

2C:43, B.4

LEGISLATIVE HISTORY CHECKLIST
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("Violent Predator
Incapacitation Act")

NJSA: 2C:43-6.4

LAWS OF: 1994 CHAPTER: 130

BILL NO: S320

SPONSOR(S): Girgenti and Kosco

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: ---
SENATE: Judiciary

AMENDED DURING PASSAGE: No Senate Committee
substitute enacted

DATE OF PASSAGE: ASSEMBLY: October 20, 1994
SENATE: October 3, 1994

DATE OF APPROVAL: October 31, 1994

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COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes

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SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 320

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 19, 1994

Sponsored by Senators GIRGENTI and KOSCO

1 AN ACT concerning sentencing of sex offenders and amending
2 and supplementing Title 2C of the New Jersey Statutes.

3
4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. (New section) Sections 1 and 2 of this act shall be known
7 and may be cited as the "Violent Predator Incapcipation Act of
8 1994."

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

19 b. The special sentence of community supervision required by
20 this section shall commence upon completion of the sentence
21 imposed pursuant to other applicable provisions of the Code of
22 Criminal Justice. Persons serving a special sentence of
23 community supervision shall be supervised as if on parole and
24 subject to conditions appropriate to protect the public and foster
25 rehabilitation.

26 c. A person sentenced to a term of community supervision for
27 life may petition the Superior Court for release from community
28 supervision. The court shall grant a petition for release from a
29 special sentence of community supervision only upon proof that
30 the person has not committed a crime for 15 years since last
31 conviction or release from incarceration, whichever is later, and
32 that the person is not likely to pose a threat to the safety of
33 others if released from supervision.

34 d. A person who violates a condition of a special sentence of
35 community supervision without good cause is guilty of a crime of
36 the fourth degree.

37 e. (1) A person serving a special sentence of community
38 supervision imposed pursuant this section who commits a
39 violation of 2C:11-3, 2C:11-4, section b. of 2C:12-1, 2C:13-1,
40 2C:13-6, 2C:14-2, 2C:14-3, 2C:24-4, a crime of the second
41 degree under 2C:18-2 or subsection a. of 2C:39-4, shall be
42 sentenced to an extended term of imprisonment.

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 (2) The court shall not impose a sentence of imprisonment
2 pursuant to this subsection unless the ground therefor has been
3 established at a hearing after the conviction of the defendant and
4 on written notice to the defendant of the ground proposed. The
5 defendant shall have the right to hear and controvert the
6 evidence against him and to offer evidence upon the issue.

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

8 2C:43-7. Sentence of Imprisonment for Crime; Extended
9 Terms. a. In the cases designated in section 2C:44-3, a person
10 who has been convicted of a crime may be sentenced, and in the
11 cases designated in subsection e. of section 2 of P.L. , c.
12 (C.) (now pending before the Legislature as section 2 of this
13 bill) a person who has been convicted of a crime shall be
14 sentenced, to an extended term of imprisonment, as follows:

15 (1) In case of aggravated manslaughter sentenced under
16 subsection c. of N.J.S.2C:11-4 or kidnapping when sentenced as a
17 crime of the first degree under paragraph (1) of subsection c. of
18 2C:13-1 for a specific term of years which shall be between 30
19 years and life imprisonment;

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

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

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

28 (5) In the case of a crime of the fourth degree pursuant to
29 2C:43-6c., 2C:44-3d. and 2C:44-3e. for a term of five years, and
30 in the case of a crime of the fourth degree pursuant to 2C:43-6f.
31 for a term which shall be fixed by the court between three and
32 five years;

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

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

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

50 c. In the case of a person sentenced to an extended term
51 pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall
52 impose a sentence within the ranges permitted by 2C:43-7a.(2),
53 (3), (4) or (5) according to the degree or nature of the crime for
54 which the defendant is being sentenced, which sentence shall

1 include a minimum term which shall, except as may be
2 specifically provided by N.J.S.2C:43-6f., be fixed at or between
3 one-third and one-half of the sentence imposed by the court or
4 five years, whichever is greater, during which the defendant shall
5 not be eligible for parole. Where the sentence imposed is life
6 imprisonment, the court shall impose a minimum term of 25 years
7 during which the defendant shall not be eligible for parole, except
8 that where the term of life imprisonment is imposed on a person
9 convicted for a violation of N.J.S.2C:35-3, the term of parole
10 ineligibility shall be 30 years.

