



<b>COMMITTEE STATEMENT A3735/A3740:</b>	<b>ASSEMBLY:</b>	Yes	Law and Public Safety Appropriations
	<b>SENATE:</b>	No	
<b>FLOOR AMENDMENT STATEMENT:</b>		No	
<b>LEGISLATIVE FISCAL NOTE A3735/A3740:</b>		Yes	
<b>LEGISLATIVE FISCAL NOTE A3740:</b>		Yes	
<b>VETO MESSAGE:</b>		No	
<b>GOVERNOR'S PRESS RELEASE ON SIGNING:</b>		Yes	

**FOLLOWING WERE PRINTED:**

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<b>REPORTS:</b>	No
<b>HEARINGS:</b>	No
<b>NEWSPAPER ARTICLES:</b>	Yes

"New law toughens state's penalties for child porn distribution," The Star-Ledger, 8-15-13  
 "Gov. Christie signs into law harsher child porn penalties," The Trentonian, 8-15-13  
 "Christie signs bill that bolsters child porn law," Asbury Park Press, 8-15-13  
 Tougher child porn law OK'd," Daily Record 8-15-13

LAW/RWH

P.L.2013, CHAPTER 136, *approved August 14, 2013*  
Senate, No. 2493 (*First Reprint*)

1 AN ACT concerning the sexual exploitation or abuse of a child and  
2 amending various parts of the statutory law.

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

6  
7 <sup>1</sup>1. N.J.S.2C:24-4 is amended to read as follows:  
8 2C:24-4. Endangering Welfare of Children.

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

18 (2) Any person having a legal duty for the care of a child or who  
19 has assumed responsibility for the care of a child who causes the  
20 child harm that would make the child an abused or neglected child  
21 as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c.119, s.1 (C.9:6-  
22 8.21) is guilty of a crime of the second degree. Any other person  
23 who engages in conduct or who causes harm as described in this  
24 paragraph to a child is guilty of a crime of the third degree.

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

26 “Child” means any person under **[16]** 18 years of age.

27 “Distribute” means to sell, or to manufacture, give, provide,  
28 lend, trade, mail, deliver, publish, circulate, disseminate, present,  
29 exhibit, display, share, advertise, offer, or make available via the  
30 Internet or by any other means, whether for pecuniary gain or not.  
31 The term also includes an agreement or attempt to distribute.

32 “File-sharing program” means a computer program, application,  
33 software or operating system that allows the user of a computer on  
34 which such program, application, software or operating system is  
35 installed to designate files as available for searching by and copying  
36 to one or more other computers, to transmit such designated files  
37 directly to one or more other computers, and to request the  
38 transmission of such designated files directly from one or more  
39 other computers. The term “file-sharing program” includes but is  
40 not limited to a computer program, application or software that  
41 enables a computer user to participate in a peer-to-peer network.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted June 6, 2013.

1 “Internet” means the international computer network of both  
2 federal and non-federal interoperable packet switched data  
3 networks.

4 “Item depicting the sexual exploitation or abuse of a child”  
5 means a photograph, film, video, an electronic, electromagnetic or  
6 digital recording, an image stored or maintained in a computer  
7 program or file or in a portion of a file, or any other reproduction or  
8 reconstruction which depicts a child engaging in a prohibited sexual  
9 act or in the simulation of such an act.

10 “Peer-to-peer network” means a connection of computer systems  
11 through which files are shared directly between the systems on a  
12 network without the need of a central server.

13 “Prohibited sexual act” means

14 (a) Sexual intercourse; or

15 (b) Anal intercourse; or

16 (c) Masturbation; or

17 (d) Bestiality; or

18 (e) Sadism; or

19 (f) Masochism; or

20 (g) Fellatio; or

21 (h) Cunnilingus;

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

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

26 “Reproduction” means, but is not limited to, computer generated  
27 images.

28 (2) (Deleted by amendment, P.L.2001, c.291).

29 (3) A person commits a crime of the **【second】** first degree if he  
30 causes or permits a child to engage in a prohibited sexual act or in  
31 the simulation of such an act if the person knows, has reason to  
32 know or intends that the prohibited act may be photographed,  
33 filmed, reproduced, or reconstructed in any manner, including on  
34 the Internet, or may be part of an exhibition or performance. **【If the**  
35 **person is a parent, guardian or other person legally charged with the**  
36 **care or custody of the child, the person shall be guilty of a crime of**  
37 **the first degree.】**

38 (4) **【Any person who】** A person commits a crime of the second  
39 degree if he photographs or films a child in a prohibited sexual act  
40 or in the simulation of such an act or who uses any device,  
41 including a computer, to reproduce or reconstruct the image of a  
42 child in a prohibited sexual act or in the simulation of such an act  
43 **【is guilty of a crime of the second degree】.**

44 (5) (a) **【Any person who knowingly receives for the purpose of**  
45 **selling or who knowingly sells, procures, manufactures, gives,**  
46 **provides, lends, trades, mails, delivers, transfers, publishes,**  
47 **distributes, circulates, disseminates, presents, exhibits, advertises,**

