

# 43:1-3.1 to 43:1-3.3

## LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

**LAWS OF:** 2007                      **CHAPTER:** 49

**NJSA:** 43:1-3.1 to 43:1-3.3 (Provides for mandatory forfeiture of retirement benefits and mandatory imprisonment for public officers or employees convicted of certain crimes)

**BILL NO:** S14 (Substituted for A20)

**SPONSOR(S)** Adler and Others

**DATE INTRODUCED:** January 9, 2007

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

**SENATE:**

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**                      **ASSEMBLY:** January 29, 2007

**SENATE:** January 22, 2007

**DATE OF APPROVAL:** March 15, 2007

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

**S14**

[SPONSOR'S STATEMENT:](#) (Begins on page 14 of original bill) [Yes](#)

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

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

**A20**

[SPONSOR'S STATEMENT:](#) (Begins on page 13 of original bill) [Yes](#)

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

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

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

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"Corzine signs first batch of major tax reform bills," Burlington County Times, March 16, 2007, p.B-1

"Corzine signs first batch of tax reform legislation," Courier News, March 16, 2007, p.A-3

"Corzine signs reform bills aimed at saving money," The Record, March 16, 2007, p.A04

"Corzine signs first batch of tax-reform legislation," The Press, March 16, 2007, p.A4

"Corzine signs first batch of major tax reform bills," The Trentonian, March 16, 2007, p.8

"Corzine signs three key bills," The Times, March 16, 2007, p.01

"Corzine enacts 3 pieces of tax reform," The Star-Ledger, March 16, 2007, p.19

RWH 4/11/08

§§2-4 -  
C.43:1-3.1 to  
43:1-3.3  
§6 - C.2C:43-6.5  
§7 - Note to  
§§2 & 6  
§10 - Note to  
§§1-9

P.L. 2007, CHAPTER 49, *approved March 15, 2007*  
Senate, No. 14

1 **AN ACT** concerning mandatory forfeiture of retirement benefits and  
2 mandatory imprisonment for public officers or employees  
3 convicted of certain crimes and amending and supplementing  
4 P.L.1995, c.408 (C.43:1-3 et seq.) and Title 2C of the New  
5 Jersey Statutes.

6

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

9

10 1. Section 1 of P.L.1995, c.408 (C.43:1-3) is amended to read as  
11 follows:

12 1. a. The receipt of a public pension or retirement benefit is  
13 hereby expressly conditioned upon the rendering of honorable  
14 service by a public officer or employee.

15 b. The board of trustees of any State or locally-administered  
16 pension fund or retirement system created under the laws of this  
17 State is authorized to order the forfeiture of all or part of the earned  
18 service credit or pension or retirement benefit of any member of the  
19 fund or system for misconduct occurring during the member's  
20 public service which renders the member's service or part thereof  
21 dishonorable and to implement any pension forfeiture ordered by a  
22 court pursuant to section 2 of P.L. , c. (C. )(pending before  
23 the Legislature as this bill).

24 c. In evaluating a member's misconduct to determine whether it  
25 constitutes a breach of the condition that public service be  
26 honorable and whether forfeiture or partial forfeiture of earned  
27 service credit or earned pension or retirement benefits is  
28 appropriate, the board of trustees shall consider and balance the  
29 following factors in view of the goals to be achieved under the  
30 pension laws:

- 31 (1) the member's length of service;  
32 (2) the basis for retirement;  
33 (3) the extent to which the member's pension has vested;  
34 (4) the duties of the particular member;  
35 (5) the member's public employment history and record covered  
36 under the retirement system;  
37 (6) any other public employment or service;

**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 (7) the nature of the misconduct or crime, including the gravity  
2 or substantiality of the offense, whether it was a single or multiple  
3 offense and whether it was continuing or isolated;

4 (8) the relationship between the misconduct and the member's  
5 public duties;

6 (9) the quality of moral turpitude or the degree of guilt or  
7 culpability, including the member's motives and reasons, personal  
8 gain and similar considerations;

9 (10) the availability and adequacy of other penal sanctions; and

10 (11) other personal circumstances relating to the member which  
11 bear upon the justness of forfeiture.

12 d. Whenever a board of trustees determines, pursuant to this  
13 section, that a partial forfeiture of earned service credit or earned  
14 pension or retirement benefits is warranted, it shall order that  
15 benefits be calculated as if the accrual of pension rights terminated  
16 as of the date the misconduct first occurred or, if termination as of  
17 that date would in light of the nature and extent of the misconduct  
18 result in an excessive pension or retirement benefit or in an  
19 excessive forfeiture, a date reasonably calculated to impose a  
20 forfeiture that reflects the nature and extent of the misconduct and  
21 the years of honorable service.

22 (cf: P.L.1995, c.408, s.1)

23

24 2. (New section) a. A person who holds or has held any public  
25 office, position, or employment, elective or appointive, under the  
26 government of this State or any agency or political subdivision  
27 thereof, who is convicted of any crime set forth in subsection b. of  
28 this section, or of a substantially similar offense under the laws of  
29 another state or the United States which would have been such a  
30 crime under the laws of this State, which crime or offense involves  
31 or touches such office, position or employment, shall forfeit all of  
32 the pension or retirement benefit earned as a member of any State  
33 or locally-administered pension fund or retirement system in which  
34 he participated at the time of the commission of the offense and  
35 which covered the office, position or employment involved in the  
36 offense. As used in this section, a crime or offense that "involves  
37 or touches such office, position or employment" means that the  
38 crime or offense was related directly to the person's performance in,  
39 or circumstances flowing from, the specific public office or  
40 employment held by the person.

41 b. Subsection a. of this section applies to a conviction of any of  
42 the following crimes:

43 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
44 coercion;

45 (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
46 exceeds \$10,000;

47 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

48 (4) N.J.S.2C:20-9, theft by failure to make required disposition

- 1 of property received, if the amount involved exceeds \$10,000;
- 2 (5) N.J.S.2C:21-10, commercial bribery;
- 3 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money  
4 laundering;
- 5 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract  
6 payment claims;
- 7 (8) N.J.S.2C:27-2, bribery in official matters;
- 8 (9) N.J.S.2C:27-3, threats and other improper influence in  
9 official and political matters;
- 10 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful  
11 official business transaction where interest is involved;
- 12 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or  
13 receipt of unlawful benefit by public servant for official behavior;
- 14 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of  
15 unlawful benefit to public servant for official behavior;
- 16 (13) N.J.S.2C:28-1, perjury;
- 17 (14) N.J.S.2C:28-5, tampering with witnesses;
- 18 (15) N.J.S.2C:28-7, tampering with public records or  
19 information;
- 20 (16) N.J.S.2C:29-4, compounding;
- 21 (17) N.J.S.2C:30-2, official misconduct;
- 22 (18) N.J.S.2C:30-3, speculating or wagering on official action or  
23 information; or
- 24 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official  
25 misconduct.
- 26 c. A court of this State shall enter an order of pension forfeiture  
27 pursuant to this section:
- 28 (1) Immediately upon a finding of guilt by the trier of fact or a  
29 plea of guilty entered in any court of this State unless the court, for  
30 good cause shown, orders a stay of the pension forfeiture pending a  
31 hearing on the merits at the time of sentencing; or
- 32 (2) Upon application of the county prosecutor or the Attorney  
33 General, when the pension forfeiture is based upon a conviction of  
34 an offense under the laws of another state or of the United States.  
35 An order of pension forfeiture pursuant to this paragraph shall be  
36 deemed to have taken effect on the date the person was found guilty  
37 by the trier of fact or pled guilty to the offense.
- 38 d. No court shall grant a stay of an order of pension forfeiture  
39 pending appeal of a conviction or pension forfeiture order unless  
40 the court is clearly convinced that there is a substantial likelihood of  
41 success on the merits. If the conviction be reversed or the order of  
42 pension forfeiture be overturned, his pension rights and benefits  
43 shall be restored from the date of pension forfeiture.
- 44 e. Nothing in this section shall be deemed to preclude the  
45 authority of the board of trustees of any State or locally-  
46 administered pension fund or retirement system created under the  
47 laws of this State from ordering the forfeiture of all or part of the  
48 earned service credit or pension or retirement benefit of any

1 member of the fund or system for misconduct occurring during the  
2 member's public service pursuant to the provisions of P.L.1995,  
3 c.408 (C.43:1-3 et seq.), including in a case where the court does  
4 not enter an order of forfeiture pursuant to this section.

5  
6 3. (New section) The board of trustees of any State or locally-  
7 administered pension fund or retirement system created under the  
8 laws of this State may subpoena witnesses and compel their  
9 attendance, and also may require the production of books, papers or  
10 documents in a matter concerning the rendering of honorable  
11 service by a public officer or employee seeking to receive a public  
12 pension or retirement benefit. If any person shall refuse to obey  
13 any subpoena so issued, or shall refuse to testify or produce any  
14 books, papers or documents, the board may apply ex parte to the  
15 Superior Court to compel the person to comply forthwith with the  
16 subpoena.

17  
18 4. (New section) A State, county or local employer participating  
19 in a State or locally-administered pension fund or retirement system  
20 shall be responsible for reimbursement to the pension fund or  
21 retirement system of all pension costs incurred by a State or locally-  
22 administered pension fund or retirement system following any  
23 settlement agreement between the employer and an employee that  
24 provides for the employer not to pursue any civil or criminal  
25 charges or an action for misconduct against the employee in  
26 exchange for the employee's resignation in good standing when the  
27 employer has failed to fully disclose the settlement to the board of  
28 trustees of the pension fund or retirement system so that it can  
29 determine whether to order the forfeiture of all or part of the earned  
30 service credit or pension or retirement benefit of any member of the  
31 fund or system for misconduct occurring during the member's  
32 public service which renders the member's service or part thereof  
33 dishonorable.

34  
35 5. N.J.S.2C:51-2 is amended to read as follows:

36 2C:51-2. Forfeiture of Public Office, Position, or Employment.

37 a. A person holding any public office, position, or employment,  
38 elective or appointive, under the government of this State or any  
39 agency or political subdivision thereof, who is convicted of an  
40 offense shall forfeit such office **[or]**, position or employment if:

41 (1) He is convicted under the laws of this State of an offense  
42 involving dishonesty or of a crime of the third degree or above or  
43 under the laws of another state or of the United States of an offense  
44 or a crime which, if committed in this State, would be such an  
45 offense or crime;

46 (2) He is convicted of an offense involving or touching such  
47 office, position or employment; or

48 (3) The Constitution so provides.

1       As used in this subsection, “involving or touching such office,  
2 position or employment” means that the offense was related directly  
3 to the person’s performance in, or circumstances flowing from, the  
4 specific public office, position or employment held by the person.

5       b. A court of this State shall enter an order of forfeiture pursuant  
6 to subsection a.:

7       (1) Immediately upon a finding of guilt by the trier of fact or a  
8 plea of guilty entered in any court of this State unless the court, for  
9 good cause shown, orders a stay of such forfeiture pending a  
10 hearing on the merits at the time of sentencing; or

11       (2) Upon application of the county prosecutor or the Attorney  
12 General, when the forfeiture is based upon a conviction of an  
13 offense under the laws of another state or of the United States. An  
14 order of forfeiture pursuant to this paragraph shall be deemed to  
15 have taken effect on the date the person was found guilty by the  
16 trier of fact or pled guilty to the offense.

17       c. No court shall grant a stay of an order of forfeiture pending  
18 appeal of a conviction or forfeiture order unless the court is clearly  
19 convinced that there is a substantial likelihood of success on the  
20 merits. If the conviction be reversed or the order of forfeiture be  
21 overturned, he shall be restored, if feasible, to his office, position or  
22 employment with all the rights, emoluments and salary thereof from  
23 the date of forfeiture.

24       Any official action taken by the convicted person on or after the  
25 date as of which a forfeiture of the person’s office shall take effect  
26 shall, during a period of 60 days following the date on which an  
27 order of forfeiture shall have been issued hereunder, be voidable by  
28 the person’s successor in office or, if the office of the person was  
29 that of member of the governing body of a county, municipality or  
30 independent authority, by that governing body.

31       d. In addition to the punishment prescribed for the offense, and  
32 the forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person  
33 convicted of an offense involving or touching on his public office,  
34 position or employment shall be forever disqualified from holding  
35 any office or position of honor, trust or profit under this State or  
36 any of its administrative or political subdivisions. As used in this  
37 subsection, “involving or touching on his public office, position or  
38 employment” means that the offense was related directly to the  
39 person’s performance in, or circumstances flowing from, the  
40 specific public office, position or employment held by the person.

41       e. Any forfeiture or disqualification under subsection a., b. or d.  
42 which is based upon a conviction of a disorderly persons or petty  
43 disorderly persons offense may be waived by the court upon  
44 application of the county prosecutor or the Attorney General and for  
45 good cause shown.

46       f. Except as may otherwise be ordered by the Attorney General  
47 as the public need may require, any person convicted of an offense  
48 under **[section]** section 97 of P.L.1999, c.440 (C.2C:21-34), N.J.S.

1 2C:27-2, [2C:27-4, 2C:27-6, 2C:27-7,] N.J.S.2C:27-3,  
2 N.J.S.2C:27-5, section 100 of P.L.1999, c. 440 (C.2C:27-9), section  
3 5 of P.L.2003, c.255 (C.2C:27-10), section 6 of P.L.2003, c.255  
4 (C.2C:27-11), N.J.S.2C:29-4, N.J.S.2C:30-2, or N.J.S.2C:30-3 of  
5 this Title shall be ineligible, either directly or indirectly, to submit a  
6 bid, enter into any contract, or to conduct any business with any  
7 board, agency, authority, department, commission, public  
8 corporation, or other body of this State, of this or one or more other  
9 states, or of one or more political subdivisions of this State for a  
10 period of, but not more than, 10 years from the date of conviction  
11 for a crime of the second degree, or five years from the date of  
12 conviction for a crime of the third degree. It is the purpose of this  
13 subsection to bar any individual convicted of any of the above  
14 enumerated offenses and any business, including any corporation,  
15 partnership, association or proprietorship in which such individual  
16 is a principal, or with respect to which such individual owns,  
17 directly or indirectly, or controls 5% or more of the stock or other  
18 equity interest of such business, from conducting business with  
19 public entities.

20 The State Treasurer shall keep and maintain a list of all  
21 corporations barred from conducting such business pursuant to this  
22 section.

23 g. In any case in which the issue of forfeiture is not raised in a  
24 court of this State at the time of a finding of guilt, entry of guilty  
25 plea or sentencing, a forfeiture of public office, position or  
26 employment required by this section may be ordered by a court of  
27 this State upon application of the county prosecutor or the Attorney  
28 General or upon application of the public officer or public entity  
29 having authority to remove the person convicted from his public  
30 office, position or employment. The fact that a court has declined  
31 to order forfeiture shall not preclude the public officer or public  
32 entity having authority to remove the person convicted from  
33 seeking to remove or suspend the person from his office, position or  
34 employment on the ground that the conduct giving rise to the  
35 conviction demonstrates that the person is unfit to hold the office,  
36 position or employment.