11 d. In the case of a person sentenced to an extended term
12 pursuant to N.J.S.2C:43-6g., the court shall impose a sentence
13 within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5)
14 according to the degree or nature of the crime for which the
15 defendant is being sentenced, which sentence shall include a
16 minimum term which shall be fixed at 15 years for a crime of the
17 first or second degree, eight years for a crime of the third
18 degree, or five years for a crime of the fourth degree during
19 which the defendant shall not be eligible for parole. Where the
20 sentence imposed is life imprisonment, the court shall impose a
21 minimum term of 25 years during which the defendant shall not
22 be eligible for parole, except that where the term of life
23 imprisonment is imposed on a person convicted of a violation of
24 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.
25 (cf:P.L. 1990, c. 87, S.3)

26 4. N.J.S.2C:44-3 is amended to read as follows:

27 2C:44-3. Criteria for Sentence of Extended Term of
28 Imprisonment.

29 The court may, upon application of the prosecuting attorney,
30 sentence a person who has been convicted of a crime of the first,
31 second or third degree to an extended term of imprisonment if it
32 finds one or more of the grounds specified in subsection a., b., c.,
33 or f. of this section. The court shall, upon application of the
34 prosecuting attorney, sentence a person who has been convicted
35 of a crime, other than a violation of N.J.S.2C:12-1a.,
36 N.J.S.2C:33-4 or a violation of section 1 or 2 of P.L.1981, c.282
37 (C.2C:33-10 or 2C:33-11), to an extended term if it finds, by a
38 preponderance of the evidence, the grounds in subsection e. If the
39 grounds specified in subsection d. are found, and the person is
40 being sentenced for commission of any of the offenses
41 enumerated in N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall
42 sentence the defendant to an extended term as required by
43 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., and application by the
44 prosecutor shall not be required. The court shall, upon
45 application of the prosecuting attorney, sentence a person to an
46 extended term if the imposition of such term is required pursuant
47 to the provisions of section 2 of P.L. , c. (C.)(now pending
48 before the Legislature as section 2 of this bill). The finding of
49 the court shall be incorporated in the record.

50 a. The defendant has been convicted of a crime of the first,
51 second or third degree and is a persistent offender. A persistent
52 offender is a person who at the time of the commission of the
53 crime is 21 years of age or over, who has been previously
54 convicted on at least two separate occasions of two crimes,

1 committed at different times, when he was at least 18 years of
2 age, if the latest in time of these crimes or the date of the
3 defendant's last release from confinement, whichever is later, is
4 within 10 years of the date of the crime for which the defendant
5 is being sentenced.

6 b. The defendant has been convicted of a crime of the first,
7 second or third degree and is a professional criminal. A
8 professional criminal is a person who committed a crime as part
9 of a continuing criminal activity in concert with two or more
10 persons, and the circumstances of the crime show he has
11 knowingly devoted himself to criminal activity as a major source
12 of livelihood.

13 c. The defendant has been convicted of a crime of the first,
14 second or third degree and committed the crime as consideration
15 for the receipt, or in expectation of the receipt, of anything of
16 pecuniary value the amount of which was unrelated to the
17 proceeds of the crime or he procured the commission of the
18 offense by payment or promise of payment of anything of
19 pecuniary value.

20 d. Second offender with a firearm. The defendant is at least
21 18 years of age and has been previously convicted of any of the
22 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,
23 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or
24 has been previously convicted of an offense under Title 2A of the
25 New Jersey Statutes which is equivalent of the offenses
26 enumerated in this subsection and he used or possessed a firearm,
27 as defined in 2C:39-1f., in the course of committing or
28 attempting to commit any of these crimes, including the
29 immediate flight therefrom.

30 e. The defendant in committing the crime acted, at least in
31 part, with ill will, hatred or bias toward, and with a purpose to
32 intimidate, an individual or group of individuals because of race,
33 color, religion, sexual orientation or ethnicity.

34 f. The defendant has been convicted of a crime under any of
35 the following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b.,
36 N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1,
37 N.J.S.2C:18-2, N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5,
38 and in the course of committing or attempting to commit the
39 crime, including the immediate flight therefrom, the defendant
40 used or was in possession of a stolen motor vehicle.

41 (cf: P.L.1993, c.132, s.2)

42 5. N.J.S.2C:47-1 is amended to read as follows:

43 2C:47-1. Referral to Adult Diagnostic and Treatment Center;
44 Commitment; Examination.

