

304-82.4

LEGISLATIVE HISTORY CHECKLIST
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(Sex offenders & other dangerous
offenders--civil commitment)

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LAWS OF: 1994 CHAPTER: 134

BILL NO: A86

SPONSOR(S): Roma and Stuhltrager

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SENATE: Law & Public Safety

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P.L.1994, CHAPTER 134, approved October 31, 1994

1994 Assembly No. 86

1 AN ACT concerning procedures for civil commitment of mentally
2 ill and dangerous sexual offenders and other offenders and
3 revising various parts of the statutory law.
4

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

7 1. (New section) The Legislature finds and declares that:

8 a. A small but dangerous group of sexual offenders and other
9 violent offenders suffer from mental illness which renders them
10 dangerous to others and for the protection of the public they are
11 in need of involuntary civil commitment for treatment.

12 b. The statutory standards for involuntary civil commitment
13 define "mental illness" in terms of its impact on impairment of
14 judgment, behavior and capacity to recognize reality. The
15 statutory standard provides for involuntary commitment when
16 such mental illness causes the person to be dangerous to self or
17 dangerous to others or property. Recommendations concerning
18 commitment too often are based on the presence or absence of
19 psychosis.

20 c. To ensure the public is not denied the protection that the
21 Legislature intended to provide in enacting a law that calls for
22 the involuntary civil commitment of the dangerous mentally ill, it
23 is necessary to reaffirm and clarify the statutory standards for
24 civil commitment and to revise the procedures governing release
25 of offenders and civil commitment in order to ensure that the full
26 benefits of the civil commitment law are realized.

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

28 2C:47-3. Disposition.

29 a. If the report of the examination reveals that the offender's
30 conduct was characterized by a pattern of repetitive, compulsive
31 behavior, the court shall determine whether the offender's
32 conduct was so characterized and shall record its findings on the
33 judgment of conviction.

34 b. If the court finds that the offender's conduct was
35 characterized by a pattern of repetitive, compulsive behavior,
36 the court may, upon the recommendation of the Adult Diagnostic
37 and Treatment Center, sentence the offender to the Center for a
38 program of specialized treatment for his mental condition;
39 provided, however, that no such person may be sentenced to the
40 Adult Diagnostic and Treatment Center in the absence of such a
41 finding that his conduct was characterized by a pattern of
42 repetitive, compulsive behavior] or place the offender on
43 probation with the requirement, as a condition of probation, that
44 he receive outpatient psychological or psychiatric treatment as
45 prescribed.

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

6 [c. In lieu of incarceration, the court may, upon the written
7 report and recommendation of the Adult Diagnostic and
8 Treatment Center, place such person on probation with the
9 requirement, as a condition of such probation, that he receive
10 outpatient psychological treatment in a manner to be prescribed
11 in each individual case.]

12 d. The court shall impose sentence in accordance with
13 chapters 43, 44 and 45 of this Title and not as provided in
14 subsection b. of this section;

15 (1) If it shall appear from the report of such examination made
16 of such person that the offender's conduct was not characterized
17 by a pattern of repetitive, compulsive behavior, the court shall
18 not impose sentence on such person as provided by this chapter;
19 or

20 (2) If the report of the examination does not recommend that
21 the offender be sentenced to the Adult Diagnostic and Treatment
22 Center for treatment or placed on probation conditioned upon
23 receipt of treatment.

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

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

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

29 2C:47-5. Parole.

30 a. Any person committed to confinement under the terms of
31 this chapter shall be released under parole supervision when it
32 shall appear to the satisfaction of the State Parole Board, after
33 recommendation by a special classification review board
34 appointed by the commissioner that such person is capable of
35 making an acceptable social adjustment in the community.

36 b. The Chief Executive Officer of the Adult Diagnostic and
37 Treatment Center shall report in writing at least semiannually to
38 the special classification review board concerning the physical
39 and psychological condition of such person with a
40 recommendation as to his continued confinement or consideration
41 for release on parole.

42 c. Any person paroled pursuant to this section shall be subject
43 to the provisions of Title 30 of the Revised Statutes governing
44 parole and the regulations promulgated pursuant thereto.

45 d. When a person confined under the terms of this chapter has
46 not been paroled in accordance with subsection a. of this section
47 and is scheduled for release, not less than 90 days prior to the
48 date of the person's scheduled release the Chief Executive
49 Officer shall;

50 (1) Notify the Attorney General and the prosecutor of the
51 county from which the person was committed of the scheduled
52 release;

53 (2) Provide the Attorney General and the county prosecutor
54 with the officer's opinion as to whether the person may be "in

1 need of involuntary commitment" within the meaning of section 2
2 of P.L.1987, c.116 (C.30:4-27.2); and

3 (3) Without regard to classification as confidential pursuant to
4 regulations of the State Parole Board or the Department of
5 Corrections, provide the Attorney General and county prosecutor
6 with all reports, records and assessments relevant to determining
7 whether the person is "in need of involuntary commitment." All
8 information received shall be deemed confidential and shall be
9 disclosed only as provided in section 4 of P.L. , c. (C.)(now
10 pending before the Legislature as this bill).