37 (cf: P.L.2003, c.145, s.1)

38

39 6. (New section) a. Notwithstanding the provisions of  
40 subsection a. of N.J.S.2C:43-6 and except as otherwise provided in  
41 subsection c. of this section, a person who serves or has served as a  
42 public officer or employee under the government of this State, or  
43 any political subdivision thereof, who is convicted of a crime that  
44 involves or touches such office or employment as set forth in  
45 subsection b. of this section, shall be sentenced to a mandatory  
46 minimum term of imprisonment without eligibility for parole as  
47 follows: for a crime of the fourth degree, the mandatory minimum  
48 term shall be one year; for a crime of the third degree, two years;



1 for a crime of the second degree, five years, and for a crime of the  
2 first degree, 10 years, unless the provisions of any other law  
3 provide for a higher mandatory minimum term. As used in this  
4 subsection, “a crime that involves or touches such office or  
5 employment” means that the crime was related directly to the  
6 person’s performance in, or circumstances flowing from, the  
7 specific public office or employment held by the person.

8 b. Subsection a. of this section applies to a conviction of any of  
9 the following crimes:

10 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
11 coercion;

12 (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
13 exceeds \$10,000;

14 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

15 (4) N.J.S.2C:20-9, theft by failure to make required disposition  
16 of property received, if the amount involved exceeds \$10,000;

17 (5) N.J.S.2C:21-10, commercial bribery;

18 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money  
19 laundering;

20 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract  
21 payment claims;

22 (8) N.J.S.2C:27-2, bribery in official matters;

23 (9) N.J.S.2C:27-3, threats and other improper influence in  
24 official and political matters;

25 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful  
26 official business transaction where interest is involved;

27 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or  
28 receipt of unlawful benefit by public servant for official behavior;

29 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of  
30 unlawful benefit to public servant for official behavior;

31 (13) N.J.S.2C:28-1, perjury;

32 (14) N.J.S.2C:28-5, tampering with witnesses;

33 (15) N.J.S.2C:28-7, tampering with public records or  
34 information;

35 (16) N.J.S.2C:29-4, compounding;

36 (17) N.J.S.2C:30-2, official misconduct;

37 (18) N.J.S.2C:30-3, speculating or wagering on official action or  
38 information; or

39 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official  
40 misconduct.

41 c. (1) On motion by the prosecutor stating that the defendant has  
42 provided substantial assistance in a criminal investigation or  
43 prosecution of another person, the court may waive or reduce the  
44 mandatory minimum term of imprisonment required by subsection  
45 a. of this section. The appropriate waiver or reduction shall be  
46 determined by the court for reasons stated that may include, but are  
47 not limited to, consideration of the following:

1 (i) the court's evaluation of the significance and usefulness of the  
2 defendant's assistance, giving substantial weight to the prosecutor's  
3 evaluation of the assistance rendered;

4 (ii) the truthfulness, completeness, and reliability of any  
5 information or testimony provided by the defendant;

6 (iii) the nature and extent of the defendant's assistance;

7 (iv) any injury suffered, or any danger or risk of injury to the  
8 defendant or his family resulting for his assistance;

9 (v) the timeliness of the defendant's assistance.

10 In making such a determination, the court shall give substantial  
11 weight to the prosecutor's evaluation of the extent of the  
12 defendant's assistance, particularly where the extent and value of  
13 the assistance are difficult to ascertain.

14 (2) If the court finds by clear and convincing evidence that  
15 extraordinary circumstances exist such that imposition of a  
16 mandatory minimum term would be a serious injustice which  
17 overrides the need to deter such conduct in others, the court may  
18 waive or reduce the mandatory minimum term of imprisonment  
19 required by subsection a. of this section. In making any such  
20 finding, the court must state with specificity its reasons for waiving  
21 or reducing the mandatory minimum sentence that would otherwise  
22 apply.

23 (3) If, pursuant to paragraph (1) or (2) of this subsection, the  
24 court waives or reduces the mandatory minimum term required by  
25 subsection a. of this section, such sentence shall not become final  
26 for 10 days in order to permit the appeal of the sentence by the  
27 prosecution.

28 d. (1) a prosecutor shall not recommend the admission into or  
29 consent to the referral to a pretrial intervention program of a person  
30 who serves or has served as a public officer or employee under the  
31 government of this State, or any political subdivision thereof, who  
32 is charged with a crime that involves or touches such office or  
33 employment as set forth in subsection b. of this section, without the  
34 prior approval of the Attorney General.

35 (2) A person who serves or has served as a public officer or  
36 employee under the government of this State, or any political  
37 subdivision thereof, who is convicted of a crime that involves or  
38 touches such office or employment as set forth in subsection b. of  
39 this section shall be ineligible for participation in any program of  
40 intensive supervision during any period of parole ineligibility.

41 e. The Attorney General shall develop guidelines to ensure the  
42 uniform exercise of discretion in making determinations regarding  
43 the waiver or reduction of a mandatory minimum term of  
44 imprisonment pursuant to paragraph (1) of this subsection c. of this  
45 section and participation in a pretrial intervention program pursuant  
46 to paragraph (1) of subsection d. of this section.

47  
48 7. (New section) a. The provisions of section 2 of

1 P.L. , c. (C. ) (pending before the Legislature as this bill)  
2 concerning the forfeiture of all of the pension or retirement benefit  
3 for a member of any State or locally-administered pension fund or  
4 retirement system shall be prospective in application for any crime  
5 or offense committed after the effective date of  
6 P.L. c. (C. )(pending before the Legislature as this bill).

7 b. The provisions of section 6 of P.L. c. (C. )(pending  
8 before the Legislature as this bill) concerning mandatory terms of  
9 imprisonment shall be prospective in application for any crime  
10 committed after the effective date of P.L. , c. (C. ) (pending  
11 before the Legislature as this bill).

12

13 8. Section 2 of P.L.1993, c.123 (C.2C:43-11) is amended to  
14 read as follows:

15 2. a. No custodial sentence imposed pursuant to Chapters 43, 44  
16 or 45 of Title 2C shall be changed to permit entry into any program  
17 of intensive supervision established pursuant to the Rules  
18 Governing the Courts of the State of New Jersey if the inmate:

19 (1) Is serving a sentence for a conviction of any crime of the  
20 first degree; or

21 (2) Is serving a sentence for a conviction of any offense in  
22 which the sentencing court found that there is a substantial  
23 likelihood that the defendant is involved in organized criminal  
24 activity pursuant to N.J.S. 2C:44-1a(5); or

25 (3) Is serving any statutorily mandated parole ineligibility, or  
26 any parole ineligibility imposed by the court pursuant to subsection  
27 b. of N.J.S. 2C:43-6 or section 6 of P.L. , c. (C. )(pending  
28 before the Legislature as this bill); or

29 (4) Has previously completed a program of intensive  
30 supervision established pursuant to the Rules Governing the Courts  
31 of the State of New Jersey; or

32 (5) Has previously been convicted of a crime of the first degree,  
33 or of any offense in any other jurisdiction which, if committed in  
34 New Jersey, would constitute a crime of the first degree and the  
35 inmate was released from incarceration on the first degree offense  
36 within five years of the commission of the offense for which the  
37 inmate is applying for intensive supervision.

38 Nothing in this subsection shall be construed to preclude the  
39 program of intensive supervision from imposing more restrictive  
40 standards for admission.

41 b. Unless the inmate is within nine months of parole eligibility  
42 and has served at least six months of the sentence, no custodial  
43 sentence of an inmate serving a sentence for conviction of any  
44 crime of the second degree shall be changed to permit entry into  
45 any program of intensive supervision established pursuant to the  
46 Rules Governing the Courts of the State of New Jersey, if, within  
47 20 days of receipt of notice of the inmate's application, the county  
48 prosecutor or Attorney General objects in writing.

1 c. If an inmate's application for a change of custodial sentence to  
2 permit entry into any program of intensive supervision established  
3 pursuant to the Rules Governing the Courts of the State of New  
4 Jersey is granted over the objection of the county prosecutor or the  
5 Attorney General, the order shall not become final for 20 days or  
6 until reconsideration by the Intensive Supervision Resentencing  
7 Panel in order to permit the county prosecutor or the Attorney  
8 General to appear personally or in writing, with notice to defense  
9 counsel, to request reconsideration of the application approval.

10 d. A victim of the offense for which the inmate was sentenced  
11 shall have the right to make a written statement or to appear at a  
12 proceeding regarding the application for a change of custodial  
13 sentence imposed pursuant to Chapters 43, 44 or 45 of Title 2C for  
14 entry into any program of intensive supervision established  
15 pursuant to the Rules Governing the Courts of the State of New  
16 Jersey.

17 (cf: P.L.1993, c.123, s.2)

18

19 9. N.J.S.2C:43-12 is amended to read as follows:

20 2C:43-12. Supervisory Treatment--Pretrial Intervention. a.  
21 Public policy. The purpose of sections 2C:43-12 through 2C:43-22  
22 of this chapter is to effectuate a Statewide program of Pretrial  
23 Intervention. It is the policy of the State of New Jersey that  
24 supervisory treatment should ordinarily be limited to persons who  
25 have not previously been convicted of any criminal offense under  
26 the laws of New Jersey, or under any criminal law of the United  
27 States, or any other state when supervisory treatment would:

28 (1) Provide applicants, on an equal basis, with opportunities to  
29 avoid ordinary prosecution by receiving early rehabilitative services  
30 or supervision, when such services or supervision can reasonably be  
31 expected to deter future criminal behavior by an applicant, and  
32 when there is apparent causal connection between the offense  
33 charged and the rehabilitative or supervisory need, without which  
34 cause both the alleged offense and the need to prosecute might not  
35 have occurred; or

36 (2) Provide an alternative to prosecution for applicants who  
37 might be harmed by the imposition of criminal sanctions as  
38 presently administered, when such an alternative can be expected to  
39 serve as sufficient sanction to deter criminal conduct; or

40 (3) Provide a mechanism for permitting the least burdensome  
41 form of prosecution possible for defendants charged with  
42 "victimless" offenses, other than defendants who were public  
43 officers or employees charged with offenses that involved or  
44 touched their office or employment; or

45 (4) Provide assistance to criminal calendars in order to focus  
46 expenditure of criminal justice resources on matters involving  
47 serious criminality and severe correctional problems; or

48 (5) Provide deterrence of future criminal or disorderly behavior

1 by an applicant in a program of supervisory treatment.

2 b. Admission of an applicant into a program of supervisory  
3 treatment shall be measured according to the applicant's amenability  
4 to correction, responsiveness to rehabilitation and the nature of the  
5 offense. There shall be a presumption against admission into a  
6 program of supervisory treatment for a defendant who was a public  
7 officer or employee whose offense involved or touched upon his  
8 public office or employment.

9 c. The decision and reasons therefor made by the designated  
10 judges (or assignment judges), prosecutors and program directors in  
11 granting or denying applications for supervisory treatment, in  
12 recommending and ordering termination from the program or  
13 dismissal of charges, in all cases shall be reduced to writing and  
14 disclosed to the applicant.

15 d. If an applicant desires to challenge the decision of the  
16 prosecutor or program director not to recommend enrollment in a  
17 program of supervisory treatment the proceedings prescribed under  
18 section 14 shall be followed.

19 e. Referral. At any time prior to trial but after the filing of a  
20 criminal complaint, or the filing of an accusation or the return of an  
21 indictment, with the consent of the prosecutor and upon written  
22 recommendation of the program director, the assignment judge or a  
23 judge designated by him may postpone all further proceedings  
24 against an applicant and refer said applicant to a program of  
25 supervisory treatment approved by the Supreme Court. Prosecutors  
26 and program directors shall consider in formulating their  
27 recommendation of an applicant's participation in a supervisory  
28 treatment program, among others, the following criteria:

29 (1) The nature of the offense;

30 (2) The facts of the case;

31 (3) The motivation and age of the defendant;

32 (4) The desire of the complainant or victim to forego  
33 prosecution;

34 (5) The existence of personal problems and character traits which  
35 may be related to the applicant's crime and for which services are  
36 unavailable within the criminal justice system, or which may be  
37 provided more effectively through supervisory treatment and the  
38 probability that the causes of criminal behavior can be controlled by  
39 proper treatment;

40 (6) The likelihood that the applicant's crime is related to a  
41 condition or situation that would be conducive to change through  
42 his participation in supervisory treatment;

43 (7) The needs and interests of the victim and society;

44 (8) The extent to which the applicant's crime constitutes part of a  
45 continuing pattern of anti-social behavior;

46 (9) The applicant's record of criminal and penal violations and  
47 the extent to which he may present a substantial danger to others;

48 (10) Whether or not the crime is of an assaultive or violent

1 nature, whether in the criminal act itself or in the possible injurious  
2 consequences of such behavior;

3 (11) Consideration of whether or not prosecution would  
4 exacerbate the social problem that led to the applicant's criminal  
5 act;

6 (12) The history of the use of physical violence toward others;

7 (13) Any involvement of the applicant with organized crime;

8 (14) Whether or not the crime is of such a nature that the value  
9 of supervisory treatment would be outweighed by the public need  
10 for prosecution;

11 (15) Whether or not the applicant's involvement with other  
12 people in the crime charged or in other crime is such that the  
13 interest of the State would be best served by processing his case  
14 through traditional criminal justice system procedures;

15 (16) Whether or not the applicant's participation in pretrial  
16 intervention will adversely affect the prosecution of codefendants;  
17 and

18 (17) Whether or not the harm done to society by abandoning  
19 criminal prosecution would outweigh the benefits to society from  
20 channeling an offender into a supervisory treatment program.

21 f. Review of Supervisory Treatment Applications; Procedure  
22 Upon Denial. Each applicant for supervisory treatment shall be  
23 entitled to full and fair consideration of his application. If an  
24 application is denied, the program director or the prosecutor shall  
25 precisely state his findings and conclusion which shall include the  
26 facts upon which the application is based and the reasons offered  
27 for the denial. If the applicant desires to challenge the decision of a  
28 program director not to recommend, or of a prosecutor not to  
29 consent to, enrollment into a supervisory treatment program, a  
30 motion shall be filed before the designated judge (or assignment  
31 judge) authorized pursuant to the rules of court to enter orders.

32 g. Limitations. Supervisory treatment may occur only once with  
33 respect to any defendant and any person who has previously  
34 received supervisory treatment under section 27 of P.L.1970, c.226  
35 (C.24:21-27), shall not be eligible for supervisory treatment under  
36 this section. However, supervisory treatment, as provided herein,  
37 shall be available to a defendant irrespective of whether the  
38 defendant contests his guilt of the charge or charges against him.

39 h. Termination. Termination of supervisory treatment under this  
40 section shall be immediately reported to the assignment judge of the  
41 county who shall forward such information to the Administrative  
42 Director of the Courts.