45 Whenever a person is convicted of the offense of aggravated
46 sexual assault, sexual assault, or aggravated criminal sexual
47 contact, kidnapping pursuant to paragraph (2) of subsection c. of
48 N.J.S.2C:13-1, or an attempt to commit any such crime, the
49 judge shall order that such person be referred to the Adult
50 Diagnostic and Treatment Center for such period as shall be
51 necessary to complete a physical and psychological examination,
52 said period of referral not to exceed 10 days. The referral order
53 shall contain a determination of the person's legal settlement in
54 accordance with subdivision D of article 3 of chapter 4 of Title

1 30 of the Revised Statutes.

2 (cf: P.L.1979, c.178, s.101)

3 6. N.J.S.2C:47-3 is amended to read as follows:

4 2C:47-3. Disposition. a. If the report of the examination
5 reveals that the offender's conduct was characterized by a
6 pattern of repetitive, compulsive behavior, the court shall
7 determine whether the offender's conduct was so characterized
8 and shall record its findings on the judgment of conviction.

9 b. If the court finds that the offender's conduct was
10 characterized by a pattern of repetitive, compulsive behavior,
11 the court may, upon the recommendation of the Adult Diagnostic
12 and Treatment Center, sentence the offender to the Center for a
13 program of specialized treatment for his mental condition,
14 [provided, however, that no such person may be sentenced to the
15 Adult Diagnostic and Treatment Center in the absence of such a
16 finding that his conduct was characterized by a pattern of
17 repetitive, compulsive behavior] or place the offender on
18 probation with the requirement, as a condition of probation, that
19 he receive outpatient psychological or psychiatric treatment as
20 prescribed.

21 In the event that the court shall sentence a person as provided
22 herein, the court shall notwithstanding] c. A sentence of
23 incarceration or probation imposed pursuant to subsection b. of
24 this section shall be set [the sentence] in accordance with
25 Chapters 43 [and], 44 and 45 of this code.

26 [c. In lieu of incarceration, the court may, upon the written
27 report and recommendation of the Adult Diagnostic and
28 Treatment Center, place such person on probation with the
29 requirement, as a condition of such probation, that he receive
30 outpatient psychological treatment in a manner to be prescribed
31 in each individual case.]

32 d. The court shall impose sentence in accordance with
33 chapters 43, 44 and 45 of this Title and not as provided in
34 subsection b. of this section:

35 (1) If it shall appear from the report of such examination made
36 of such person that the offender's conduct was not characterized
37 by a pattern of repetitive, compulsive behavior[, the court shall
38 not impose sentence on such person as provided by this chapter];
39 or

40 (2) If the report of the examination does not recommend that
41 the offender be sentenced to the Adult Diagnostic and Treatment
42 Center for treatment or placed on probation conditioned upon
43 receipt of treatment.

44 e. The court may, in its discretion, sentence an offender who
45 is eligible for sentence pursuant to subsection b. of this section in
46 accordance with chapters 43, 44 and 45 of this Title.

47 (cf: P.L.1979, c.178, s.103)

48 7. This act shall take effect immediately.

49

50

51

52

53 The "Violent Predator Incapacitation Act of 1994."

SENATE, No. 320

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senators GIRGENTI and KOSCO

1 **AN ACT** concerning the incapacitation of certain predatory
2 sexual offenders and revising various parts of the statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. (New section) This act shall be known and may be cited as
7 the "Violent Predator Incapacitation Act of 1993."

8 2. (New section) The Legislature finds and declares that:

9 a. By enacting the "New Jersey Code of Criminal Justice," the
10 Legislature recognized that one of the principal objectives of a
11 rational sentencing system is to ensure the public safety by
12 preventing the commission of offenses through the deterrent
13 influence of sentences imposed and the confinement of offenders
14 when required in the interest of public protection. The
15 Legislature hereby reaffirms that the overriding purpose of the
16 sentencing provisions of Title 2C of the New Jersey Statutes is to
17 protect public safety.