11 e. Upon receipt of the notice, advice and information required
12 by subsection d. of this section, the Attorney General or county
13 prosecutor shall proceed as provided in section 4 of P.L. c.
14 (C.)(now pending before the Legislature as this bill).

15 (cf: N.J.S.2C:47-5)

16 4. (New section) a. In order to ensure that adult and juvenile
17 inmates who are dangerous to themselves or others because of
18 mental illness and who are "in need of involuntary commitment"
19 within the meaning of section 2 of P.L.1987, c.116 (C.30:4-27.2),
20 are not released without appropriate supervision and treatment,
21 the board, the Commissioner of the Department of Corrections,
22 the Attorney General and county prosecutors shall follow the
23 procedures set forth in this section.

24 b. When an adult or juvenile inmate is scheduled for release
25 due to expiration of the inmate's maximum term, the
26 Commissioner shall notify the Attorney General and the
27 prosecutor of the county from which the person was committed if:

28 (1) The adult inmate's term includes a sentence imposed for
29 conviction of aggravated sexual assault, sexual assault or
30 aggravated criminal sexual contact and the court imposing
31 sentence found that the offender's conduct was characterized by
32 a pattern of repetitive, compulsive behavior; or

33 (2) The parole board or the superintendent of the facility in
34 which the inmate has been confined has advised the
35 Commissioner that the conduct of the inmate during the period of
36 confinement, the inmate's mental condition or the inmate's past
37 history indicates that the inmate may be "in need of involuntary
38 commitment" within the meaning of section 2 of P.L.1987, c.116
39 (C.30:4-27.2).

40 c. Notice required by subsection b. shall be given no less than
41 90 days before the date on which the inmate's maximum term is
42 scheduled to expire.

43 d. When such notice is given, the board or the Commissioner
44 shall provide the Attorney General and county prosecutor with all
45 information relevant to a determination of whether the inmate
46 may be "in need of involuntary commitment," including, without
47 regard to classification as confidential pursuant to regulations of
48 the board or of the Department of Corrections, any preparole
49 report, psychological and medical records, any statement of the
50 reasons for denial of parole and, if applicable, a statement of the
51 reasons for the determination that the inmate may be "in need of
52 involuntary commitment."

53 e. If the Attorney General or county prosecutor determines, on
54 the basis of the information provided pursuant to this section or

1 N.J.S.2C:47-5, that the inmate may be "in need of involuntary
2 commitment," the Commissioner of Corrections, upon request of
3 the Attorney General or county prosecutor shall:

4 (1) Permit persons qualified to execute clinical certificates
5 necessary for civil commitment to examine the inmate in the
6 institution in which he is confined; or

7 (2) Pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2),
8 arrange for persons qualified to execute clinical certificates
9 necessary for civil commitment to examine the inmate.

10 f. In the interests of the public safety and the well-being of
11 the inmate, the Attorney General or county prosecutor may
12 exercise discretion to obtain an assessment of the inmate's
13 condition by one or more of the means set forth in subsection e.
14 of this section.

15 g. The Attorney General or county prosecutor shall provide a
16 psychiatrist or physician assessing or examining an inmate
17 pursuant to this section with all information relevant to the
18 inmate's need of involuntary commitment, including information
19 concerning the inmate's condition, history, recent behavior and
20 any recent act or threat. Any person who assesses or examines
21 an inmate pursuant to this section shall provide the Attorney
22 General and county prosecutor with a written report detailing the
23 person's findings and conclusions.

24 h. (1) All information, documents and records concerning the
25 inmate's mental condition or classified as confidential pursuant
26 to regulations of the board or of the Department of Corrections
27 that are received or provided pursuant to this section or
28 N.J.S.2C:47-5 shall be deemed confidential.

29 (2) Unless authorized or required by court order or except as
30 required in the course of judicial proceedings relating to the
31 inmate's commitment or release, disclosure of such information,
32 documents and records shall be limited to professionals
33 evaluating the inmate's condition pursuant to this section, the
34 Attorney General, county prosecutor and members of their
35 respective staffs as necessary to the performance of duties
36 imposed pursuant to this section.

37 i. Any person acting in good faith who has provided
38 information relevant to an inmate's need of involuntary
39 commitment or has taken good faith steps to assess an inmate's
40 need of involuntary commitment is immune from civil and
41 criminal liability.

42 5. Section 2 of P.L.1987, c.116 (C.30:4-27.2) is amended to
43 read as follows:

44 2. As used in this act:

45 a. "Chief executive officer" means the person who is the chief
46 administrative officer of an institution or psychiatric facility.

47 b. "Clinical certificate" means a form prepared by the division
48 and approved by the Administrative Office of the Courts, that is
49 completed by the psychiatrist or other physician who has
50 examined the person who is subject to commitment within three
51 days of presenting the person for admission to a facility for
52 treatment, and which states that the person is in need of
53 involuntary commitment. The form shall also state the specific
54 facts upon which the examining physician has based his conclusion

1 and shall be certified in accordance with the Rules of the Court.
 2 A clinical certificate may not be executed by a person who is a
 3 relative by blood or marriage to the person who is being screened.