43 i. Appointment of Program Directors; Authorized Referrals.  
44 Programs of supervisory treatment and appointment of the program  
45 directors require approval by the Supreme Court with the consent of  
46 the assignment judge and prosecutor. Referrals of participants from  
47 supervisory treatment programs may be to any public or private  
48 office or agency, including but not limited to, programs within the

1 probation service of the court, offering counseling or any other  
2 social service likely to aid in the rehabilitation of the participant  
3 and to deter the commission of other offenses.

4 j. Health Care Professional Licensing Board Notification. The  
5 program director shall promptly notify the State Board of Medical  
6 Examiners when a State licensed physician or podiatrist has been  
7 enrolled in a supervisory treatment program after he has been  
8 charged with an offense involving drugs or alcohol.

9 (cf: P.L.1989, c.300, s.22)

10

11 10. This act shall take effect on the 30th day after the date of  
12 enactment.

13

14

15

### STATEMENT

16

17 This bill imposes mandatory imprisonment and mandatory  
18 forfeiture of pension and retirement benefits for public officers or  
19 employees convicted of certain crimes involving or touching their  
20 office or employment. The bill clarifies that the board of trustees of  
21 a State or local pension fund can order forfeiture of “earned service  
22 credit” and can implement any pension forfeiture ordered by a  
23 court, and requires mandatory pension forfeiture for crimes or  
24 offenses involving or touching the office, position or employment  
25 for the following crimes:

26 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
27 coercion;

28 (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
29 exceeds \$10,000;

30 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

31 (4) N.J.S.2C:20-9, theft by failure to make required disposition  
32 of property received, if the amount involved exceeds \$10,000;

33 (5) N.J.S.2C:21-10, commercial bribery;

34 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money  
35 laundering;

36 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract  
37 payment claims;

38 (8) N.J.S.2C:27-2, bribery in official matters;

39 (9) N.J.S.2C:27-3, threats and other improper influence in  
40 official and political matters;

41 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful  
42 official business transaction where interest is involved;

43 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or  
44 receipt of unlawful benefit by public servant for official behavior;

45 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of  
46 unlawful benefit to public servant for official behavior;

47 (13) N.J.S.2C:28-1, perjury;

48 (14) N.J.S.2C:28-5, tampering with witnesses;

1 (15) N.J.S.2C:28-7, tampering with public records or  
2 information;

3 (16) N.J.S.2C:29-4, compounding;

4 (17) N.J.S.2C:30-2, official misconduct;

5 (18) N.J.S.2C:30-3, speculating or wagering on official action or  
6 information; or

7 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official  
8 misconduct.

9 Under the bill, the pension forfeiture will be ordered by the court  
10 immediately upon a finding of guilt by the trier of fact or a plea of  
11 guilty unless the court, for good cause shown, orders a stay of the  
12 pension forfeiture pending a hearing on the merits at the time of  
13 sentencing. The bill does not preclude the authority of the board of  
14 trustees from ordering the forfeiture of all or part of the earned  
15 service credit or pension or retirement benefit of any member of the  
16 fund or system for misconduct occurring at the time of the  
17 member's public service pursuant to the provisions of P.L.1995,  
18 c.408 (C.43:1-3 et seq.), including in a case where the court does  
19 not enter an order of forfeiture.

20 The bill provides that the board of trustees of any State or  
21 locally-administered pension fund or retirement system may  
22 subpoena witnesses and compel their attendance, and also may  
23 require the production of books, papers or documents in a matter  
24 concerning the rendering of honorable service by a public officer or  
25 employee seeking to receive a public pension or retirement benefit.  
26 If any person refuses to obey any subpoena so issued, or refuses to  
27 testify or produce any books, papers or documents, the board may  
28 apply ex parte to the Superior Court to compel the person to comply  
29 with the subpoena.

30 The bill provides that a State, county or local employer  
31 participating in a pension fund or retirement system will be  
32 responsible for reimbursement to the pension fund or retirement  
33 system of all pension costs incurred by the pension fund or  
34 retirement system following any settlement agreement between the  
35 employer and an employee that provides for the employer not to  
36 pursue any civil or criminal charges or an action for misconduct  
37 against the employee in exchange for the employee's resignation in  
38 good standing when the employer has failed to fully disclose the  
39 settlement to the board of trustees of the pension fund or retirement  
40 system so that it can determine whether to order the forfeiture of all  
41 or part of the earned service credit or pension or retirement benefit  
42 of any member of the fund or system for misconduct occurring  
43 during the member's public service which renders the member's  
44 service or part thereof dishonorable.

45 The bill amends current law concerning forfeiture of public  
46 office to include a definition of the phrase concerning crimes and  
47 offenses "involving or touching" public office or employment, in  
48 accordance with the definition set forth by the New Jersey Supreme



1 Court in McCann v. Clerk of the City of Jersey City, 167 N.J. 311  
2 (2001). It provides that a crime or offense “involving or touching”  
3 public office or employment means that the crime or offense was  
4 related directly to the person’s performance in, or circumstances  
5 flowing from, a specific public office or position held by the  
6 person. As the Supreme Court stated in McCann: “When an  
7 individual commits a crime wholly unrelated to his or her public  
8 office, the crime ordinarily cannot be characterized as involving or  
9 touching on the public office.”

10 The bill adds certain public corruption crimes to subsection f. of  
11 N.J.S.A.2C:51-2, which provides that persons convicted of certain  
12 crimes are barred from entering into contracts, submitting bids, or  
13 conducting any business with any State entity: N.J.S.A.2C:21-34,  
14 false contract payment claims; N.J.S.A.2C:27-3, threats and other  
15 improper influence in official and political matters; N.J.S.A.2C:27-  
16 5, retaliation for past official action; N.J.S.A.2C:27-9, unlawful  
17 official business transaction where interest is involved;  
18 N.J.S.A.2C:27-10, acceptance of unlawful benefit by public servant  
19 for official behavior, and N.J.S.A.2C:27-11, offer of unlawful  
20 benefit to public servant for official behavior.

21 The bill provides mandatory terms of imprisonment for  
22 conviction of any of the nineteen crimes enumerated. For a crime  
23 of the fourth degree, the mandatory minimum term will be one year;  
24 for a crime of the third degree, two years; for a crime of the second  
25 degree, five years, and for a crime of the first degree, 10 years,  
26 unless the provisions of any other law provide for a higher  
27 mandatory minimum term. (Generally, a crime of the fourth degree  
28 is punishable by a term of imprisonment of up to 18 months or a  
29 fine of up to \$10,000 or both; a crime of the third degree, by a term  
30 of three to five years or a fine of up to \$15,000 or both; a crime of  
31 the second degree, a by a term of five to 10 years or a fine of up to  
32 \$150,000 or both; and a crime of the first degree, by a term of 10 to  
33 20 years or a fine of up to \$200,000 or both.)

34 The bill further provides that if the defendant has provided  
35 substantial assistance in a criminal investigation or prosecution of  
36 another person, the prosecutor is permitted to ask the court to waive  
37 or reduce the mandatory minimum term of imprisonment. Any  
38 waiver or reduction in the term of imprisonment would be  
39 determined by the court, which would state with specificity its  
40 reasons for waiving or reducing the mandatory minimum sentence  
41 that would otherwise apply.

42 Prosecutors are not permitted to recommend the admission into a  
43 pretrial intervention program of any person who serves or has  
44 served as a public officer or employee and who is charged with  
45 certain crimes set forth in this bill without the prior approval of the  
46 Attorney General. Individuals convicted of one or more of these  
47 crimes would be ineligible for participation in any program of  
48 intensive supervision during any period of parole ineligibility. The

1 Attorney General is required to develop guidelines to ensure the  
2 uniform exercise of discretion in making determinations regarding  
3 the waiver or reduction of a mandatory minimum term of  
4 imprisonment.

5 The provisions of the bill are prospective in application. Pension  
6 forfeiture and mandatory terms of imprisonment will apply to  
7 crimes or offenses committed after the bill takes effect to avoid a  
8 challenge on ex post facto grounds that the forfeiture and  
9 imprisonment terms constitute new criminal penalties which may  
10 not be applied retroactively. The bill will take effect on the 30th  
11 day after enactment.

12

13

14

15

16 Provides for mandatory forfeiture of retirement benefits and  
17 mandatory imprisonment for public officers or employees convicted  
18 of certain crimes.

# SENATE, No. 14

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 9, 2007

**Sponsored by:**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Senator ELLEN KARCHER**

**District 12 (Mercer and Monmouth)**

**Senator RICHARD J. CODEY**

**District 27 (Essex)**

**Assemblyman MICHAEL J. PANTER**

**District 12 (Mercer and Monmouth)**

**Assemblywoman NELLIE POU**

**District 35 (Bergen and Passaic)**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Assemblyman KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex and Passaic)**

**Assemblyman JEFF VAN DREW**

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

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Senator Vitale, Assemblymen Gusciora, Vas, Mayer and Russo**

**SYNOPSIS**

Provides for mandatory forfeiture of retirement benefits and mandatory imprisonment for public officers or employees convicted of certain crimes.

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 1/30/2007)

1 AN ACT concerning mandatory forfeiture of retirement benefits and  
2 mandatory imprisonment for public officers or employees  
3 convicted of certain crimes and amending and supplementing  
4 P.L.1995, c.408 (C.43:1-3 et seq.) and Title 2C of the New  
5 Jersey Statutes.

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

9  
10 1. Section 1 of P.L.1995, c.408 (C.43:1-3) is amended to read as  
11 follows:

12 1. a. The receipt of a public pension or retirement benefit is  
13 hereby expressly conditioned upon the rendering of honorable  
14 service by a public officer or employee.

15 b. The board of trustees of any State or locally-administered  
16 pension fund or retirement system created under the laws of this  
17 State is authorized to order the forfeiture of all or part of the earned  
18 service credit or pension or retirement benefit of any member of the  
19 fund or system for misconduct occurring during the member's  
20 public service which renders the member's service or part thereof  
21 dishonorable and to implement any pension forfeiture ordered by a  
22 court pursuant to section 2 of P.L. , c. (C. )(pending before  
23 the Legislature as this bill).

24 c. In evaluating a member's misconduct to determine whether it  
25 constitutes a breach of the condition that public service be  
26 honorable and whether forfeiture or partial forfeiture of earned  
27 service credit or earned pension or retirement benefits is  
28 appropriate, the board of trustees shall consider and balance the  
29 following factors in view of the goals to be achieved under the  
30 pension laws:

- 31 (1) the member's length of service;  
32 (2) the basis for retirement;  
33 (3) the extent to which the member's pension has vested;  
34 (4) the duties of the particular member;  
35 (5) the member's public employment history and record covered  
36 under the retirement system;  
37 (6) any other public employment or service;  
38 (7) the nature of the misconduct or crime, including the gravity  
39 or substantiality of the offense, whether it was a single or multiple  
40 offense and whether it was continuing or isolated;  
41 (8) the relationship between the misconduct and the member's  
42 public duties;  
43 (9) the quality of moral turpitude or the degree of guilt or  
44 culpability, including the member's motives and reasons, personal  
45 gain and similar considerations;

**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 (10) the availability and adequacy of other penal sanctions; and  
2 (11) other personal circumstances relating to the member which  
3 bear upon the justness of forfeiture.

4 d. Whenever a board of trustees determines, pursuant to this  
5 section, that a partial forfeiture of earned service credit or earned  
6 pension or retirement benefits is warranted, it shall order that  
7 benefits be calculated as if the accrual of pension rights terminated  
8 as of the date the misconduct first occurred or, if termination as of  
9 that date would in light of the nature and extent of the misconduct  
10 result in an excessive pension or retirement benefit or in an  
11 excessive forfeiture, a date reasonably calculated to impose a  
12 forfeiture that reflects the nature and extent of the misconduct and  
13 the years of honorable service.

14 (cf: P.L.1995, c.408, s.1)

15

16 2. (New section) a. A person who holds or has held any public  
17 office, position, or employment, elective or appointive, under the  
18 government of this State or any agency or political subdivision  
19 thereof, who is convicted of any crime set forth in subsection b. of  
20 this section, or of a substantially similar offense under the laws of  
21 another state or the United States which would have been such a  
22 crime under the laws of this State, which crime or offense involves  
23 or touches such office, position or employment, shall forfeit all of  
24 the pension or retirement benefit earned as a member of any State  
25 or locally-administered pension fund or retirement system in which  
26 he participated at the time of the commission of the offense and  
27 which covered the office, position or employment involved in the  
28 offense. As used in this section, a crime or offense that “involves  
29 or touches such office, position or employment” means that the  
30 crime or offense was related directly to the person’s performance in,  
31 or circumstances flowing from, the specific public office or  
32 employment held by the person.

33 b. Subsection a. of this section applies to a conviction of any of  
34 the following crimes:

35 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
36 coercion;

37 (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
38 exceeds \$10,000;

39 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

40 (4) N.J.S.2C:20-9, theft by failure to make required disposition  
41 of property received, if the amount involved exceeds \$10,000;

42 (5) N.J.S.2C:21-10, commercial bribery;

43 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money  
44 laundering;

45 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract  
46 payment claims;

47 (8) N.J.S.2C:27-2, bribery in official matters;

48 (9) N.J.S.2C:27-3, threats and other improper influence in

- 1 official and political matters;
- 2 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful  
3 official business transaction where interest is involved;
- 4 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or  
5 receipt of unlawful benefit by public servant for official behavior;
- 6 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of  
7 unlawful benefit to public servant for official behavior;
- 8 (13) N.J.S.2C:28-1, perjury;
- 9 (14) N.J.S.2C:28-5, tampering with witnesses;
- 10 (15) N.J.S.2C:28-7, tampering with public records or  
11 information;
- 12 (16) N.J.S.2C:29-4, compounding;
- 13 (17) N.J.S.2C:30-2, official misconduct;
- 14 (18) N.J.S.2C:30-3, speculating or wagering on official action or  
15 information; or
- 16 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official  
17 misconduct.
- 18 c. A court of this State shall enter an order of pension forfeiture  
19 pursuant to this section:
- 20 (1) Immediately upon a finding of guilt by the trier of fact or a  
21 plea of guilty entered in any court of this State unless the court, for  
22 good cause shown, orders a stay of the pension forfeiture pending a  
23 hearing on the merits at the time of sentencing; or
- 24 (2) Upon application of the county prosecutor or the Attorney  
25 General, when the pension forfeiture is based upon a conviction of  
26 an offense under the laws of another state or of the United States.  
27 An order of pension forfeiture pursuant to this paragraph shall be  
28 deemed to have taken effect on the date the person was found guilty  
29 by the trier of fact or pled guilty to the offense.
- 30 d. No court shall grant a stay of an order of pension forfeiture  
31 pending appeal of a conviction or pension forfeiture order unless  
32 the court is clearly convinced that there is a substantial likelihood of  
33 success on the merits. If the conviction be reversed or the order of  
34 pension forfeiture be overturned, his pension rights and benefits  
35 shall be restored from the date of pension forfeiture.
- 36 e. Nothing in this section shall be deemed to preclude the  
37 authority of the board of trustees of any State or locally-  
38 administered pension fund or retirement system created under the  
39 laws of this State from ordering the forfeiture of all or part of the  
40 earned service credit or pension or retirement benefit of any  
41 member of the fund or system for misconduct occurring during the  
42 member's public service pursuant to the provisions of P.L.1995,  
43 c.408 (C.43:1-3 et seq.), including in a case where the court does  
44 not enter an order of forfeiture pursuant to this section.
- 45
- 46 3. (New section) The board of trustees of any State or locally-  
47 administered pension fund or retirement system created under the  
48 laws of this State may subpoena witnesses and compel their

1 attendance, and also may require the production of books, papers or  
2 documents in a matter concerning the rendering of honorable  
3 service by a public officer or employee seeking to receive a public  
4 pension or retirement benefit. If any person shall refuse to obey  
5 any subpoena so issued, or shall refuse to testify or produce any  
6 books, papers or documents, the board may apply ex parte to the  
7 Superior Court to compel the person to comply forthwith with the  
8 subpoena.