18 b. As a general proposition, the sentencing provisions of Title
19 2C of the New Jersey Statutes focus inexorably on the offense
20 rather than the offender. In other words, statutorily authorized
21 or required sentencing dispositions are determined principally by
22 reference to the nature and seriousness of the offense, as
23 established by the Legislature, rather than the individual
24 characteristics of the defendant. While this approach and the
25 adoption of a determinate sentencing scheme is necessary to
26 ensure consistency, uniformity and predictability so as to
27 promote the general deterrence of persons contemplating the
28 commission of crime, the overriding need to protect public safety
29 requires courts on occasion to focus more intently on the
30 individual characteristics of certain predatory sexual offenders,
31 who would otherwise be likely to commit new offenses and to
32 cause further injury or trauma to their victims. For these
33 especially dangerous sexual offenders, incapacitation emerges as
34 the principal goal of sentencing. Such incapacitation can be
35 achieved not only through imprisonment, but also by making
36 certain that following any term of imprisonment, such offenders
37 remain subject to parole monitoring and supervision for the rest
38 of their natural lives.

39 c. Under certain circumstances, it is appropriate that sexual
40 offenders deemed to be repetitive and compulsive and who are
41 sentenced to a term of imprisonment should, as a condition of
42 their release from confinement on parole, to a halfway house, to

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

Matter underlined thus is new matter.

1 electronically monitored house arrest or any other form of
2 release into the community, bear the burden of demonstrating to
3 the satisfaction of parole authorities that they no longer
4 constitute a threat to public safety.

5 d. Certain persons convicted of comparatively less serious
6 sexual offenses may be amenable to a probationary sentence
7 under subsection c. of N.J.S.2C:47-3 rather than a term of
8 imprisonment, but nonetheless may pose a risk to public safety by
9 reason of their repetitive and compulsive nature. Such persons
10 may require ongoing treatment and constant monitoring. It is
11 thus appropriate that such persons remain subject to probationary
12 supervision for the remainder of their natural lives.

13 e. The common law expressly or impliedly authorizes the
14 Attorney General or a county prosecutor, acting in the exercise
15 of the State's authority as *parens patriae*, to protect the public
16 safety and welfare by initiating a civil action to involuntarily
17 commit to a psychiatric institution certain person who remain
18 dangerous to themselves to other persons, but who have
19 completed or are about to complete their maximum term of
20 imprisonment following a criminal conviction. Such civil actions
21 for involuntary commitment are and remain an important legal
22 tool and remedy by which to ensure the protection of the public,
23 especially where it was not feasible to have established at the
24 time of the initial criminal sentencing proceeding that the
25 offender would constitute such danger to public safety. Where,
26 however, it is possible to establish that the offender would
27 constitute such a danger, it is appropriate and necessary to
28 authorize and require the sentencing court to consider such
29 circumstances in fixing an appropriate sentence following
30 conviction. Indeed, the need in any case to resort to a civil
31 action for involuntary commitment following the expiration of a
32 term of imprisonment suggests that such original sentence was
33 inadequate to achieve the overriding goal of protecting public
34 safety.

35 f. Accordingly, it is the policy of this State to identify
36 repetitive, compulsive sexual offenders so as to ensure that they
37 remain at all times subject to the jurisdiction of the courts, the
38 Department of Corrections or the State Parole Board.

39 3. N.J.S.2C:47-3 is amended to read as follows:

40 2C:47-3. Disposition; Imposition of Special Life Term;
41 Sentence to Adult Diagnostic and Treatment Center;
42 Probationary Sentence; Duration of Parole or Probationary
43 Supervision; Presumption of Imprisonment.

44 a. Notwithstanding the provisions of chapters 43 and 44 of
45 Title 2C of the New Jersey Statutes, where the court finds that
46 an offender's conduct was characterized by a pattern of
47 repetitive, compulsive behavior, the court shall sentence the
48 offender to a special life term. Where the court sentences the
49 person to a special life term, whether or not it is to be served at
50 the Adult Diagnostic and Treatment Center, the court shall
51 indicate on the judgment of conviction the specific term of years
52 which the court would have imposed but for the provisions of this
53 section, which specific term of years shall be determined in
54 accordance with the provisions of Title 2C of the New Jersey

1 Statutes which generally apply. The defendant's primary date of
2 parole eligibility shall be calculated based upon such specific
3 term of years, notwithstanding that the defendant has been
4 sentenced to a special life term and shall remain subject to
5 parole or probation supervision for the remainder of the person's
6 natural life. Nothing in this act shall be construed in any way to
7 limit the court's authority or obligation to impose an extended
8 term or minimum term of imprisonment during which the
9 defendant shall be ineligible for parole, where such extended
10 term or term of parole ineligibility is authorized or required to be
11 imposed pursuant to N.J.S.2C:44-3 and N.J.S.2C:14-6 or any
12 other provision of law. The fact that the examination conducted
13 pursuant to N.J.S.2C:47-1 concludes that the defendant's
14 conduct was not characterized by a pattern of repetitive,
15 compulsive behavior shall not preclude the court from making a
16 contrary finding and sentencing the defendant to a special life
17 term pursuant to this subsection.