4 c. "Clinical director" means the person who is designated by
 5 the director or chief executive officer to organize and supervise
 6 the clinical services provided in a screening service, short-term
 7 care or psychiatric facility. The clinical director shall be a
 8 psychiatrist, however, those persons currently serving in the
 9 capacity will not be affected by this provision. This provision
 10 shall not alter any current civil service laws designating the
 11 qualifications of such position.

12 d. "Commissioner" means the Commissioner of the
 13 Department of Human Services.

14 e. "County counsel" means the chief legal officer or advisor of
 15 the governing body of a county.

16 f. "Court" means the Superior Court or a municipal court.

17 g. "Custody" means the right and responsibility to ensure the
 18 provision of care and supervision.

19 h. "Dangerous to self" means that by reason of mental illness
 20 the person has threatened or attempted suicide or serious bodily
 21 harm, or has behaved in such a manner as to indicate that the
 22 person is unable to satisfy his need for nourishment, essential
 23 medical care or shelter, so that it is probable that substantial
 24 bodily injury, serious physical debilitation or death will result
 25 within the reasonably foreseeable future; however, no person
 26 shall be deemed to be unable to satisfy his need for nourishment,
 27 essential medical care or shelter if he is able to satisfy such
 28 needs with the supervision and assistance of others who are
 29 willing and available.

30 i. "Dangerous to others or property" means that by reason of
 31 mental illness there is a substantial likelihood that the person will
 32 inflict serious bodily harm upon another person or cause serious
 33 property damage within the reasonably foreseeable future. This
 34 determination shall take into account a person's history, recent
 35 behavior and any recent act or threat.

36 j. "Department" means the Department of Human Services.

37 k. "Director" means the chief administrative officer of a
 38 screening service, a short-term care facility or a special
 39 psychiatric hospital.

40 l. "Division" means the Division of Mental Health and
 41 Hospitals in the Department of Human Services.

42 m. "In need of involuntary commitment" means that an adult
 43 who is mentally ill, whose mental illness causes the person to be
 44 dangerous to self or dangerous to others or property and who is
 45 unwilling to be admitted to a facility voluntarily for care, and
 46 who needs care at a short-term care, psychiatric facility or
 47 special psychiatric hospital because other services are not
 48 appropriate or available to meet the person's mental health care
 49 needs.

50 n. "Institution" means any State or county facility providing
 51 inpatient care, supervision and treatment for the mentally
 52 retarded; except that with respect to the maintenance provisions
 53 of Title 30 of the Revised Statutes, institution also means any
 54 psychiatric facility for the treatment of the mentally ill.

1 "Mental health agency or facility" means a legal entity
 2 which receives funds from the State, county or federal
 3 government to provide mental health services.

4 "Mental health screener" means a psychiatrist,
 5 psychologist, social worker, registered professional nurse or other
 6 individual trained to do outreach only for the purposes of
 7 psychological assessment who is employed by a screening service
 8 and possesses the license, academic training or experience, as
 9 required by the commissioner pursuant to regulation; except that
 10 a psychiatrist and a State licensed clinical psychologist who meet
 11 the requirements for mental health screener shall not have to
 12 comply with any additional requirements adopted by the
 13 commissioner.

14 q. "Mental hospital" means, for the purposes of the payment
 15 and maintenance provisions of Title 30 of the Revised Statutes, a
 16 psychiatric facility.

17 r. "Mental illness" means a current, substantial disturbance of
 18 thought, mood, perception or orientation which significantly
 19 impairs judgment, capacity to control behavior or capacity to
 20 recognize reality, but does not include simple alcohol
 21 intoxication, transitory reaction to drug ingestion, organic brain
 22 syndrome or developmental disability unless it results in the
 23 severity of impairment described herein. The term mental illness
 24 is not limited to "psychosis" or "active psychosis," but shall
 25 include all conditions that result in the severity of impairment
 26 described herein.

27 s. "Patient" means a person over the age of 18 who has been
 28 admitted to, but not discharged from a short-term care or
 29 psychiatric facility.

30 t. "Physician" means a person who is licensed to practice
 31 medicine in any one of the United States or its territories, or the
 32 District of Columbia.

33 u. "Psychiatric facility" means a State psychiatric hospital
 34 listed in R.S.30:1-7, a county psychiatric hospital, or a
 35 psychiatric unit of a county hospital.

36 v. "Psychiatrist" means a physician who has completed the
 37 training requirements of the American Board of Psychiatry and
 38 Neurology.

39 w. "Psychiatric unit of a general hospital" means an inpatient
 40 unit of a general hospital that restricts its services to the care
 41 and treatment of the mentally ill who are admitted on a
 42 voluntary basis.

43 x. "Psychologist" means a person who is licensed as a
 44 psychologist by the New Jersey Board of Psychological Examiners.

45 y. "Screening certificate" means a clinical certificate
 46 executed by a psychiatrist or other physician affiliated with a
 47 screening service.