9  
10 4. (New section) A State, county or local employer participating  
11 in a State or locally-administered pension fund or retirement system  
12 shall be responsible for reimbursement to the pension fund or  
13 retirement system of all pension costs incurred by a State or locally-  
14 administered pension fund or retirement system following any  
15 settlement agreement between the employer and an employee that  
16 provides for the employer not to pursue any civil or criminal  
17 charges or an action for misconduct against the employee in  
18 exchange for the employee's resignation in good standing when the  
19 employer has failed to fully disclose the settlement to the board of  
20 trustees of the pension fund or retirement system so that it can  
21 determine whether to order the forfeiture of all or part of the earned  
22 service credit or pension or retirement benefit of any member of the  
23 fund or system for misconduct occurring during the member's  
24 public service which renders the member's service or part thereof  
25 dishonorable.

26  
27 5. N.J.S.2C:51-2 is amended to read as follows:

28 2C:51-2. Forfeiture of Public Office, Position, or Employment.

29 a. A person holding any public office, position, or employment,  
30 elective or appointive, under the government of this State or any  
31 agency or political subdivision thereof, who is convicted of an  
32 offense shall forfeit such office **[or]**, position or employment if:

33 (1) He is convicted under the laws of this State of an offense  
34 involving dishonesty or of a crime of the third degree or above or  
35 under the laws of another state or of the United States of an offense  
36 or a crime which, if committed in this State, would be such an  
37 offense or crime;

38 (2) He is convicted of an offense involving or touching such  
39 office, position or employment; or

40 (3) The Constitution so provides.

41 As used in this subsection, "involving or touching such office,  
42 position or employment" means that the offense was related directly  
43 to the person's performance in, or circumstances flowing from, the  
44 specific public office, position or employment held by the person.

45 b. A court of this State shall enter an order of forfeiture pursuant  
46 to subsection a.:

47 (1) Immediately upon a finding of guilt by the trier of fact or a  
48 plea of guilty entered in any court of this State unless the court, for

1 good cause shown, orders a stay of such forfeiture pending a  
2 hearing on the merits at the time of sentencing; or

3 (2) Upon application of the county prosecutor or the Attorney  
4 General, when the forfeiture is based upon a conviction of an  
5 offense under the laws of another state or of the United States. An  
6 order of forfeiture pursuant to this paragraph shall be deemed to  
7 have taken effect on the date the person was found guilty by the  
8 trier of fact or pled guilty to the offense.

9 c. No court shall grant a stay of an order of forfeiture pending  
10 appeal of a conviction or forfeiture order unless the court is clearly  
11 convinced that there is a substantial likelihood of success on the  
12 merits. If the conviction be reversed or the order of forfeiture be  
13 overturned, he shall be restored, if feasible, to his office, position or  
14 employment with all the rights, emoluments and salary thereof from  
15 the date of forfeiture.

16 Any official action taken by the convicted person on or after the  
17 date as of which a forfeiture of the person's office shall take effect  
18 shall, during a period of 60 days following the date on which an  
19 order of forfeiture shall have been issued hereunder, be voidable by  
20 the person's successor in office or, if the office of the person was  
21 that of member of the governing body of a county, municipality or  
22 independent authority, by that governing body.

23 d. In addition to the punishment prescribed for the offense, and  
24 the forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person  
25 convicted of an offense involving or touching on his public office,  
26 position or employment shall be forever disqualified from holding  
27 any office or position of honor, trust or profit under this State or  
28 any of its administrative or political subdivisions. As used in this  
29 subsection, "involving or touching on his public office, position or  
30 employment" means that the offense was related directly to the  
31 person's performance in, or circumstances flowing from, the  
32 specific public office, position or employment held by the person.

33 e. Any forfeiture or disqualification under subsection a., b. or d.  
34 which is based upon a conviction of a disorderly persons or petty  
35 disorderly persons offense may be waived by the court upon  
36 application of the county prosecutor or the Attorney General and for  
37 good cause shown.

38 f. Except as may otherwise be ordered by the Attorney General  
39 as the public need may require, any person convicted of an offense  
40 under **[section]** section 97 of P.L.1999, c.440 (C.2C:21-34), N.J.S.  
41 2C:27-2, [2C:27-4, 2C:27-6, 2C:27-7,] N.J.S.2C:27-3,  
42 N.J.S.2C:27-5, section 100 of P.L.1999, c. 440 (C.2C:27-9), section  
43 5 of P.L.2003, c.255 (C.2C:27-10), section 6 of P.L.2003, c.255  
44 (C.2C:27-11), N.J.S.2C:29-4, N.J.S.2C:30-2, or N.J.S.2C:30-3 of  
45 this Title shall be ineligible, either directly or indirectly, to submit a  
46 bid, enter into any contract, or to conduct any business with any  
47 board, agency, authority, department, commission, public  
48 corporation, or other body of this State, of this or one or more other



1 states, or of one or more political subdivisions of this State for a  
2 period of, but not more than, 10 years from the date of conviction  
3 for a crime of the second degree, or five years from the date of  
4 conviction for a crime of the third degree. It is the purpose of this  
5 subsection to bar any individual convicted of any of the above  
6 enumerated offenses and any business, including any corporation,  
7 partnership, association or proprietorship in which such individual  
8 is a principal, or with respect to which such individual owns,  
9 directly or indirectly, or controls 5% or more of the stock or other  
10 equity interest of such business, from conducting business with  
11 public entities.

12 The State Treasurer shall keep and maintain a list of all  
13 corporations barred from conducting such business pursuant to this  
14 section.

15 g. In any case in which the issue of forfeiture is not raised in a  
16 court of this State at the time of a finding of guilt, entry of guilty  
17 plea or sentencing, a forfeiture of public office, position or  
18 employment required by this section may be ordered by a court of  
19 this State upon application of the county prosecutor or the Attorney  
20 General or upon application of the public officer or public entity  
21 having authority to remove the person convicted from his public  
22 office, position or employment. The fact that a court has declined  
23 to order forfeiture shall not preclude the public officer or public  
24 entity having authority to remove the person convicted from  
25 seeking to remove or suspend the person from his office, position or  
26 employment on the ground that the conduct giving rise to the  
27 conviction demonstrates that the person is unfit to hold the office,  
28 position or employment.

29 (cf: P.L.2003, c.145, s.1)

30

31 6. (New section) a. Notwithstanding the provisions of  
32 subsection a. of N.J.S.2C:43-6 and except as otherwise provided in  
33 subsection c. of this section, a person who serves or has served as a  
34 public officer or employee under the government of this State, or  
35 any political subdivision thereof, who is convicted of a crime that  
36 involves or touches such office or employment as set forth in  
37 subsection b. of this section, shall be sentenced to a mandatory  
38 minimum term of imprisonment without eligibility for parole as  
39 follows: for a crime of the fourth degree, the mandatory minimum  
40 term shall be one year; for a crime of the third degree, two years;  
41 for a crime of the second degree, five years, and for a crime of the  
42 first degree, 10 years, unless the provisions of any other law  
43 provide for a higher mandatory minimum term. As used in this  
44 subsection, "a crime that involves or touches such office or  
45 employment" means that the crime was related directly to the  
46 person's performance in, or circumstances flowing from, the  
47 specific public office or employment held by the person.

48 b. Subsection a. of this section applies to a conviction of any of

1 the following crimes:

2 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
3 coercion;

4 (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
5 exceeds \$10,000;

6 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

7 (4) N.J.S.2C:20-9, theft by failure to make required disposition  
8 of property received, if the amount involved exceeds \$10,000;

9 (5) N.J.S.2C:21-10, commercial bribery;

10 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money  
11 laundering;

12 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract  
13 payment claims;

14 (8) N.J.S.2C:27-2, bribery in official matters;

15 (9) N.J.S.2C:27-3, threats and other improper influence in  
16 official and political matters;

17 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful  
18 official business transaction where interest is involved;

19 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or  
20 receipt of unlawful benefit by public servant for official behavior;

21 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of  
22 unlawful benefit to public servant for official behavior;

23 (13) N.J.S.2C:28-1, perjury;

24 (14) N.J.S.2C:28-5, tampering with witnesses;

25 (15) N.J.S.2C:28-7, tampering with public records or  
26 information;

27 (16) N.J.S.2C:29-4, compounding;

28 (17) N.J.S.2C:30-2, official misconduct;

29 (18) N.J.S.2C:30-3, speculating or wagering on official action or  
30 information; or

31 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official  
32 misconduct.

33 c. (1) On motion by the prosecutor stating that the defendant has  
34 provided substantial assistance in a criminal investigation or  
35 prosecution of another person, the court may waive or reduce the  
36 mandatory minimum term of imprisonment required by subsection  
37 a. of this section. The appropriate waiver or reduction shall be  
38 determined by the court for reasons stated that may include, but are  
39 not limited to, consideration of the following:

40 (i) the court's evaluation of the significance and usefulness of the  
41 defendant's assistance, giving substantial weight to the prosecutor's  
42 evaluation of the assistance rendered;

43 (ii) the truthfulness, completeness, and reliability of any  
44 information or testimony provided by the defendant;

45 (iii) the nature and extent of the defendant's assistance;

46 (iv) any injury suffered, or any danger or risk of injury to the  
47 defendant or his family resulting for his assistance;

48 (v) the timeliness of the defendant's assistance.

1 In making such a determination, the court shall give substantial  
2 weight to the prosecutor's evaluation of the extent of the  
3 defendant's assistance, particularly where the extent and value of  
4 the assistance are difficult to ascertain.

5 (2) If the court finds by clear and convincing evidence that  
6 extraordinary circumstances exist such that imposition of a  
7 mandatory minimum term would be a serious injustice which  
8 overrides the need to deter such conduct in others, the court may  
9 waive or reduce the mandatory minimum term of imprisonment  
10 required by subsection a. of this section. In making any such  
11 finding, the court must state with specificity its reasons for waiving  
12 or reducing the mandatory minimum sentence that would otherwise  
13 apply.

14 (3) If, pursuant to paragraph (1) or (2) of this subsection, the  
15 court waives or reduces the mandatory minimum term required by  
16 subsection a. of this section, such sentence shall not become final  
17 for 10 days in order to permit the appeal of the sentence by the  
18 prosecution.

19 d. (1) a prosecutor shall not recommend the admission into or  
20 consent to the referral to a pretrial intervention program of a person  
21 who serves or has served as a public officer or employee under the  
22 government of this State, or any political subdivision thereof, who  
23 is charged with a crime that involves or touches such office or  
24 employment as set forth in subsection b. of this section, without the  
25 prior approval of the Attorney General.

26 (2) A person who serves or has served as a public officer or  
27 employee under the government of this State, or any political  
28 subdivision thereof, who is convicted of a crime that involves or  
29 touches such office or employment as set forth in subsection b. of  
30 this section shall be ineligible for participation in any program of  
31 intensive supervision during any period of parole ineligibility.

32 e. The Attorney General shall develop guidelines to ensure the  
33 uniform exercise of discretion in making determinations regarding  
34 the waiver or reduction of a mandatory minimum term of  
35 imprisonment pursuant to paragraph (1) of this subsection c. of this  
36 section and participation in a pretrial intervention program pursuant  
37 to paragraph (1) of subsection d. of this section.

38

39 7. (New section) a. The provisions of section 2 of  
40 P.L. , c. (C. ) (pending before the Legislature as this bill)  
41 concerning the forfeiture of all of the pension or retirement benefit  
42 for a member of any State or locally-administered pension fund or  
43 retirement system shall be prospective in application for any crime  
44 or offense committed after the effective date of  
45 P.L. c. (C. )(pending before the Legislature as this bill).

46 b. The provisions of section 6 of P.L. c. (C. )(pending  
47 before the Legislature as this bill) concerning mandatory terms of  
48 imprisonment shall be prospective in application for any crime

1 committed after the effective date of P.L. , c. (C. ) (pending  
2 before the Legislature as this bill).

3

4 8. Section 2 of P.L.1993, c.123 (C.2C:43-11) is amended to  
5 read as follows:

6 2. a. No custodial sentence imposed pursuant to Chapters 43, 44  
7 or 45 of Title 2C shall be changed to permit entry into any program  
8 of intensive supervision established pursuant to the Rules  
9 Governing the Courts of the State of New Jersey if the inmate:

10 (1) Is serving a sentence for a conviction of any crime of the  
11 first degree; or

12 (2) Is serving a sentence for a conviction of any offense in  
13 which the sentencing court found that there is a substantial  
14 likelihood that the defendant is involved in organized criminal  
15 activity pursuant to N.J.S. 2C:44-1a(5); or

16 (3) Is serving any statutorily mandated parole ineligibility, or  
17 any parole ineligibility imposed by the court pursuant to subsection  
18 b. of N.J.S. 2C:43-6 or section 6 of P.L. , c. (C. )(pending  
19 before the Legislature as this bill); or

20 (4) Has previously completed a program of intensive  
21 supervision established pursuant to the Rules Governing the Courts  
22 of the State of New Jersey; or

23 (5) Has previously been convicted of a crime of the first degree,  
24 or of any offense in any other jurisdiction which, if committed in  
25 New Jersey, would constitute a crime of the first degree and the  
26 inmate was released from incarceration on the first degree offense  
27 within five years of the commission of the offense for which the  
28 inmate is applying for intensive supervision.

29 Nothing in this subsection shall be construed to preclude the  
30 program of intensive supervision from imposing more restrictive  
31 standards for admission.

32 b. Unless the inmate is within nine months of parole eligibility  
33 and has served at least six months of the sentence, no custodial  
34 sentence of an inmate serving a sentence for conviction of any  
35 crime of the second degree shall be changed to permit entry into  
36 any program of intensive supervision established pursuant to the  
37 Rules Governing the Courts of the State of New Jersey, if, within  
38 20 days of receipt of notice of the inmate's application, the county  
39 prosecutor or Attorney General objects in writing.