18 [a.] b. If the examination conducted pursuant to N.J.S.2C:47-1
19 reveals that the offender's conduct was characterized by a
20 pattern of repetitive, compulsive behavior, the court may, upon
21 the recommendation of the Adult Diagnostic and Treatment
22 Center, sentence the offender to the Center for a program of
23 specialized treatment for his mental condition; provided,
24 however, that no such person may be sentenced to the Adult
25 Diagnostic and Treatment Center in the absence of such a finding
26 that his conduct was characterized by a pattern of repetitive,
27 compulsive behavior.

28 [b.] c. In the event that the court shall sentence a person [as
29 provided herein] to the Adult Diagnostic and Treatment Center
30 pursuant to subsection b. of this section, the court shall
31 notwithstanding set the sentence in accordance with the
32 provisions of subsection a. of this section [Chapters 43 and 44 of
33 this code].

34 [c.] d. In lieu of incarceration, the court may, [upon the
35 written report and recommendation of the Adult Diagnostic and
36 Treatment Center], subject to the presumption of imprisonment
37 established in subsection h. of this section, place such person on
38 probation with the requirement, as a condition of such probation,
39 that he receive outpatient psychological treatment in a manner
40 to be prescribed in each individual case.

41 [d.] e. Notwithstanding any other provision of law, and subject
42 to the provisions of subsection a. of section 15 of P.L.1979, c.441
43 (C.30:4-123.59), a person sentenced pursuant to this chapter to a
44 special life term shall be sentenced to a term of imprisonment
45 and shall be subject to parole supervision for the remainder of
46 that person's natural life. Such person shall not be discharged
47 from parole pursuant to section 22 of P.L.1979, c.441
48 (C.30:4-123.66) or any other provision of law. Nothing in this
49 section shall be construed to prevent the person from being
50 transferred to another jurisdiction to stand trial or to serve a
51 sentence, including but not limited to capital punishment.

52 f. Notwithstanding any other provision of law, a person
53 sentenced to a probationary term shall be subject to probation
54 supervision for the remainder of that person's natural life. Such

1 person shall not be discharged from probation supervision
2 pursuant to subsection a. of N.J.S.2C:45-2 or any other provision
3 of law. Nothing in this section shall be construed to authorize a
4 court to impose a probationary term where imprisonment is
5 required to be imposed in accordance with the provisions of
6 subsection h. of this section or any other law.

7 g. If it shall appear from the report of [such] the examination
8 made of such person pursuant to N.J.S.2C:47-1 that the
9 offender's conduct was not characterized by a pattern of
10 repetitive, compulsive behavior, the court shall not [impose
11 sentence on such person as provided by this chapter] sentence the
12 person to the Adult Diagnostic and Treatment Center, but shall
13 nonetheless sentence the person to a special life term provided
14 that the court has found the ground therefor set forth in
15 subsection a. of this section.

16 h. Any person who is sentenced to a special life term pursuant
17 to subsection a. of this section shall be subject to the
18 presumption of imprisonment established in subsection d. of
19 N.J.S.2C:44-1, notwithstanding that the person might otherwise
20 have been entitled to a presumption of nonimprisonment under
21 subsection e. of N.J.S.2C:44-1.

22 (cf: P.L.1979, c.178, s.103)

23 4. N.J.S.2C:47-5 is amended to read as follows:

24 2C:47-5. Parole; Release on Parole; Burden of Proof; Special
25 Conditions; Effect of Revocation.

26 [Any person committed to confinement under the terms of this
27 chapter shall be released under parole supervision when it shall
28 appear to the satisfaction of the State Parole Board, after
29 recommendation by a special classification review board
30 appointed by the commissioner that such person is capable of
31 making an acceptable social adjustment in the community. The
32 Chief Executive Officer of the Adult Diagnostic and Treatment
33 Center shall report in writing at least semiannually to the special
34 classification review board concerning the physical and
35 psychological condition of such person with a recommendation as
36 to his continued confinement or consideration for release on
37 parole. Any person paroled pursuant to this section shall be
38 subject to the provisions of Title 30 of the Revised Statutes
39 governing parole and the regulations promulgated pursuant
40 thereto.]