48 z. "Screening service" means a public or private ambulatory
 49 care service designated by the commissioner, which provides
 50 mental health services including assessment, emergency and
 51 referral services to mentally ill persons in a specified geographic
 52 area.

53 aa. "Screening outreach visit" means an evaluation provided
 54 by a mental health screener wherever the person may be when

1 clinically relevant information indicates the person may need
2 involuntary commitment and is unable or unwilling to come to a
3 screening service.

4 bb. "Short-term care facility" means an inpatient, community
5 based mental health treatment facility which provides acute care
6 and assessment services to a mentally ill person whose mental
7 illness causes the person to be dangerous to self or dangerous to
8 others or property. A short-term care facility is so designated by
9 the commissioner and is authorized by the commissioner to serve
10 persons from a specified geographic area. A short-term care
11 facility may be a part of a general hospital or other appropriate
12 health care facility and shall meet certificate of need
13 requirements and shall be licensed and inspected by the
14 Department of Health pursuant to P.L.1971, c.136 (C.26:2H-1
15 et seq.) and in accordance with standards developed jointly with
16 the Commissioner of Human Services.

17 cc. "Special psychiatric hospital" means a public or private
18 hospital licensed by the Department of Health to provide
19 voluntary and involuntary mental health services, including
20 assessment, care, supervision, treatment and rehabilitation
21 services to persons who are mentally ill.

22 dd. "Treatment team" means one or more persons, including at
23 least one psychiatrist or physician, and may include a
24 psychologist, social worker, nurse and other appropriate services
25 providers. A treatment team provides mental health services to
26 a patient of a screening service, short-term care or psychiatric
27 facility.

28 ee. "Voluntary admission" means that adult who is mentally
29 ill, whose mental illness causes the person to be dangerous to self
30 or dangerous to others or property and is willing to be admitted
31 to a facility voluntarily for care, needs care at a short-term care
32 or psychiatric facility because other facilities or services are not
33 appropriate or available to meet the person's mental health
34 needs. A person may also be voluntarily admitted to a
35 psychiatric facility if his mental illness presents a substantial
36 likelihood of rapid deterioration in functioning in the near future.
37 there are no appropriate community alternatives available and
38 the psychiatric facility can admit the person and remain within
39 its rated capacity.

40 ff. "County adjuster" means the person appointed pursuant to
41 R.S.30:4-34.

42 (cf: P.L.1989, c.73, s.1)

43 6. Section 10 of P.L.1987, c.116 (C.30:4-27.10) is amended to
44 read as follows:

45 10. a. A short-term care or psychiatric facility or a special
46 psychiatric hospital shall initiate court proceedings for
47 involuntary commitment by submitting to the court a clinical
48 certificate completed by a psychiatrist on the patient's
49 treatment team and the screening certificate which authorized
50 admission of the patient to the facility; provided, however, that
51 both certificates shall not be signed by the same psychiatrist
52 unless the psychiatrist has made a reasonable but unsuccessful
53 attempt to have another psychiatrist conduct the evaluation and
54 execute the certificate.

1 b. Court proceedings for the involuntary commitment of any
2 person not referred by a screening service may be initiated by the
3 submission to the court of two clinical certificates, at least one
4 of which is prepared by a psychiatrist. The person shall not be
5 involuntarily committed before the court issues a temporary
6 court order.

7 c. A court proceeding for involuntary commitment of an
8 inmate who is scheduled for release upon expiration of a
9 maximum term of incarceration shall be initiated by the Attorney
10 General or county prosecutor by submission to the court of two
11 clinical certificates, at least one of which is prepared by a
12 psychiatrist.

13 d. The Attorney General, in exercise of the State's authority
14 as parens patriae, may initiate a court proceeding for the
15 involuntary commitment of any person in accordance with the
16 procedures set forth in subsection a. or b. of this section. When
17 the Attorney General determines that the public safety requires
18 initiation of a proceeding pursuant to subsection b. of this
19 section, the Attorney General may apply to the court for an order
20 compelling the psychiatric evaluation of the person. The court
21 shall grant the Attorney General's application if the court finds
22 that there is reasonable cause to believe that the person may be
23 in need of involuntary commitment. The Attorney General may
24 delegate the authority granted pursuant to this subsection, on a
25 case by case basis, to the county prosecutor.

26 [c.] e. Any person who is a relative by blood or marriage of the
27 person being screened who executes a clinical certificate, or any
28 person who signs a clinical certificate for any purpose or motive
29 other than for purposes of care [and] , treatment [.] and
30 confinement of a person in need of involuntary commitment, shall
31 be guilty of a crime of the fourth degree.

32 [d.] f. Upon receiving these documents the court shall
33 immediately review them in order to determine whether there is
34 probable cause to believe that the person is in need of involuntary
35 commitment.

36 [e.] g. If the court finds that there is probable cause to believe
37 that the person, other than a person whose commitment is sought
38 pursuant to subsection c. of this section, is in need of involuntary
39 commitment, it shall issue a temporary order authorizing the
40 admission to or retention of the person in the custody of the
41 facility pending a final hearing.