40 c. If an inmate's application for a change of custodial sentence to  
41 permit entry into any program of intensive supervision established  
42 pursuant to the Rules Governing the Courts of the State of New  
43 Jersey is granted over the objection of the county prosecutor or the  
44 Attorney General, the order shall not become final for 20 days or  
45 until reconsideration by the Intensive Supervision Resentencing  
46 Panel in order to permit the county prosecutor or the Attorney  
47 General to appear personally or in writing, with notice to defense  
48 counsel, to request reconsideration of the application approval.

1 d. A victim of the offense for which the inmate was sentenced  
2 shall have the right to make a written statement or to appear at a  
3 proceeding regarding the application for a change of custodial  
4 sentence imposed pursuant to Chapters 43, 44 or 45 of Title 2C for  
5 entry into any program of intensive supervision established  
6 pursuant to the Rules Governing the Courts of the State of New  
7 Jersey.

8 (cf: P.L.1993, c.123, s.2)

9

10 9. N.J.S.2C:43-12 is amended to read as follows:

11 2C:43-12. Supervisory Treatment--Pretrial Intervention. a.  
12 Public policy. The purpose of sections 2C:43-12 through 2C:43-22  
13 of this chapter is to effectuate a Statewide program of Pretrial  
14 Intervention. It is the policy of the State of New Jersey that  
15 supervisory treatment should ordinarily be limited to persons who  
16 have not previously been convicted of any criminal offense under  
17 the laws of New Jersey, or under any criminal law of the United  
18 States, or any other state when supervisory treatment would:

19 (1) Provide applicants, on an equal basis, with opportunities to  
20 avoid ordinary prosecution by receiving early rehabilitative services  
21 or supervision, when such services or supervision can reasonably be  
22 expected to deter future criminal behavior by an applicant, and  
23 when there is apparent causal connection between the offense  
24 charged and the rehabilitative or supervisory need, without which  
25 cause both the alleged offense and the need to prosecute might not  
26 have occurred; or

27 (2) Provide an alternative to prosecution for applicants who  
28 might be harmed by the imposition of criminal sanctions as  
29 presently administered, when such an alternative can be expected to  
30 serve as sufficient sanction to deter criminal conduct; or

31 (3) Provide a mechanism for permitting the least burdensome  
32 form of prosecution possible for defendants charged with  
33 "victimless" offenses, other than defendants who were public  
34 officers or employees charged with offenses that involved or  
35 touched their office or employment; or

36 (4) Provide assistance to criminal calendars in order to focus  
37 expenditure of criminal justice resources on matters involving  
38 serious criminality and severe correctional problems; or

39 (5) Provide deterrence of future criminal or disorderly behavior  
40 by an applicant in a program of supervisory treatment.

41 b. Admission of an applicant into a program of supervisory  
42 treatment shall be measured according to the applicant's amenability  
43 to correction, responsiveness to rehabilitation and the nature of the  
44 offense. There shall be a presumption against admission into a  
45 program of supervisory treatment for a defendant who was a public  
46 officer or employee whose offense involved or touched upon his  
47 public office or employment.

48 c. The decision and reasons therefor made by the designated

1 judges (or assignment judges), prosecutors and program directors in  
2 granting or denying applications for supervisory treatment, in  
3 recommending and ordering termination from the program or  
4 dismissal of charges, in all cases shall be reduced to writing and  
5 disclosed to the applicant.

6 d. If an applicant desires to challenge the decision of the  
7 prosecutor or program director not to recommend enrollment in a  
8 program of supervisory treatment the proceedings prescribed under  
9 section 14 shall be followed.

10 e. Referral. At any time prior to trial but after the filing of a  
11 criminal complaint, or the filing of an accusation or the return of an  
12 indictment, with the consent of the prosecutor and upon written  
13 recommendation of the program director, the assignment judge or a  
14 judge designated by him may postpone all further proceedings  
15 against an applicant and refer said applicant to a program of  
16 supervisory treatment approved by the Supreme Court. Prosecutors  
17 and program directors shall consider in formulating their  
18 recommendation of an applicant's participation in a supervisory  
19 treatment program, among others, the following criteria:

- 20 (1) The nature of the offense;
- 21 (2) The facts of the case;
- 22 (3) The motivation and age of the defendant;
- 23 (4) The desire of the complainant or victim to forego  
24 prosecution;
- 25 (5) The existence of personal problems and character traits which  
26 may be related to the applicant's crime and for which services are  
27 unavailable within the criminal justice system, or which may be  
28 provided more effectively through supervisory treatment and the  
29 probability that the causes of criminal behavior can be controlled by  
30 proper treatment;
- 31 (6) The likelihood that the applicant's crime is related to a  
32 condition or situation that would be conducive to change through  
33 his participation in supervisory treatment;
- 34 (7) The needs and interests of the victim and society;
- 35 (8) The extent to which the applicant's crime constitutes part of a  
36 continuing pattern of anti-social behavior;
- 37 (9) The applicant's record of criminal and penal violations and  
38 the extent to which he may present a substantial danger to others;
- 39 (10) Whether or not the crime is of an assaultive or violent  
40 nature, whether in the criminal act itself or in the possible injurious  
41 consequences of such behavior;
- 42 (11) Consideration of whether or not prosecution would  
43 exacerbate the social problem that led to the applicant's criminal  
44 act;
- 45 (12) The history of the use of physical violence toward others;
- 46 (13) Any involvement of the applicant with organized crime;
- 47 (14) Whether or not the crime is of such a nature that the value  
48 of supervisory treatment would be outweighed by the public need

1 for prosecution;

2 (15) Whether or not the applicant's involvement with other  
3 people in the crime charged or in other crime is such that the  
4 interest of the State would be best served by processing his case  
5 through traditional criminal justice system procedures;

6 (16) Whether or not the applicant's participation in pretrial  
7 intervention will adversely affect the prosecution of codefendants;  
8 and

9 (17) Whether or not the harm done to society by abandoning  
10 criminal prosecution would outweigh the benefits to society from  
11 channeling an offender into a supervisory treatment program.

12 f. Review of Supervisory Treatment Applications; Procedure  
13 Upon Denial. Each applicant for supervisory treatment shall be  
14 entitled to full and fair consideration of his application. If an  
15 application is denied, the program director or the prosecutor shall  
16 precisely state his findings and conclusion which shall include the  
17 facts upon which the application is based and the reasons offered  
18 for the denial. If the applicant desires to challenge the decision of a  
19 program director not to recommend, or of a prosecutor not to  
20 consent to, enrollment into a supervisory treatment program, a  
21 motion shall be filed before the designated judge (or assignment  
22 judge) authorized pursuant to the rules of court to enter orders.

23 g. Limitations. Supervisory treatment may occur only once with  
24 respect to any defendant and any person who has previously  
25 received supervisory treatment under section 27 of P.L.1970, c.226  
26 (C.24:21-27), shall not be eligible for supervisory treatment under  
27 this section. However, supervisory treatment, as provided herein,  
28 shall be available to a defendant irrespective of whether the  
29 defendant contests his guilt of the charge or charges against him.

30 h. Termination. Termination of supervisory treatment under this  
31 section shall be immediately reported to the assignment judge of the  
32 county who shall forward such information to the Administrative  
33 Director of the Courts.

34 i. Appointment of Program Directors; Authorized Referrals.  
35 Programs of supervisory treatment and appointment of the program  
36 directors require approval by the Supreme Court with the consent of  
37 the assignment judge and prosecutor. Referrals of participants from  
38 supervisory treatment programs may be to any public or private  
39 office or agency, including but not limited to, programs within the  
40 probation service of the court, offering counseling or any other  
41 social service likely to aid in the rehabilitation of the participant  
42 and to deter the commission of other offenses.

43 j. Health Care Professional Licensing Board Notification. The  
44 program director shall promptly notify the State Board of Medical  
45 Examiners when a State licensed physician or podiatrist has been  
46 enrolled in a supervisory treatment program after he has been  
47 charged with an offense involving drugs or alcohol.

48 (cf: P.L.1989, c.300, s.22)

1       10. This act shall take effect on the 30th day after the date of  
2 enactment.

3

4

STATEMENT

5

6       This bill imposes mandatory imprisonment and mandatory  
7 forfeiture of pension and retirement benefits for public officers or  
8 employees convicted of certain crimes involving or touching their  
9 office or employment. The bill clarifies that the board of trustees of  
10 a State or local pension fund can order forfeiture of “earned service  
11 credit” and can implement any pension forfeiture ordered by a  
12 court, and requires mandatory pension forfeiture for crimes or  
13 offenses involving or touching the office, position or employment  
14 for the following crimes:

15       (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
16 coercion;

17       (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
18 exceeds \$10,000;

19       (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

20       (4) N.J.S.2C:20-9, theft by failure to make required disposition  
21 of property received, if the amount involved exceeds \$10,000;

22       (5) N.J.S.2C:21-10, commercial bribery;

23       (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money  
24 laundering;

25       (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract  
26 payment claims;

27       (8) N.J.S.2C:27-2, bribery in official matters;

28       (9) N.J.S.2C:27-3, threats and other improper influence in  
29 official and political matters;

30       (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful  
31 official business transaction where interest is involved;

32       (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or  
33 receipt of unlawful benefit by public servant for official behavior;

34       (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of  
35 unlawful benefit to public servant for official behavior;

36       (13) N.J.S.2C:28-1, perjury;

37       (14) N.J.S.2C:28-5, tampering with witnesses;

38       (15) N.J.S.2C:28-7, tampering with public records or  
39 information;

40       (16) N.J.S.2C:29-4, compounding;

41       (17) N.J.S.2C:30-2, official misconduct;

42       (18) N.J.S.2C:30-3, speculating or wagering on official action or  
43 information; or

44       (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official  
45 misconduct.

46       Under the bill, the pension forfeiture will be ordered by the court  
47 immediately upon a finding of guilt by the trier of fact or a plea of  
48 guilty unless the court, for good cause shown, orders a stay of the



1 pension forfeiture pending a hearing on the merits at the time of  
2 sentencing. The bill does not preclude the authority of the board of  
3 trustees from ordering the forfeiture of all or part of the earned  
4 service credit or pension or retirement benefit of any member of the  
5 fund or system for misconduct occurring at the time of the  
6 member's public service pursuant to the provisions of P.L.1995,  
7 c.408 (C.43:1-3 et seq.), including in a case where the court does  
8 not enter an order of forfeiture.

9 The bill provides that the board of trustees of any State or  
10 locally-administered pension fund or retirement system may  
11 subpoena witnesses and compel their attendance, and also may  
12 require the production of books, papers or documents in a matter  
13 concerning the rendering of honorable service by a public officer or  
14 employee seeking to receive a public pension or retirement benefit.  
15 If any person refuses to obey any subpoena so issued, or refuses to  
16 testify or produce any books, papers or documents, the board may  
17 apply ex parte to the Superior Court to compel the person to comply  
18 with the subpoena.

19 The bill provides that a State, county or local employer  
20 participating in a pension fund or retirement system will be  
21 responsible for reimbursement to the pension fund or retirement  
22 system of all pension costs incurred by the pension fund or  
23 retirement system following any settlement agreement between the  
24 employer and an employee that provides for the employer not to  
25 pursue any civil or criminal charges or an action for misconduct  
26 against the employee in exchange for the employee's resignation in  
27 good standing when the employer has failed to fully disclose the  
28 settlement to the board of trustees of the pension fund or retirement  
29 system so that it can determine whether to order the forfeiture of all  
30 or part of the earned service credit or pension or retirement benefit  
31 of any member of the fund or system for misconduct occurring  
32 during the member's public service which renders the member's  
33 service or part thereof dishonorable.

34 The bill amends current law concerning forfeiture of public  
35 office to include a definition of the phrase concerning crimes and  
36 offenses "involving or touching" public office or employment, in  
37 accordance with the definition set forth by the New Jersey Supreme  
38 Court in McCann v. Clerk of the City of Jersey City, 167 N.J. 311  
39 (2001). It provides that a crime or offense "involving or touching"  
40 public office or employment means that the crime or offense was  
41 related directly to the person's performance in, or circumstances  
42 flowing from, a specific public office or position held by the  
43 person. As the Supreme Court stated in McCann: "When an  
44 individual commits a crime wholly unrelated to his or her public  
45 office, the crime ordinarily cannot be characterized as involving or  
46 touching on the public office."

47 The bill adds certain public corruption crimes to subsection f. of  
48 N.J.S.A.2C:51-2, which provides that persons convicted of certain

1 crimes are barred from entering into contracts, submitting bids, or  
2 conducting any business with any State entity: N.J.S.A.2C:21-34,  
3 false contract payment claims; N.J.S.A.2C:27-3, threats and other  
4 improper influence in official and political matters; N.J.S.A.2C:27-  
5 5, retaliation for past official action; N.J.S.A.2C:27-9, unlawful  
6 official business transaction where interest is involved;  
7 N.J.S.A.2C:27-10, acceptance of unlawful benefit by public servant  
8 for official behavior, and N.J.S.A.2C:27-11, offer of unlawful  
9 benefit to public servant for official behavior.

10 The bill provides mandatory terms of imprisonment for  
11 conviction of any of the nineteen crimes enumerated. For a crime  
12 of the fourth degree, the mandatory minimum term will be one year;  
13 for a crime of the third degree, two years; for a crime of the second  
14 degree, five years, and for a crime of the first degree, 10 years,  
15 unless the provisions of any other law provide for a higher  
16 mandatory minimum term. (Generally, a crime of the fourth degree  
17 is punishable by a term of imprisonment of up to 18 months or a  
18 fine of up to \$10,000 or both; a crime of the third degree, by a term  
19 of three to five years or a fine of up to \$15,000 or both; a crime of  
20 the second degree, a by a term of five to 10 years or a fine of up to  
21 \$150,000 or both; and a crime of the first degree, by a term of 10 to  
22 20 years or a fine of up to \$200,000 or both.)

23 The bill further provides that if the defendant has provided  
24 substantial assistance in a criminal investigation or prosecution of  
25 another person, the prosecutor is permitted to ask the court to waive  
26 or reduce the mandatory minimum term of imprisonment. Any  
27 waiver or reduction in the term of imprisonment would be  
28 determined by the court, which would state with specificity its  
29 reasons for waiving or reducing the mandatory minimum sentence  
30 that would otherwise apply.

31 Prosecutors are not permitted to recommend the admission into a  
32 pretrial intervention program of any person who serves or has  
33 served as a public officer or employee and who is charged with  
34 certain crimes set forth in this bill without the prior approval of the  
35 Attorney General. Individuals convicted of one or more of these  
36 crimes would be ineligible for participation in any program of  
37 intensive supervision during any period of parole ineligibility. The  
38 Attorney General is required to develop guidelines to ensure the  
39 uniform exercise of discretion in making determinations regarding  
40 the waiver or reduction of a mandatory minimum term of  
41 imprisonment.