41 a. No person sentenced to a special life term pursuant to this
42 chapter shall be released under parole supervision, placed in a
43 halfway house or other community program or otherwise be
44 released from confinement in a secure correctional facility
45 except in accordance with the provisions of this section.

46 b. Notwithstanding the provisions of section 9 of P.L.1979,
47 c.441 (C.30:4-123.53) or any other law, a person sentenced to a
48 special life term pursuant to this chapter shall be released under
49 parole supervision, placed in a halfway house or other community
50 program or otherwise be released from confinement in a secure
51 correctional facility only where that person has established by a
52 preponderance of the evidence at a hearing before the State
53 Parole Board that such person is capable of making an acceptable
54 social adjustment in the community and that such placement in

1 the community will not endanger the public safety, and further
2 provided that such release or placement in the community has
3 been recommended by a special classification review board
4 appointed by the Commissioner of Corrections. Notwithstanding
5 the provisions of any other law to the contrary, parole shall not
6 be certified until a majority of the full parole board, after
7 conducting a hearing, concurs in that recommendation.

8 c. In addition to the requirements of subsection b. of this
9 section, the person shall not be released under parole supervision,
10 placed in a halfway house or other community program or
11 otherwise be released from confinement in a secure correctional
12 facility unless the person has been examined by a duly qualified
13 psychiatrist appointed or retained by the State Parole Board or
14 the Department of Corrections and who has certified that the
15 person no longer manifests repetitive, compulsive behavior such
16 that the person may be released from confinement without posing
17 a danger to the public. Where the psychiatrist fails or refuses to
18 make such certification, parole or any form of release shall not
19 be granted unless a majority of the full State Parole Board finds
20 by clear and convincing evidence on the record that such failure
21 or refusal by the psychiatrist to make such certification was
22 erroneous.

23 d. Any person released from confinement or otherwise placed
24 in the community pursuant to this section shall be subject to the
25 provisions of Title 30 of the Revised Statutes and shall at all
26 times comply with such conditions established by the State Parole
27 Board as may be necessary to monitor and supervise the person's
28 conduct and to protect public safety, provided however that in
29 addition to any such conditions as may be authorized by law, the
30 person shall be ordered to avoid having any contact with the
31 victim of the present offense, unless the State Parole Board is
32 clearly convinced and finds on the record that no purpose would
33 be served by imposing such restraints.

34 e. If the person's parole is revoked after a hearing conducted
35 pursuant to section 19 of P.L.1979, c.441 (C.30:4-123.63) on the
36 basis of being convicted of aggravated sexual assault, sexual
37 assault or aggravated criminal sexual contact or any substantially
38 similar crime under the laws of this State, the United States or
39 any other state while on parole, or on the basis of knowingly
40 having contact with any prior victim in violation of an order
41 issued pursuant to subsection d. of this section, the person shall
42 be returned to confinement and shall thereafter be ineligible for
43 release under parole supervision, placement in a halfway house or
44 other community program, or any other form of release from
45 confinement in a secure correctional facility for the remainder of
46 the person's natural life. Nothing in this subsection shall be
47 construed in any way to prevent appropriate authorities from
48 detaining or returning to confinement the person pending the
49 revocation hearing.

50 f. No person sentenced to a life term pursuant to this chapter
51 shall be eligible to be resentenced to the Intensive Supervision
52 Program.

53 (cf: P.L.1978, c.95, s.2C:47-5)

54 5. (New section) Special Conditions of Probation; Effect of

1 Revocation.

2 a. Any person sentenced to a special life term pursuant to this
3 chapter who is sentenced to probation shall at all times comply
4 with such conditions fixed by the court or the probation
5 department authorized by N.J.S.2C:45-1 and subsection c. of
6 N.J.S.2C:47-3, or any other law, as may be necessary to monitor
7 and supervise the person's conduct and to protect public safety.
8 In addition, the court at the time of sentencing shall order the
9 person to avoid having any contact with the victim of the present
10 offense, unless the court is clearly convinced and finds on the
11 record that no purpose would be served by imposing such
12 restraints.