42 h. If the court finds that there is probable cause to believe
43 that a person whose commitment is sought pursuant to subsection
44 c. of this section is in need of involuntary commitment, it shall
45 issue an order setting a date for a final hearing and authorizing
46 the Commissioner of the Department of Corrections to arrange
47 for temporary commitment pursuant to section 2 of P.L.1986,
48 c.71 (C.30:4-82.2) to the Forensic Psychiatric Hospital in Trenton
49 or other facility designated for the criminally insane pending the
50 final hearing and prior to the expiration of the person's term.
51 The order shall specifically provide for transfer of custody to the
52 Forensic Psychiatric Hospital in Trenton or other facility
53 designated for the criminally insane if the person's maximum
54 term will expire prior to the final hearing.

1 [f.] i. In the case of a person committed to a short-term care
2 facility or special psychiatric hospital, after the facility's
3 treatment team conducts a mental and physical examination,
4 administers appropriate treatment and prepares a discharge
5 assessment, the facility may transfer the patient to a psychiatric
6 facility prior to the final hearing; provided that: (1) the patient,
7 his family and his attorney are given 24 hours' advance notice of
8 the pending transfer; and (2) the transfer is accomplished in a
9 manner which will give the receiving facility adequate time to
10 examine the patient, become familiar with his behavior and
11 condition and prepare for the hearing. In no event shall the
12 transfer be made less than five days prior to the date of the
13 hearing unless an unexpected transfer is dictated by a change in
14 the person's clinical condition.

15 (cf: P.L.1987, c.116, s.10)

16 7. Section 12 of P.L.1987, c.116 (C.30:4-27.12) is amended to
17 read as follows:

18 12. a. A patient who is involuntarily committed to a
19 short-term care or psychiatric facility or special psychiatric
20 hospital shall receive a court hearing with respect to the issue of
21 continuing need for involuntary commitment within 20 days from
22 initial inpatient admission to the facility unless the patient has
23 been administratively discharged from the facility pursuant to
24 section 17 of [this act] P.L.1987, c.116 (C.30:4-27.17). However,
25 if a person is involuntarily committed pursuant to subsection c. or
26 d. of section 10 of P.L.1987, C.116 (C.30:4-27.10), that person
27 immediately shall be committed to the Forensic Psychiatric
28 Hospital in Trenton or other facility designated for the criminally
29 insane for the duration of the 20 day waiting period.

30 [The] b. Except as provided in subsection c. of this section, the
31 assigned county counsel is responsible for presenting the case for
32 the patient's involuntary commitment to the court, unless the
33 county adjuster is licensed to practice law in this State, in which
34 case the county adjuster shall present the case for the patient's
35 involuntary commitment to the court.

36 c. Notwithstanding the provisions of subsection b. of this
37 section and upon notice to the county adjuster:

38 (1) The Attorney General, or the county prosecutor acting at
39 the request of the Attorney General, may supersede the county
40 counsel or county adjuster and assume responsibility for
41 presenting any case for involuntary commitment or may elect to
42 participate with the county counsel or county adjuster in
43 presenting any such case; and

44 (2) The county prosecutor may supersede the county counsel or
45 county adjuster and assume responsibility for presenting any case
46 for involuntary commitment initiated by the county prosecutor
47 pursuant to subsection c. of section 10 of P.L.1987, c.116
48 (C.30:4-27.10) or may elect to participate with the county
49 counsel in the presentation of any such case.

50 d. A patient subject to involuntary commitment shall have
51 counsel present at the hearing and shall not be permitted to
52 appear at the hearing without counsel.

53 (cf: P.L.1989, c.73, s.2)

54 8. Section 13 of P.L.1987, c.116 (C.30:4-27.13) is amended to

1 read as follows:

2 13. a. At least 10 days prior to a court hearing, the county
3 adjuster of the admitting county or the Attorney General or
4 county prosecutor if presenting the case for the patient's
5 involuntary commitment, shall cause notice of the court hearing
6 to be served upon the patient, the patient's guardian if any, the
7 patient's next-of-kin, the patient's attorney, the director, chief
8 executive officer, or other individual who has custody of the
9 patient, the county adjuster of the county in which the patient
10 has legal settlement and any other individual specified by the
11 court. The notice shall contain the date, time and location of the
12 court hearing. The patient and the patient's attorney shall also
13 receive copies of the clinical certificates and supporting
14 documents, the temporary court order and a statement of the
15 patient's rights at the court hearing.

16 b. A psychiatrist on the patient's treatment team who has
17 conducted a personal examination of the patient as close to the
18 court hearing date as possible, but in no event more than five
19 calendar days prior to the court hearing, shall testify at the
20 hearing to the clinical basis for the need for involuntary
21 commitment. Other members of the patient's treatment team
22 [may] and any other witness with relevant information offered by
23 the patient or the persons presenting the case for civil
24 commitment shall also be permitted to testify at the hearing.

25 c. The patient's next-of-kin may attend and testify at the
26 court hearing if the court so determines.