42 The provisions of the bill are prospective in application. Pension  
43 forfeiture and mandatory terms of imprisonment will apply to  
44 crimes or offenses committed after the bill takes effect to avoid a  
45 challenge on ex post facto grounds that the forfeiture and  
46 imprisonment terms constitute new criminal penalties which may  
47 not be applied retroactively. The bill will take effect on the 30th  
48 day after enactment.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 14**  
**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

DATED: FEBRUARY 14, 2007

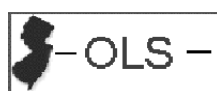
**SUMMARY**

- Synopsis:** Provides for mandatory forfeiture of retirement benefits and mandatory imprisonment for public officers or employees convicted of certain crimes.
- Type of Impact:** Deferred decrease in annual expenditures, State General Fund.  
 Deferred decrease in annual expenditures, Local government funds.  
 Deferred decrease in annual expenditures, Local school board funds.
- Agencies Affected:** Department of the Treasury, Division of Pensions and Benefits.  
 Department of Corrections.  
 Local government entities.  
 Local boards of education.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Savings</b>	Indeterminate - See Comments Below		
<b>Local Savings</b>	Indeterminate - See Comments Below		

- The Office of Legislative Services (OLS) cannot estimate the amount of savings to the State and local government entities from the forfeiture of retirement benefits provision of this bill because the amount of accrued pension benefits earned by persons convicted under the provisions of this bill cannot be determined.
- The bill imposes mandatory imprisonment and mandatory forfeiture of pension and retirement benefits for public officers or employees convicted of certain crimes of misconduct in their office or employment.
- Clarifies that the board of trustees of a State or locally-administered pension fund or retirement system is authorized to implement a court ordered pension forfeiture of all or part of the earned service credit, including in a case where the court does not enter an order of forfeiture.
- The mandatory terms of imprisonment for conviction of any of the enumerated crimes would be: for a crime of the fourth degree, the mandatory minimum term would be one year; for a



crime of the third degree, two years; for a crime of the second degree, five years, and for a crime of the first degree, 10 years, unless the provisions of any other law provide for a higher mandatory minimum term.

- The OLS estimates that State and local pension funds or systems would accrue some additional savings because the accrued liability to the system would decrease by an indeterminate amount commensurate with each pension forfeiture.
- The OLS notes that State and local pension funds would be reduced because a member whose pension is forfeited is refunded his or her employee contributions.

### **BILL DESCRIPTION**

Senate Bill No. 14 of 2007 would impose mandatory imprisonment and mandatory forfeiture of pension and retirement benefits for public officers or employees convicted of certain crimes involving or touching their office or employment. This bill amends current law concerning forfeiture of public office to include a definition of the phrase concerning crimes and offenses “involving or touching” public office or employment, in accordance with the definition set forth by the New Jersey Supreme Court in McCann v. Clerk of the City of Jersey City, 167 N.J. 311 (2001).

The bill clarifies that the board of trustees of a State or local pension fund can order forfeiture of “earned service credit” and provides that the board of trustees can implement any pension forfeiture ordered by a court pursuant to the substitute. The bill would require mandatory pension forfeiture for crimes or offenses involving or touching the office, position or employment for the following crimes:

- 1) criminal coercion;
- 2) theft by deception, if the amount involved exceeds \$10,000;
- 3) theft by extortion;
- 4) theft by failure to make required disposition of property received, if the amount involved exceeds \$10,000;
- 5) commercial bribery;
- 6) money laundering;
- 7) false contract payment claims;
- 8) bribery in official matters;
- 9) threats and other improper influence in official and political matters;
- 10) unlawful official business transaction where interest is involved;
- 11) acceptance or receipt of unlawful benefit by public servant for official behavior;
- 12) offer of unlawful benefit to public servant for official behavior;
- 13) perjury;
- 14) tampering with witnesses;
- 15) tampering with public records or information;
- 16) compounding;
- 17) official misconduct;
- 18) speculating or wagering on official action or information; or
- 19) pattern of official misconduct.

Currently, a member whose pension is forfeited receives a refund of his own contributions to the fund or system, and this bill is not intended to change this practice, except under certain instances. Contributions are considered part of the employee's salary and not part of the pension benefit.

The bill provides mandatory terms of imprisonment for conviction of any of the above listed crimes. For a crime of the fourth degree, the mandatory minimum term would be one year; for a crime of the third degree, two years; for a crime of the second degree, five years, and for a crime of the first degree, 10 years, unless the provisions of any other law provide for a higher mandatory minimum term. Generally, a crime of the fourth degree is punishable by a term of imprisonment of up to 18 months or a fine of up to \$10,000 or both; a crime of the third degree, by a term of three to five years or a fine of up to \$15,000 or both; a crime of the second degree, a by a term of five to 10 years or a fine of up to \$150,000 or both; and a crime of the first degree, by a term of 10 to 20 years or a fine of up to \$200,000 or both. Convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders.

This bill provides that a State, county or local employer participating in a pension fund or retirement system would be responsible for reimbursement to the pension fund or retirement system of all pension costs incurred by the pension fund or retirement system following any settlement agreement between the employer and an employee that provides for the employer not to pursue any civil or criminal charges or an action for misconduct against the employee.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS cannot determine pension fund or system savings that would accrue to the State and local government entities under the provisions of this bill to impose a mandatory forfeiture of pension and retirement benefits for public officers and employees convicted of certain crimes of misconduct in their office or employment. The OLS notes that savings would be of a deferred nature for any public official or employee who was an active member of the retirement system at the time of conviction. State and local pension funds or systems would accrue some additional savings because the accrued liability to the system would decrease by an indeterminate amount with each pension forfeiture conviction. State and local government employers may incur some additional costs in the near-term because member contributions would be returned to the public official or employee at the time of conviction.

The OLS notes that the Department of Corrections would have additional expenses housing convicted inmates under the provisions of this legislation.

*Section:* State Government

*Analyst:* James F. Vari  
Lead Fiscal Analyst

*Approved:* David J. Rosen  
Legislative Budget and Finance Officer

**ASSEMBLY, No. 20**

---

**STATE OF NEW JERSEY**

**212th LEGISLATURE**

---

INTRODUCED JANUARY 25, 2007

**Sponsored by:**

**Assemblyman MICHAEL J. PANTER**

**District 12 (Mercer and Monmouth)**

**Assemblywoman NELLIE POU**

**District 35 (Bergen and Passaic)**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Assemblyman KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex and Passaic)**

**Assemblyman JEFF VAN DREW**

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

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

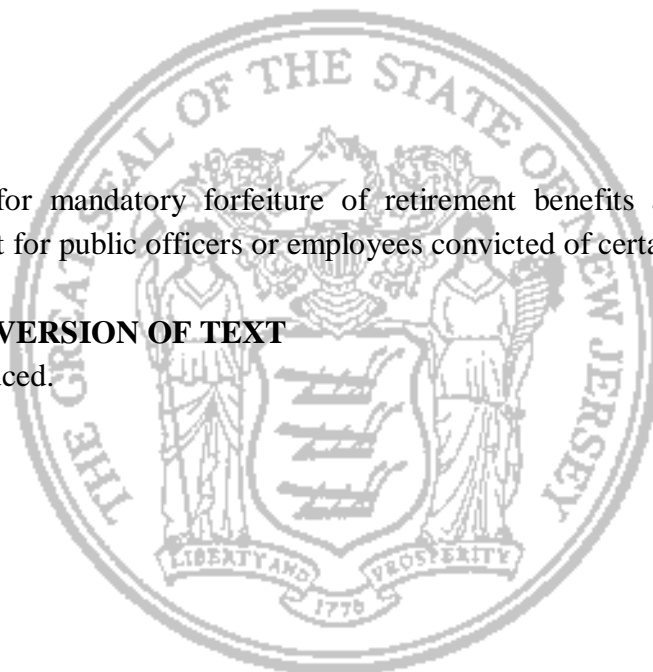
**Assemblymen Gusciora, Vas, Mayer and Russo**

**SYNOPSIS**

Provides for mandatory forfeiture of retirement benefits and mandatory imprisonment for public officers or employees convicted of certain crimes.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/30/2007)**

1 AN ACT concerning mandatory forfeiture of retirement benefits and  
2 mandatory imprisonment for public officers or employees  
3 convicted of certain crimes and amending and supplementing  
4 P.L.1995, c.408 (C.43:1-3 et seq.) and Title 2C of the New  
5 Jersey Statutes.

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

9  
10 1. Section 1 of P.L.1995, c.408 (C.43:1-3) is amended to read as  
11 follows:

12 1. a. The receipt of a public pension or retirement benefit is  
13 hereby expressly conditioned upon the rendering of honorable  
14 service by a public officer or employee.

15 b. The board of trustees of any State or locally-administered  
16 pension fund or retirement system created under the laws of this  
17 State is authorized to order the forfeiture of all or part of the earned  
18 service credit or pension or retirement benefit of any member of the  
19 fund or system for misconduct occurring during the member's  
20 public service which renders the member's service or part thereof  
21 dishonorable and to implement any pension forfeiture ordered by a  
22 court pursuant to section 2 of P.L. , c. (C. )(pending before  
23 the Legislature as this bill).

24 c. In evaluating a member's misconduct to determine whether it  
25 constitutes a breach of the condition that public service be  
26 honorable and whether forfeiture or partial forfeiture of earned  
27 service credit or earned pension or retirement benefits is  
28 appropriate, the board of trustees shall consider and balance the  
29 following factors in view of the goals to be achieved under the  
30 pension laws:

- 31 (1) the member's length of service;  
32 (2) the basis for retirement;  
33 (3) the extent to which the member's pension has vested;  
34 (4) the duties of the particular member;  
35 (5) the member's public employment history and record covered  
36 under the retirement system;  
37 (6) any other public employment or service;  
38 (7) the nature of the misconduct or crime, including the gravity  
39 or substantiality of the offense, whether it was a single or multiple  
40 offense and whether it was continuing or isolated;  
41 (8) the relationship between the misconduct and the member's  
42 public duties;  
43 (9) the quality of moral turpitude or the degree of guilt or  
44 culpability, including the member's motives and reasons, personal  
45 gain and similar considerations;

**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 (10) the availability and adequacy of other penal sanctions; and  
2 (11) other personal circumstances relating to the member which  
3 bear upon the justness of forfeiture.

4 d. Whenever a board of trustees determines, pursuant to this  
5 section, that a partial forfeiture of earned service credit or earned  
6 pension or retirement benefits is warranted, it shall order that  
7 benefits be calculated as if the accrual of pension rights terminated  
8 as of the date the misconduct first occurred or, if termination as of  
9 that date would in light of the nature and extent of the misconduct  
10 result in an excessive pension or retirement benefit or in an  
11 excessive forfeiture, a date reasonably calculated to impose a  
12 forfeiture that reflects the nature and extent of the misconduct and  
13 the years of honorable service.

14 (cf: P.L.1995, c.408, s.1)

15

16 2. (New section) a. A person who holds or has held any public  
17 office, position, or employment, elective or appointive, under the  
18 government of this State or any agency or political subdivision  
19 thereof, who is convicted of any crime set forth in subsection b. of  
20 this section, or of a substantially similar offense under the laws of  
21 another state or the United States which would have been such a  
22 crime under the laws of this State, which crime or offense involves  
23 or touches such office, position or employment, shall forfeit all of  
24 the pension or retirement benefit earned as a member of any State  
25 or locally-administered pension fund or retirement system in which  
26 he participated at the time of the commission of the offense and  
27 which covered the office, position or employment involved in the  
28 offense. As used in this section, a crime or offense that “involves  
29 or touches such office, position or employment” means that the  
30 crime or offense was related directly to the person’s performance in,  
31 or circumstances flowing from, the specific public office or  
32 employment held by the person.

33 b. Subsection a. of this section applies to a conviction of any of  
34 the following crimes:

35 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
36 coercion;

37 (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
38 exceeds \$10,000;

39 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

40 (4) N.J.S.2C:20-9, theft by failure to make required disposition  
41 of property received, if the amount involved exceeds \$10,000;

42 (5) N.J.S.2C:21-10, commercial bribery;

43 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money  
44 laundering;

45 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract  
46 payment claims;

47 (8) N.J.S.2C:27-2, bribery in official matters;

48 (9) N.J.S.2C:27-3, threats and other improper influence in  
49 official and political matters;



- 1 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful
- 2 official business transaction where interest is involved;
- 3 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or
- 4 receipt of unlawful benefit by public servant for official behavior;
- 5 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of
- 6 unlawful benefit to public servant for official behavior;
- 7 (13) N.J.S.2C:28-1, perjury;
- 8 (14) N.J.S.2C:28-5, tampering with witnesses;
- 9 (15) N.J.S.2C:28-7, tampering with public records or
- 10 information;
- 11 (16) N.J.S.2C:29-4, compounding;
- 12 (17) N.J.S.2C:30-2, official misconduct;
- 13 (18) N.J.S.2C:30-3, speculating or wagering on official action or
- 14 information; or
- 15 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official
- 16 misconduct.

17 c. A court of this State shall enter an order of pension forfeiture  
18 pursuant to this section:

19 (1) Immediately upon a finding of guilt by the trier of fact or a  
20 plea of guilty entered in any court of this State unless the court, for  
21 good cause shown, orders a stay of the pension forfeiture pending a  
22 hearing on the merits at the time of sentencing; or

23 (2) Upon application of the county prosecutor or the Attorney  
24 General, when the pension forfeiture is based upon a conviction of  
25 an offense under the laws of another state or of the United States.  
26 An order of pension forfeiture pursuant to this paragraph shall be  
27 deemed to have taken effect on the date the person was found guilty  
28 by the trier of fact or pled guilty to the offense.

29 d. No court shall grant a stay of an order of pension forfeiture  
30 pending appeal of a conviction or pension forfeiture order unless  
31 the court is clearly convinced that there is a substantial likelihood of  
32 success on the merits. If the conviction be reversed or the order of  
33 pension forfeiture be overturned, his pension rights and benefits  
34 shall be restored from the date of pension forfeiture.

35 e. Nothing in this section shall be deemed to preclude the  
36 authority of the board of trustees of any State or locally-  
37 administered pension fund or retirement system created under the  
38 laws of this State from ordering the forfeiture of all or part of the  
39 earned service credit or pension or retirement benefit of any  
40 member of the fund or system for misconduct occurring during the  
41 member's public service pursuant to the provisions of P.L.1995,  
42 c.408 (C.43:1-3 et seq.), including in a case where the court does  
43 not enter an order of forfeiture pursuant to this section.

44  
45 3. (New section) The board of trustees of any State or locally-  
46 administered pension fund or retirement system created under the  
47 laws of this State may subpoena witnesses and compel their  
48 attendance, and also may require the production of books, papers or  
49 documents in a matter concerning the rendering of honorable

1 service by a public officer or employee seeking to receive a public  
2 pension or retirement benefit. If any person shall refuse to obey  
3 any subpoena so issued, or shall refuse to testify or produce any  
4 books, papers or documents, the board may apply ex parte to the  
5 Superior Court to compel the person to comply forthwith with the  
6 subpoena.