13 b. If the person's probation is revoked after a hearing
14 conducted pursuant to N.J.S.2C:45-3 on the basis of being
15 convicted of aggravated sexual assault, sexual assault or
16 aggravated criminal sexual contact or any substantially similar
17 crime under the laws of this State, the United States or any other
18 state while on probation, or on the basis of knowingly having
19 contact with any prior victim in violation of an order issued
20 pursuant to subsection a. of this section, the court shall
21 immediately resentence the person to a term of imprisonment
22 during which the person shall be ineligible for parole for a period
23 to be fixed by the court at not less than ten years or up to the
24 remainder of the person's natural life. In that event, the person
25 shall not be eligible for release under parole supervision,
26 placement in a halfway house or other community program or any
27 other form of release from confinement in a secure correctional
28 facility except in accordance with the procedures and
29 requirements of N.J.S.2C:47-5. Nothing in this subsection shall
30 be construed in any way to prevent appropriate authorities from
31 detaining the person without bail pending the revocation hearing.

32 6. This act shall take effect immediately.

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Sponsors'

STATEMENT

36

37 This bill requires the court to sentence those individuals who
38 have been convicted of aggravated sexual assault, sexual assault
39 or aggravated criminal sexual contact and whose conduct may be
40 characterized by a pattern of repetitive and compulsive behavior
41 or who pose a danger to society to a "special life term." Under
42 the provisions of the bill, an offender who would receive a
43 "special life term" would be sentenced to a specific term of
44 imprisonment and be subject to parole supervision for the
45 remainder of that person's natural life. The bill also provides
46 that if a sexual offender is sentenced to a probationary term that
47 offender would be subject to probation supervision for the
48 remainder of that person's life.

49 In addition, the bill provides that an offender may be released
50 under parole supervision, placed in a halfway house or other
51 community program or otherwise released from confinement if
52 the offender establishes by a preponderance of evidence at
53 hearing before the State Parole Board that he is capable of
54 making an acceptable social adjustment in the community and

1 that his placement would not endanger the public. The bill also
2 provides that in order for an offender to be released a
3 recommendation for release must be given by the special
4 classification review board and a psychiatrist must certify that
5 the offender no longer manifests repetitive and compulsive
6 behavior and does not pose a danger to society.

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11 Creates the "Violent Predator Incapacitation Act of 1993."

SENATE JUDICIARY COMMITTEE
STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE No. 320
STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1994

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill No. 320.

SCS for S-320 would establish a special sentence of community supervision for life. In addition to any term of incarceration and any other authorized disposition, "community supervision for life" would be included as part of the sentence of any person convicted of any of the following: aggravated sexual assault; sexual assault; aggravated criminal sexual contact; endangering the welfare of a child or kidnapping when the victim is a child and the circumstances involve sexual assault or sexual exploitation.

This community supervision would begin upon completion of any term of imprisonment imposed and persons on community supervision would be monitored as if on parole and would be subject to conditions appropriate to protect the public and foster rehabilitation. Any person who violates a condition of community supervision would be guilty of a crime of the fourth degree.

A person sentenced to a term of community supervision for life may petition the Superior Court for release from that supervision if 15 years has passed from the date of the last conviction or release from incarceration and the person can demonstrate that he is not likely to pose a threat to safety if released from supervision.

In addition to establishing "community supervision for life," SCS for S-320 provides that if a person while on community supervision commits a crime such as murder, kidnapping, sexual assault or burglary, that person, upon application of the prosecutor, would be sentenced to an extended term of imprisonment. The length of that extended term would depend upon the degree of the crime committed. The extended term for a crime of the first degree, for example, is between 20 years and life imprisonment. For a crime of the second degree, the extended term would be between 10 and 20 years.

In conjunction with this extended term provisions, SCS for S-320 establishes special extended terms for murder and for the kidnapping of a child for the purpose of sexual assault. The extended term for murder would be set at between 35 years and life imprisonment and for this type of kidnapping at between 30 years and life imprisonment. Under present law, the term for murder if the death penalty is not imposed is between 30 years and life imprisonment and for kidnapping under the circumstances described above is between 25 years and life imprisonment.

It should be noted that these extended terms for murder and kidnapping would not only be available for those convicted of crimes while on community service but also be available for persons eligible for extended terms under other existing criteria such as persistent offenders and professional criminals.

SCS for S-320 also clarifies the presentencing procedures to be employed in evaluating sexual offenders.