27 d. The court shall transcribe the court hearing and arrange for
28 the payment of expenses related thereto in the same manner as
29 for other court proceedings.

30 (cf: P.L.1987, c.116, s.13)

31 9. Section 15 of P.L.1987, c.116 (C.30:4-27.15) is amended to
32 read as follows:

33 15. a. If the court finds by clear and convincing evidence that
34 the patient needs continued involuntary commitment, it shall
35 issue an order authorizing the involuntary commitment of the
36 patient and shall schedule a subsequent court hearing in the event
37 the patient is not administratively discharged pursuant to section
38 17 of [this act] P.L.1987, c.116 (C.30:4-27.17) prior thereto.

39 b. If the court finds that the patient does not need continued
40 involuntary commitment, the court shall so order. A patient who
41 is serving a term of incarceration shall be returned to the
42 appropriate State, county or local authority to complete service
43 of the term of incarceration imposed until increased in accordance
44 with law, and [the facility shall discharge the] any other patient
45 shall be discharged by the facility within 48 hours of the court's
46 verbal order or by the end of the next working day, whichever is
47 longer, with a discharge plan prepared pursuant to section 18 of
48 [this act] P.L.1987, c.116 (C.30:4-27.18).

49 c. [(f) (1)] The court may discharge the patient subject to
50 conditions, if the court finds that the person does not need
51 involuntary or continued involuntary commitment and the court
52 finds:

53 (a) that the patient's history indicates a high risk of
54 rehospitalization because of the patient's failure to comply with

1 discharge plan, the court may discharge the patient subject to
2 conditions; or

3 (b) that there is substantial likelihood that by reason of mental
4 illness the patient will be dangerous to himself, others or
5 property if the patient does not receive other appropriate and
6 available services that render involuntary commitment
7 unnecessary.

8 (2) Conditions imposed pursuant to this section shall include
9 those recommended by the facility and mental health agency
10 staff and developed with the participation of the patient.
11 Conditions imposed on the patient shall be specific and their
12 duration shall not exceed 90 days unless the court determines, in
13 a case in which the Attorney General or a county prosecutor
14 participated, that the conditions should be imposed for a longer
15 period. If the court imposes conditions for a period exceeding six
16 months, the court shall provide for a review hearing on a date the
17 court deems appropriate but in no event later than six months
18 from the date of the order. The review hearing shall be
19 conducted in the manner provided in this section, and the court
20 may impose any order authorized pursuant to this section.

21 (3) The designated mental health agency staff person shall
22 notify the court if the patient fails to meet the conditions of the
23 discharge plan, and the court shall issue an order directing that
24 the person be taken to a screening service for an assessment.
25 The court shall determine, in conjunction with the findings of a
26 screening service, if the patient needs to be rehospitalized and, if
27 so, the patient shall be returned to the facility. The court shall
28 hold a hearing within 20 days of the day the patient was returned
29 to the facility to determine if the order of conditional discharge
30 should be vacated.

31 d. Notwithstanding subsection a. of this section, or any
32 provision of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27.
33 16 through 30:4-27.18), no person committed while serving a term
34 of incarceration shall be discharged by the court or
35 administratively discharged prior to the date on which the
36 person's maximum term would have expired had he not been
37 committed. If the person is no longer in need of involuntary
38 commitment, the person shall be returned to the appropriate
39 State, county or local authority to complete service of the term
40 of incarceration imposed until released in accordance with law,
41 and the person shall be given day for day credit for all time
42 during which the person was committed.

43 (cf: P.L.1987, c.116, s.15)

44 10. Section 17 of P.L.1987, c.116 (C.30:4-27.17) is amended to
45 read as follows:

46 17. a. The treatment team at a short-term care or psychiatric
47 facility or special psychiatric hospital shall, subject to the
48 limitations set forth in subsection b. of this section,
49 administratively discharge a patient from involuntary
50 commitment status if the treatment team determines that the
51 patient no longer needs involuntary commitment. If a discharge
52 plan has not been developed pursuant to section 18 of this act, it
53 shall be developed forthwith.

54 b. If the patient is confined pursuant to an order entered under

1 section 15 of P.L.1987, c.116 (C.30:4-27.15) in a case in which
2 the Attorney General or a county prosecutor participated, the
3 treatment team shall, no less than 10 days prior to the proposed
4 date of administrative discharge, provide written notice to the
5 committing court and to the person or persons who presented the
6 case for involuntary commitment. If, within five days of receipt
7 of such notice, a person who presented the case for commitment
8 files a request for a hearing on the issue of continuing need for
9 commitment and serves notice of that request, in accordance
10 with the provisions of section 13 of P.L. 1987, c.116
11 (C.30:4-27.13), the treatment team shall delay the administrative
12 discharge and the court shall schedule a hearing on the issue. The
13 hearing shall be conducted in the manner provided in section 15
14 of P.L.1987, c.116 (C.30:4-27.15).