7  
8 4. (New section) A State, county or local employer participating  
9 in a State or locally-administered pension fund or retirement system  
10 shall be responsible for reimbursement to the pension fund or  
11 retirement system of all pension costs incurred by a State or locally-  
12 administered pension fund or retirement system following any  
13 settlement agreement between the employer and an employee that  
14 provides for the employer not to pursue any civil or criminal  
15 charges or an action for misconduct against the employee in  
16 exchange for the employee's resignation in good standing when the  
17 employer has failed to fully disclose the settlement to the board of  
18 trustees of the pension fund or retirement system so that it can  
19 determine whether to order the forfeiture of all or part of the earned  
20 service credit or pension or retirement benefit of any member of the  
21 fund or system for misconduct occurring during the member's  
22 public service which renders the member's service or part thereof  
23 dishonorable.

24  
25 5. N.J.S.2C:51-2 is amended to read as follows:

26 2C:51-2. Forfeiture of Public Office, Position, or Employment.

27 a. A person holding any public office, position, or employment,  
28 elective or appointive, under the government of this State or any  
29 agency or political subdivision thereof, who is convicted of an  
30 offense shall forfeit such office **[or]**, position or employment if:

31 (1) He is convicted under the laws of this State of an offense  
32 involving dishonesty or of a crime of the third degree or above or  
33 under the laws of another state or of the United States of an offense  
34 or a crime which, if committed in this State, would be such an  
35 offense or crime;

36 (2) He is convicted of an offense involving or touching such  
37 office, position or employment; or

38 (3) The Constitution so provides.

39 As used in this subsection, "involving or touching such office,  
40 position or employment" means that the offense was related directly  
41 to the person's performance in, or circumstances flowing from, the  
42 specific public office, position or employment held by the person.

43 b. A court of this State shall enter an order of forfeiture pursuant  
44 to subsection a.:

45 (1) Immediately upon a finding of guilt by the trier of fact or a  
46 plea of guilty entered in any court of this State unless the court, for  
47 good cause shown, orders a stay of such forfeiture pending a  
48 hearing on the merits at the time of sentencing; or

49 (2) Upon application of the county prosecutor or the Attorney

1 General, when the forfeiture is based upon a conviction of an  
2 offense under the laws of another state or of the United States. An  
3 order of forfeiture pursuant to this paragraph shall be deemed to  
4 have taken effect on the date the person was found guilty by the  
5 trier of fact or pled guilty to the offense.

6 c. No court shall grant a stay of an order of forfeiture pending  
7 appeal of a conviction or forfeiture order unless the court is clearly  
8 convinced that there is a substantial likelihood of success on the  
9 merits. If the conviction be reversed or the order of forfeiture be  
10 overturned, he shall be restored, if feasible, to his office, position or  
11 employment with all the rights, emoluments and salary thereof from  
12 the date of forfeiture.

13 Any official action taken by the convicted person on or after the  
14 date as of which a forfeiture of the person's office shall take effect  
15 shall, during a period of 60 days following the date on which an  
16 order of forfeiture shall have been issued hereunder, be voidable by  
17 the person's successor in office or, if the office of the person was  
18 that of member of the governing body of a county, municipality or  
19 independent authority, by that governing body.

20 d. In addition to the punishment prescribed for the offense, and  
21 the forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person  
22 convicted of an offense involving or touching on his public office,  
23 position or employment shall be forever disqualified from holding  
24 any office or position of honor, trust or profit under this State or  
25 any of its administrative or political subdivisions. As used in this  
26 subsection, "involving or touching on his public office, position or  
27 employment" means that the offense was related directly to the  
28 person's performance in, or circumstances flowing from, the  
29 specific public office, position or employment held by the person.

30 e. Any forfeiture or disqualification under subsection a., b. or d.  
31 which is based upon a conviction of a disorderly persons or petty  
32 disorderly persons offense may be waived by the court upon  
33 application of the county prosecutor or the Attorney General and for  
34 good cause shown.

35 f. Except as may otherwise be ordered by the Attorney General  
36 as the public need may require, any person convicted of an offense  
37 under **[section]** section 97 of P.L.1999, c.440 (C.2C:21-34), N.J.S.  
38 2C:27-2, [2C:27-4, 2C:27-6, 2C:27-7,] N.J.S.2C:27-3,  
39 N.J.S.2C:27-5, section 100 of P.L.1999, c. 440 (C.2C:27-9), section  
40 5 of P.L.2003, c.255 (C.2C:27-10), section 6 of P.L.2003, c.255  
41 (C.2C:27-11), N.J.S.2C:29-4, N.J.S.2C:30-2, or N.J.S.2C:30-3 of  
42 this Title shall be ineligible, either directly or indirectly, to submit a  
43 bid, enter into any contract, or to conduct any business with any  
44 board, agency, authority, department, commission, public  
45 corporation, or other body of this State, of this or one or more other  
46 states, or of one or more political subdivisions of this State for a  
47 period of, but not more than, 10 years from the date of conviction  
48 for a crime of the second degree, or five years from the date of  
49 conviction for a crime of the third degree. It is the purpose of this

1 subsection to bar any individual convicted of any of the above  
2 enumerated offenses and any business, including any corporation,  
3 partnership, association or proprietorship in which such individual  
4 is a principal, or with respect to which such individual owns,  
5 directly or indirectly, or controls 5% or more of the stock or other  
6 equity interest of such business, from conducting business with  
7 public entities.

8 The State Treasurer shall keep and maintain a list of all  
9 corporations barred from conducting such business pursuant to this  
10 section.

11 g. In any case in which the issue of forfeiture is not raised in a  
12 court of this State at the time of a finding of guilt, entry of guilty  
13 plea or sentencing, a forfeiture of public office, position or  
14 employment required by this section may be ordered by a court of  
15 this State upon application of the county prosecutor or the Attorney  
16 General or upon application of the public officer or public entity  
17 having authority to remove the person convicted from his public  
18 office, position or employment. The fact that a court has declined  
19 to order forfeiture shall not preclude the public officer or public  
20 entity having authority to remove the person convicted from  
21 seeking to remove or suspend the person from his office, position or  
22 employment on the ground that the conduct giving rise to the  
23 conviction demonstrates that the person is unfit to hold the office,  
24 position or employment.

25 (cf: P.L.2003, c.145, s.1)

26

27 6. (New section) a. Notwithstanding the provisions of  
28 subsection a. of N.J.S.2C:43-6 and except as otherwise provided in  
29 subsection c. of this section, a person who serves or has served as a  
30 public officer or employee under the government of this State, or  
31 any political subdivision thereof, who is convicted of a crime that  
32 involves or touches such office or employment as set forth in  
33 subsection b. of this section, shall be sentenced to a mandatory  
34 minimum term of imprisonment without eligibility for parole as  
35 follows: for a crime of the fourth degree, the mandatory minimum  
36 term shall be one year; for a crime of the third degree, two years;  
37 for a crime of the second degree, five years, and for a crime of the  
38 first degree, 10 years, unless the provisions of any other law  
39 provide for a higher mandatory minimum term. As used in this  
40 subsection, "a crime that involves or touches such office or  
41 employment" means that the crime was related directly to the  
42 person's performance in, or circumstances flowing from, the  
43 specific public office or employment held by the person.

44 b. Subsection a. of this section applies to a conviction of any of  
45 the following crimes:

46 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
47 coercion;

48 (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
49 exceeds \$10,000;

- 1 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;
- 2 (4) N.J.S.2C:20-9, theft by failure to make required disposition
- 3 of property received, if the amount involved exceeds \$10,000;
- 4 (5) N.J.S.2C:21-10, commercial bribery;
- 5 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money
- 6 laundering;
- 7 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract
- 8 payment claims;
- 9 (8) N.J.S.2C:27-2, bribery in official matters;
- 10 (9) N.J.S.2C:27-3, threats and other improper influence in
- 11 official and political matters;
- 12 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful
- 13 official business transaction where interest is involved;
- 14 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or
- 15 receipt of unlawful benefit by public servant for official behavior;
- 16 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of
- 17 unlawful benefit to public servant for official behavior;
- 18 (13) N.J.S.2C:28-1, perjury;
- 19 (14) N.J.S.2C:28-5, tampering with witnesses;
- 20 (15) N.J.S.2C:28-7, tampering with public records or
- 21 information;
- 22 (16) N.J.S.2C:29-4, compounding;
- 23 (17) N.J.S.2C:30-2, official misconduct;
- 24 (18) N.J.S.2C:30-3, speculating or wagering on official action or
- 25 information; or
- 26 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official
- 27 misconduct.
- 28 c. (1) On motion by the prosecutor stating that the defendant has
- 29 provided substantial assistance in a criminal investigation or
- 30 prosecution of another person, the court may waive or reduce the
- 31 mandatory minimum term of imprisonment required by subsection
- 32 a. of this section. The appropriate waiver or reduction shall be
- 33 determined by the court for reasons stated that may include, but are
- 34 not limited to, consideration of the following:
- 35 (i) the court's evaluation of the significance and usefulness of the
- 36 defendant's assistance, giving substantial weight to the prosecutor's
- 37 evaluation of the assistance rendered;
- 38 (ii) the truthfulness, completeness, and reliability of any
- 39 information or testimony provided by the defendant;
- 40 (iii) the nature and extent of the defendant's assistance;
- 41 (iv) any injury suffered, or any danger or risk of injury to the
- 42 defendant or his family resulting for his assistance;
- 43 (v) the timeliness of the defendant's assistance.
- 44 In making such a determination, the court shall give substantial
- 45 weight to the prosecutor's evaluation of the extent of the
- 46 defendant's assistance, particularly where the extent and value of
- 47 the assistance are difficult to ascertain.
- 48 (2) If the court finds by clear and convincing evidence that
- 49 extraordinary circumstances exist such that imposition of a

1 mandatory minimum term would be a serious injustice which  
2 overrides the need to deter such conduct in others, the court may  
3 waive or reduce the mandatory minimum term of imprisonment  
4 required by subsection a. of this section. In making any such  
5 finding, the court must state with specificity its reasons for waiving  
6 or reducing the mandatory minimum sentence that would otherwise  
7 apply.

8 (3) If, pursuant to paragraph (1) or (2) of this subsection, the  
9 court waives or reduces the mandatory minimum term required by  
10 subsection a. of this section, such sentence shall not become final  
11 for 10 days in order to permit the appeal of the sentence by the  
12 prosecution.

13 d. (1) a prosecutor shall not recommend the admission into or  
14 consent to the referral to a pretrial intervention program of a person  
15 who serves or has served as a public officer or employee under the  
16 government of this State, or any political subdivision thereof, who  
17 is charged with a crime that involves or touches such office or  
18 employment as set forth in subsection b. of this section, without the  
19 prior approval of the Attorney General.

20 (2) A person who serves or has served as a public officer or  
21 employee under the government of this State, or any political  
22 subdivision thereof, who is convicted of a crime that involves or  
23 touches such office or employment as set forth in subsection b. of  
24 this section shall be ineligible for participation in any program of  
25 intensive supervision during any period of parole ineligibility.

26 e. The Attorney General shall develop guidelines to ensure the  
27 uniform exercise of discretion in making determinations regarding  
28 the waiver or reduction of a mandatory minimum term of  
29 imprisonment pursuant to paragraph (1) of this subsection c. of this  
30 section and participation in a pretrial intervention program pursuant  
31 to paragraph (1) of subsection d. of this section.

32

33 7. (New section) a. The provisions of section 2 of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill)  
35 concerning the forfeiture of all of the pension or retirement benefit  
36 for a member of any State or locally-administered pension fund or  
37 retirement system shall be prospective in application for any crime  
38 or offense committed after the effective date of  
39 P.L. c. (C. )(pending before the Legislature as this bill).

40 b. The provisions of section 6 of P.L. c. (C. )(pending  
41 before the Legislature as this bill) concerning mandatory terms of  
42 imprisonment shall be prospective in application for any crime  
43 committed after the effective date of P.L. , c. (C. ) (pending  
44 before the Legislature as this bill).

45

46 8. Section 2 of P.L.1993, c.123 (C.2C:43-11) is amended to read  
47 as follows:

48 2. a. No custodial sentence imposed pursuant to Chapters 43, 44  
49 or 45 of Title 2C shall be changed to permit entry into any program

1 of intensive supervision established pursuant to the Rules  
2 Governing the Courts of the State of New Jersey if the inmate:

3 (1) Is serving a sentence for a conviction of any crime of the first  
4 degree; or

5 (2) Is serving a sentence for a conviction of any offense in which  
6 the sentencing court found that there is a substantial likelihood that  
7 the defendant is involved in organized criminal activity pursuant to  
8 N.J.S. 2C:44-1a(5); or

9 (3) Is serving any statutorily mandated parole ineligibility, or any  
10 parole ineligibility imposed by the court pursuant to subsection b.  
11 of N.J.S. 2C:43-6 or section 6 of P.L. , c. (C. )(pending before  
12 the Legislature as this bill); or

13 (4) Has previously completed a program of intensive supervision  
14 established pursuant to the Rules Governing the Courts of the State  
15 of New Jersey; or

16 (5) Has previously been convicted of a crime of the first degree,  
17 or of any offense in any other jurisdiction which, if committed in  
18 New Jersey, would constitute a crime of the first degree and the  
19 inmate was released from incarceration on the first degree offense  
20 within five years of the commission of the offense for which the  
21 inmate is applying for intensive supervision.

22 Nothing in this subsection shall be construed to preclude the  
23 program of intensive supervision from imposing more restrictive  
24 standards for admission.

25 b. Unless the inmate is within nine months of parole eligibility  
26 and has served at least six months of the sentence, no custodial  
27 sentence of an inmate serving a sentence for conviction of any  
28 crime of the second degree shall be changed to permit entry into  
29 any program of intensive supervision established pursuant to the  
30 Rules Governing the Courts of the State of New Jersey, if, within  
31 20 days of receipt of notice of the inmate's application, the county  
32 prosecutor or Attorney General objects in writing.

33 c. If an inmate's application for a change of custodial sentence to  
34 permit entry into any program of intensive supervision established  
35 pursuant to the Rules Governing the Courts of the State of New  
36 Jersey is granted over the objection of the county prosecutor or the  
37 Attorney General, the order shall not become final for 20 days or  
38 until reconsideration by the Intensive Supervision Resentencing  
39 Panel in order to permit the county prosecutor or the Attorney  
40 General to appear personally or in writing, with notice to defense  
41 counsel, to request reconsideration of the application approval.

42 d. A victim of the offense for which the inmate was sentenced  
43 shall have the right to make a written statement or to appear at a  
44 proceeding regarding the application for a change of custodial  
45 sentence imposed pursuant to Chapters 43, 44 or 45 of Title 2C for  
46 entry into any program of intensive supervision established  
47 pursuant to the Rules Governing the Courts of the State of New  
48 Jersey.

49 (cf: P.L.1993, c.123, s.2)

- 1       9. N.J.S.2C:43-12 is amended to read as follows:
- 2       2C:43-12. Supervisory Treatment--Pretrial Intervention. a.
- 3 Public policy. The purpose of sections 2C:43-12 through 2C:43-22
- 4 of this chapter is to effectuate a Statewide program of Pretrial
- 5 Intervention. It is the policy of the State of New Jersey that
- 6 supervisory treatment should ordinarily be limited to persons who
- 7 have not previously been convicted of any criminal offense under
- 8 the laws of New Jersey, or under any criminal law of the United
- 9 States, or any other state when supervisory treatment would:
- 10       (1) Provide applicants, on an equal basis, with opportunities to
- 11 avoid ordinary prosecution by receiving early rehabilitative services
- 12 or supervision, when such services or supervision can reasonably be
- 13 expected to deter future criminal behavior by an applicant, and
- 14 when there is apparent causal connection between the offense
- 15 charged and the rehabilitative or supervisory need, without which
- 16 cause both the alleged offense and the need to prosecute might not
- 17 have occurred; or
- 18       (2) Provide an alternative to prosecution for applicants who
- 19 might be harmed by the imposition of criminal sanctions as
- 20 presently administered, when such an alternative can be expected to
- 21 serve as sufficient sanction to deter criminal conduct; or
- 22       (3) Provide a mechanism for permitting the least burdensome
- 23 form of prosecution possible for defendants charged with
- 24 "victimless" offenses, other than defendants who were public
- 25 officers or employees charged with offenses that involved or
- 26 touched their office or employment; or
- 27       (4) Provide assistance to criminal calendars in order to focus
- 28 expenditure of criminal justice resources on matters involving
- 29 serious criminality and severe correctional problems; or
- 30       (5) Provide deterrence of future criminal or disorderly behavior
- 31 by an applicant in a program of supervisory treatment.
- 32       b. Admission of an applicant into a program of supervisory
- 33 treatment shall be measured according to the applicant's amenability
- 34 to correction, responsiveness to rehabilitation and the nature of the
- 35 offense. There shall be a presumption against admission into a
- 36 program of supervisory treatment for a defendant who was a public
- 37 officer or employee whose offense involved or touched upon his
- 38 public office or employment.
- 39       c. The decision and reasons therefor made by the designated
- 40 judges (or assignment judges), prosecutors and program directors in
- 41 granting or denying applications for supervisory treatment, in
- 42 recommending and ordering termination from the program or
- 43 dismissal of charges, in all cases shall be reduced to writing and
- 44 disclosed to the applicant.
- 45       d. If an applicant desires to challenge the decision of the
- 46 prosecutor or program director not to recommend enrollment in a
- 47 program of supervisory treatment the proceedings prescribed under
- 48 section 14 shall be followed.
- 49       e. Referral. At any time prior to trial but after the filing of a



1 criminal complaint, or the filing of an accusation or the return of an  
2 indictment, with the consent of the prosecutor and upon written  
3 recommendation of the program director, the assignment judge or a  
4 judge designated by him may postpone all further proceedings  
5 against an applicant and refer said applicant to a program of  
6 supervisory treatment approved by the Supreme Court. Prosecutors  
7 and program directors shall consider in formulating their  
8 recommendation of an applicant's participation in a supervisory  
9 treatment program, among others, the following criteria:

- 10 (1) The nature of the offense;
- 11 (2) The facts of the case;
- 12 (3) The motivation and age of the defendant;
- 13 (4) The desire of the complainant or victim to forego  
14 prosecution;
- 15 (5) The existence of personal problems and character traits which  
16 may be related to the applicant's crime and for which services are  
17 unavailable within the criminal justice system, or which may be  
18 provided more effectively through supervisory treatment and the  
19 probability that the causes of criminal behavior can be controlled by  
20 proper treatment;
- 21 (6) The likelihood that the applicant's crime is related to a  
22 condition or situation that would be conducive to change through  
23 his participation in supervisory treatment;
- 24 (7) The needs and interests of the victim and society;
- 25 (8) The extent to which the applicant's crime constitutes part of a  
26 continuing pattern of anti-social behavior;
- 27 (9) The applicant's record of criminal and penal violations and  
28 the extent to which he may present a substantial danger to others;
- 29 (10) Whether or not the crime is of an assaultive or violent  
30 nature, whether in the criminal act itself or in the possible injurious  
31 consequences of such behavior;
- 32 (11) Consideration of whether or not prosecution would  
33 exacerbate the social problem that led to the applicant's criminal  
34 act;
- 35 (12) The history of the use of physical violence toward others;
- 36 (13) Any involvement of the applicant with organized crime;
- 37 (14) Whether or not the crime is of such a nature that the value  
38 of supervisory treatment would be outweighed by the public need  
39 for prosecution;
- 40 (15) Whether or not the applicant's involvement with other  
41 people in the crime charged or in other crime is such that the  
42 interest of the State would be best served by processing his case  
43 through traditional criminal justice system procedures;
- 44 (16) Whether or not the applicant's participation in pretrial  
45 intervention will adversely affect the prosecution of codefendants;  
46 and
- 47 (17) Whether or not the harm done to society by abandoning  
48 criminal prosecution would outweigh the benefits to society from  
49 channeling an offender into a supervisory treatment program.

1 f. Review of Supervisory Treatment Applications; Procedure  
2 Upon Denial. Each applicant for supervisory treatment shall be  
3 entitled to full and fair consideration of his application. If an  
4 application is denied, the program director or the prosecutor shall  
5 precisely state his findings and conclusion which shall include the  
6 facts upon which the application is based and the reasons offered  
7 for the denial. If the applicant desires to challenge the decision of a  
8 program director not to recommend, or of a prosecutor not to  
9 consent to, enrollment into a supervisory treatment program, a  
10 motion shall be filed before the designated judge (or assignment  
11 judge) authorized pursuant to the rules of court to enter orders.

12 g. Limitations. Supervisory treatment may occur only once with  
13 respect to any defendant and any person who has previously  
14 received supervisory treatment under section 27 of P.L.1970, c.226  
15 (C.24:21-27), shall not be eligible for supervisory treatment under  
16 this section. However, supervisory treatment, as provided herein,  
17 shall be available to a defendant irrespective of whether the  
18 defendant contests his guilt of the charge or charges against him.

19 h. Termination. Termination of supervisory treatment under this  
20 section shall be immediately reported to the assignment judge of the  
21 county who shall forward such information to the Administrative  
22 Director of the Courts.

23 i. Appointment of Program Directors; Authorized Referrals.  
24 Programs of supervisory treatment and appointment of the program  
25 directors require approval by the Supreme Court with the consent of  
26 the assignment judge and prosecutor. Referrals of participants from  
27 supervisory treatment programs may be to any public or private  
28 office or agency, including but not limited to, programs within the  
29 probation service of the court, offering counseling or any other  
30 social service likely to aid in the rehabilitation of the participant  
31 and to deter the commission of other offenses.

32 j. Health Care Professional Licensing Board Notification. The  
33 program director shall promptly notify the State Board of Medical  
34 Examiners when a State licensed physician or podiatrist has been  
35 enrolled in a supervisory treatment program after he has been  
36 charged with an offense involving drugs or alcohol.

37 (cf: P.L.1989, c.300, s.22)

38

39 10. This act shall take effect on the 30th day after the date of  
40 enactment.

41

42

43

#### STATEMENT

44

45 This bill imposes mandatory imprisonment and mandatory  
46 forfeiture of pension and retirement benefits for public officers or  
47 employees convicted of certain crimes involving or touching their  
48 office or employment. The bill clarifies that the board of trustees of  
49 a State or local pension fund can order forfeiture of “earned service

1 credit” and can implement any pension forfeiture ordered by a  
2 court, and requires mandatory pension forfeiture for crimes or  
3 offenses involving or touching the office, position or employment  
4 for the following crimes:

5 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal  
6 coercion;

7 (2) N.J.S.2C:20-4, theft by deception, if the amount involved  
8 exceeds \$10,000;

9 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

10 (4) N.J.S.2C:20-9, theft by failure to make required disposition  
11 of property received, if the amount involved exceeds \$10,000;

12 (5) N.J.S.2C:21-10, commercial bribery;

13 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money  
14 laundering;

15 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract  
16 payment claims;

17 (8) N.J.S.2C:27-2, bribery in official matters;

18 (9) N.J.S.2C:27-3, threats and other improper influence in  
19 official and political matters;

20 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful  
21 official business transaction where interest is involved;

22 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or  
23 receipt of unlawful benefit by public servant for official behavior;

24 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of  
25 unlawful benefit to public servant for official behavior;

26 (13) N.J.S.2C:28-1, perjury;

27 (14) N.J.S.2C:28-5, tampering with witnesses;

28 (15) N.J.S.2C:28-7, tampering with public records or  
29 information;

30 (16) N.J.S.2C:29-4, compounding;

31 (17) N.J.S.2C:30-2, official misconduct;

32 (18) N.J.S.2C:30-3, speculating or wagering on official action or  
33 information; or

34 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official  
35 misconduct.

36 Under the bill, the pension forfeiture will be ordered by the court  
37 immediately upon a finding of guilt by the trier of fact or a plea of  
38 guilty unless the court, for good cause shown, orders a stay of the  
39 pension forfeiture pending a hearing on the merits at the time of  
40 sentencing. Under the bill, there is an expectation of automatic  
41 forfeiture upon conviction. However, in special or extraordinary  
42 circumstances the court may stay the order of forfeiture if good  
43 cause is shown. Among the factors the court may consider when  
44 determining if forfeiture is unreasonable include the factors set  
45 forth in subsection c. of section 1 of P.L.1995, c.408 (C.43:1-3).

46 The bill does not preclude the authority of the board of trustees  
47 from ordering the forfeiture of all or part of the earned service  
48 credit or pension or retirement benefit of any member of the fund or  
49 system for misconduct occurring at the time of the member’s public

1 service pursuant to the provisions of P.L.1995, c.408 (C.43:1-3 et  
2 seq.), including in a case where the court does not enter an order of  
3 forfeiture.

4 The bill provides that the board of trustees of any State or  
5 locally-administered pension fund or retirement system may  
6 subpoena witnesses and compel their attendance, and also may  
7 require the production of books, papers or documents in a matter  
8 concerning the rendering of honorable service by a public officer or  
9 employee seeking to receive a public pension or retirement benefit.  
10 If any person refuses to obey any subpoena so issued, or refuses to  
11 testify or produce any books, papers or documents, the board may  
12 apply ex parte to the Superior Court to compel the person to comply  
13 with the subpoena.

14 The bill provides that a State, county or local employer  
15 participating in a pension fund or retirement system will be  
16 responsible for reimbursement to the pension fund or retirement  
17 system of all pension costs incurred by the pension fund or  
18 retirement system following any settlement agreement between the  
19 employer and an employee that provides for the employer not to  
20 pursue any civil or criminal charges or an action for misconduct  
21 against the employee in exchange for the employee's resignation in  
22 good standing when the employer has failed to fully disclose the  
23 settlement to the board of trustees of the pension fund or retirement  
24 system so that it can determine whether to order the forfeiture of all  
25 or part of the earned service credit or pension or retirement benefit  
26 of any member of the fund or system for misconduct occurring  
27 during the member's public service which renders the member's  
28 service or part thereof dishonorable.

29 The bill amends current law concerning forfeiture of public  
30 office to include a definition of the phrase concerning crimes and  
31 offenses "involving or touching" public office or employment, in  
32 accordance with the definition set forth by the New Jersey Supreme  
33 Court in McCann v. Clerk of the City of Jersey City, 167 N.J. 311  
34 (2001). It provides that a crime or offense "involving or touching"  
35 public office or employment means that the crime or offense was  
36 related directly to the person's performance in, or circumstances  
37 flowing from, a specific public office or position held by the  
38 person. As the Supreme Court stated in McCann: "When an  
39 individual commits a crime wholly unrelated to his or her public  
40 office, the crime ordinarily cannot be characterized as involving or  
41 touching on the public office."

42 The bill adds certain public corruption crimes to subsection f. of  
43 N.J.S.A.2C:51-2, which provides that persons convicted of certain  
44 crimes are barred from entering into contracts, submitting bids, or  
45 conducting any business with any State entity: N.J.S.A.2C:21-34,  
46 false contract payment claims; N.J.S.A.2C:27-3, threats and other  
47 improper influence in official and political matters; N.J.S.A.2C:27-  
48 5, retaliation for past official action; N.J.S.A.2C:27-9, unlawful  
49 official business transaction where interest is involved;

1 N.J.S.A.2C:27-10, acceptance of unlawful benefit by public servant  
2 for official behavior, and N.J.S.A.2C:27-11, offer of unlawful  
3 benefit to public servant for official behavior.

4 The bill provides mandatory terms of imprisonment for  
5 conviction of any of the nineteen crimes enumerated. For a crime  
6 of the fourth degree, the mandatory minimum term will be one year;  
7 for a crime of the third degree, two years; for a crime of the second  
8 degree, five years, and for a crime of the first degree, 10 years,  
9 unless the provisions of any other law provide for a higher  
10 mandatory minimum term. (Generally, a crime of the fourth degree  
11 is punishable by a term of imprisonment of up to 18 months or a  
12 fine of up to \$10,000 or both; a crime of the third degree, by a term  
13 of three to five years or a fine of up to \$15,000 or both; a crime of  
14 the second degree, a by a term of five to 10 years or a fine of up to  
15 \$150,000 or both; and a crime of the first degree, by a term of 10 to  
16 20 years or a fine of up to \$200,000 or both.)

17 The bill further provides that if the defendant has provided  
18 substantial assistance in a criminal investigation or prosecution of  
19 another person, the prosecutor is permitted to ask the court to waive  
20 or reduce the mandatory minimum term of imprisonment. Any  
21 waiver or reduction in the term of imprisonment would be  
22 determined by the court, which would state with specificity its  
23 reasons for waiving or reducing the mandatory minimum sentence  
24 that would otherwise apply.

25 Prosecutors are not permitted to recommend the admission into a  
26 pretrial intervention program of any person who serves or has  
27 served as a public officer or employee and who is charged with  
28 certain crimes set forth in this bill without the prior approval of the  
29 Attorney General. Individuals convicted of one or more of these  
30 crimes would be ineligible for participation in any program of  
31 intensive supervision during any period of parole ineligibility. The  
32 Attorney General is required to develop guidelines to ensure the  
33 uniform exercise of discretion in making determinations regarding  
34 the waiver or reduction of a mandatory minimum term of  
35 imprisonment.

36 The provisions of the bill are prospective in application. Pension  
37 forfeiture and mandatory terms of imprisonment will apply to  
38 crimes or offenses committed after the bill takes effect to avoid a  
39 challenge on ex post facto grounds that the forfeiture and  
40 imprisonment terms constitute new criminal penalties which may  
41 not be applied retroactively. The bill will take effect on the 30th  
42 day after enactment.