15 (cf: P.L.1987, c.116, s.17)

16 11. Section 28 of P.L.1966, c.282 (C.45:14B-28) is amended to
17 read as follows:

18 28. The confidential relations and communications between
19 and among a licensed practicing psychologist and individuals,
20 couples, families or groups in the course of the practice of
21 psychology are placed on the same basis as those provided
22 between attorney and client, and nothing in this act shall be
23 construed to require any such privileged communications to be
24 disclosed by any such person.

25 There is no privilege under this section for any communication:
26 (a) upon an issue of the client's condition in an action to commit
27 the client or otherwise place the client under the control of
28 another or others because of alleged mental incompetence, or in
29 an action in which the client seeks to establish his competence or
30 in an action to recover damages on account of conduct of the
31 client which constitutes a crime; or (b) upon an issue as to the
32 validity of a document as a will of the client; or (c) upon an issue
33 between parties claiming by testate or intestate succession from
34 a deceased client.

35 (cf: P.L.1981, c.303, s.1)

36 12. This act shall take effect immediately.

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STATEMENT

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41 The purpose of this bill is to protect the public safety by
42 coordinating procedures governing the release of inmates and the
43 involuntary commitment of persons who are mentally ill and
44 dangerous.

45 The bill would codify what is inherent in the Attorney
46 General's common law responsibility to act on behalf of the
47 State, as *parens patriae* -- a grant of authority to seek civil
48 commitment when the public safety requires. This bill would also
49 give the Attorney General and the county prosecutors the notice
50 and opportunity needed to obtain an assessment of the condition
51 of certain inmates, prior to their release from prison, who are
52 likely to be in need of involuntary commitment after release. In
53 addition, it would give the Attorney General and the county
54 prosecutors clear statutory authority to initiate timely civil

1 commitment proceedings when appropriate.

2 Under current law, the Department of Corrections must
3 release an inmate when he has served his maximum term. In
4 most instances, these inmates have been denied parole because it
5 is likely that they will commit another crime or because they
6 have been found to be repetitive and compulsive sex offenders
7 who are not capable of making an acceptable social adjustment in
8 the community. Some of these inmates suffer from mental
9 illness that causes them to be dangerous to themselves, others or
10 property. Although they are "in need of involuntary
11 commitment" within the meaning of New Jersey's civil
12 commitment law, the law does not provide clear procedures for
13 securing their commitment. They may be released into the
14 community without supervision or treatment.

15 This bill would not establish a different standard for civil
16 commitment of these former inmates; like all other persons,
17 they would be subject to involuntary commitment only if a court
18 found them to be mentally ill and dangerous to themselves, others
19 or property. The bill, however, would reaffirm and clarify the
20 standard for civil commitment applicable to all persons in order
21 to ensure that those who apply the standard do not erroneously
22 focus on the presence or absence of "psychosis" in making
23 recommendations concerning the need for civil commitment.

24 Once committed, patients who are former inmates would be
25 released in accordance with the procedures and standards
26 applicable to all other persons involuntarily hospitalized. The
27 procedures applicable to release, however, would be modified in
28 order to ensure that the need to protect the public is given due
29 consideration in the release decision.

30 Under current law, a treatment facility may discharge a
31 patient found to be in need of involuntary commitment at any
32 time. This bill would require the facility to give prior notice to
33 the party that presented the case for civil commitment. If, upon
34 receipt of such notice, the party were to request a hearing on the
35 continued need for commitment, administrative discharge would
36 not take place and a hearing would be held.

37 The bill provides that if involuntary commitment proceedings
38 are initiated by the Attorney General or the county prosecutor,
39 the person would be committed to the Forensic Psychiatric
40 Hospital in Trenton or other facility designated for the criminal
41 insane for the 20 day waiting period for a hearing on the
42 continued need for involuntary commitment. The court would
43 authorize the Commissioner of Corrections to arrange for
44 temporary commitment to the Forensic Psychiatric Hospital or
45 similar facility pending the final hearing and prior to the
46 expiration of the person's term. In addition, the court order
47 would specifically provide for transfer of custody to the Forensic
48 Psychiatric Hospital or similar facility if the person's maximum
49 term would expire prior to the final hearing.

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54 Revises procedures governing civil commitment of certain
55 mentally ill and dangerous persons.

FISCAL ESTIMATE TO

ASSEMBLY, No. 86

STATE OF NEW JERSEY

DATED: September 26, 1994

Assembly Bill No. 86 of 1994 revises procedures governing the release and involuntary commitment of inmates convicted of certain sexual offenses to ensure that protection of the public is given due consideration. The bill codifies the Attorney General's common law responsibility to act on behalf of the public in seeking civil commitments.

The bill requires the Chief Executive Officer of the Adult Diagnostic and Treatment Center to: 1) notify the Attorney General and the prosecutor of the county 90 days prior to the scheduled release of an inmate who has not been paroled; 2) provide the Attorney General and the county prosecutor with his recommendation regarding the decision involving the involuntary commitment of the inmate; 3) provide the Attorney General and the county prosecutor with all information relevant to make an independent determination concerning involuntary commitment of the inmate.

The bill authorizes the Attorney General or the county prosecutors, at their discretion, to initiate civil commitment of inmates determined to be mentally ill and dangerous to the public. The bill provides that if involuntary commitment proceedings are initiated by the Attorney General or the county prosecutor, the person would be committed to the Forensic Psychiatric Hospital in Trenton or another facility designated for the criminal insane for the 20 day waiting period for a hearing on involuntary commitment. The bill authorizes the Department of Corrections to arrange temporary commitment of these inmates to such facilities pending their final hearings.

Information provided informally by the Department of Law and Public Safety estimates that 144 cases a year would be reviewed under this bill but the department did not provide an estimate of the number of civil commitments which might be sought by the Attorney General. The department states, however, that it would expect county prosecutors to also be active in the commitment process.

The department estimates its costs of administering this bill at \$188,226 in the first year after enactment. Included in this estimate are salary and fringe benefit costs of \$85,226 for one Deputy Attorney General and one typist, \$1,000 for materials and supplies, \$100,000 for expert witness evaluations and \$2,000 for data processing equipment. Assuming an annual inflation rate of five percent in the second and third year for salaries and other expenses and deducting one-time data processing equipment costs, the department estimates the bill's second and third year costs at \$195,837 and \$205,314, respectively. The Office of Legislative Services (OLS) concurs with the department's estimate of its costs.

However, OLS notes that enactment of this bill would also result in increased county costs based on the extent of participation



OFFICE OF THE GOVERNOR NEWS RELEASE

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Release: IMMEDIATE
OCT. 31, 1994

Gov. Christie Whitman today signed an 11-bill package of legislation establishing a comprehensive system for dealing with convicted sex offenders, ranging from community notification to extended prison sentences.

Whitman signed the legislation at a public ceremony in her office.

"This package represents a comprehensive and balanced response to a complex law enforcement and social issue," Whitman said. "Our priority in these efforts was to create a system of protection for the community at large as well as to enhance our ability to deal with individuals who commit crimes of this nature."

Whitman commended the Legislature for its reasoned response as embodied in the bill package.

"These bills are an outstanding example of what can be accomplished through bi-partisan cooperation and when there is a high level of coordination between the Executive and Legislative branches of government to solve problems," Whitman said.

The bills signed into law today are:

A-165, sponsored by Assemblymen Patrick Roma, R-Bergen, and Gary Stuhltrager, R-Salem, to require the Department of Corrections or the Department of Human Services to provide written notification to a county prosecutor prior to the release of an adult or juvenile who has been convicted or judged delinquent of certain offenses, including murder and sexual crimes. The prosecutor, in turn, is required to notify the Office of Victim-Witness Advocacy.

A-84, sponsored by Assemblywomen Joanna Gregory-Scocchi, R-Middlesex, and Joan Quigley, D-Bergen, to require the registration of sex offenders with a designated registration agency

or the chief law enforcement officer of the municipality in which the person resides.

S-14, sponsored by Sens. Peter Inverso, R-Mercer, and Gerald Cardinale, R-Bergen, to provide for community notification when a sex offender is released from an institution and moves into a municipality. The community notification is to be given in accordance with guidelines developed by the Attorney General.

S-320, sponsored by Sens. John Girgenti, D-Passaic, and Louis Kosco, R-Bergen, to establish community supervision for life for convicted sex offenders. Community supervision will begin upon the offender's release and the monitoring system is similar to that used for parolees.

S-1398, sponsored by Sens. Andrew Ciesla, R-Monmouth, and John Scott, R-Bergen, to establish victim notification procedures for victims of domestic violence when the offender is scheduled to appear for any court proceeding related to the offense. It also requires notification to a county prosecutor upon the offender's release from jail.

S-11, sponsored by Sens. Donald DiFrancesco, R-Union, and Robert Martin, R-Morris, to provide for an extended prison term for a sexual offender if the crime involved violence and if the victim was 16 years of age or under.

S-15, sponsored by Sens. Andrew Ciesla, R-Monmouth, and Jack Sinagra, R-Middlesex, to provide that no inmate at the Adult Diagnostic and Treatment Center at Avenel will be eligible for good behavior credit unless the individual cooperates with the treatment program offered at the institution.

A-1592, sponsored by Assemblywoman Joan Quigley, D-Bergen, and Assemblyman Nicholas Felice, R-Bergen, to require persons convicted of sexual offenses to provide samples of blood for DNA profiling and use in connection with criminal investigations.

A-81, sponsored by former Assemblyman Frank Catania, R-Passaic, and Assemblywoman Marion Crecco, R-Essex, to establish a victim's age of less than 14 years old as an aggravating factor in death penalty cases.

A-86, sponsored by Assemblymen Patrick Roma, R-Bergen, and Gary Stuhltrager, R-Salem, to provide for the involuntary commitment of sex offenders whose conduct has been characterized by a pattern of repetitive, compulsive behavior.

A-1602, sponsored by Assemblymen John Rocco and Lee Solomon, both R-Camden, to provide that a prosecuting agency must notify the victim of a domestic violence matter whenever a defendant charged with an offense involving domestic violence is released from custody.