1 offers, or agrees to offer, through any means, including the Internet,  
2 any photograph, film, videotape, computer program or file, video  
3 game or any other reproduction or reconstruction which depicts a  
4 child engaging in a prohibited sexual act or in the simulation of  
5 such an act is guilty of a crime of the second degree.】 A person  
6 commits a crime of the second degree if, by any means, including  
7 but not limited to the Internet, he:

8 (1) knowingly distributes an item depicting the sexual  
9 exploitation or abuse of a child;

10 (2) knowingly possesses an item depicting the sexual  
11 exploitation or abuse of a child with the intent to distribute that  
12 item; or

13 (3) using a file-sharing program, knowingly stores or maintains  
14 an item depicting the sexual exploitation or abuse of a child which  
15 is designated as available for searching by or copying to one or  
16 more other computers.

17 In a prosecution under subparagraph (a) of paragraph (3) of this  
18 subsection, the State shall not be required to offer proof that an item  
19 depicting the sexual exploitation or abuse of a child had actually  
20 been searched, copied, transmitted or viewed by another user of the  
21 file-sharing program, or by any other person, and it shall be no  
22 defense that the defendant did not intend to distribute the item to  
23 another user of the file-sharing program or to any other person. Nor  
24 shall the State be required to prove that the defendant was aware  
25 that the item depicting the sexual exploitation or abuse of a child  
26 was available for searching or copying to one or more other  
27 computers, and the defendant shall be strictly liable for failing to  
28 designate the item as not available for searching or copying by one  
29 or more other computers.

30 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
31 6, a person whose offense under this subparagraph involved 25 or  
32 more items depicting the sexual exploitation or abuse of a child  
33 shall be sentenced to a mandatory minimum term of imprisonment,  
34 which shall be fixed at, or between, one-third and one-half of the  
35 sentence imposed by the court or five years, whichever is greater,  
36 during which the defendant shall be ineligible for parole.

37 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
38 6, a person convicted of a second or subsequent offense under this  
39 subparagraph shall be sentenced to an extended term of  
40 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
41 subparagraph, an offense is considered a second or subsequent  
42 offense if the actor has at any time been convicted pursuant to  
43 paragraph (3), (4) or (5) of this subsection, or under any similar  
44 statute of the United States, this State or any other state for an  
45 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
46 this subsection.

1       For purposes of this subparagraph, the term “possess” includes  
2 receiving, viewing, or having under one’s control, through any  
3 means, including the Internet.

4       (b) **【Any person who】** A person commits a crime of the third  
5 degree if he knowingly possesses, receives, views or 【knowingly  
6 views any photograph, film, videotape, computer program or file,  
7 video game or any other reproduction or reconstruction which  
8 depicts a child engaging in a prohibited sexual act or in the  
9 simulation of such an act, including on the Internet, is guilty of a  
10 crime of the fourth degree】 has under his control, through any  
11 means, including the Internet, an item depicting the sexual  
12 exploitation or abuse of a child.

13       Notwithstanding the provisions of subsection e. of N.J.S.2C:44-  
14 1, in any instance where a person was convicted of an offense under  
15 this subparagraph that involved 100 or more items depicting the  
16 sexual exploitation or abuse of a child, the court shall impose a  
17 sentence of imprisonment unless, having regard to the character and  
18 condition of the defendant, it is of the opinion that imprisonment  
19 would be a serious injustice which overrides the need to deter such  
20 conduct by others.

21       Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
22 6, a person convicted of a second or subsequent offense under this  
23 subparagraph shall be sentenced to an extended term of  
24 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
25 subparagraph, an offense is considered a second or subsequent  
26 offense if the actor has at any time been convicted pursuant to  
27 paragraph (3), (4) or (5) of this subsection, or under any similar  
28 statute of the United States, this State or any other state for an  
29 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
30 this subsection.

31       Nothing in this subparagraph shall be construed to preclude or  
32 limit any prosecution or conviction for the offense set forth in  
33 subparagraph (a) of this paragraph.

34       (6) For purposes of this subsection, a person who is depicted as  
35 or presents the appearance of being under the age of **【16】 18** in any  
36 photograph, film, videotape, computer program or file, video game  
37 or any other reproduction or reconstruction shall be rebuttably  
38 presumed to be under the age of **【16】 18**.

39       If the child who is depicted as engaging in, or who is caused to  
40 engage in, a prohibited sexual act or simulation of a prohibited  
41 sexual act is under the age of **【16】 18**, the actor shall be strictly  
42 liable and it shall not be a defense that the actor did not know that  
43 the child was under the age of **【16】 18**, nor shall it be a defense that  
44 the actor believed that the child was **【16】 18** years of age or older,  
45 even if such a mistaken belief was reasonable.

46       (7) For aggregation purposes, each depiction of the sexual  
47 exploitation or abuse of a child shall be considered a separate item,

1 and each individual act of distribution of an item depicting the  
2 sexual exploitation or abuse of a child shall be considered a  
3 separate item. For purposes of determining the number of items  
4 depicting the sexual exploitation or abuse of a child for purposes of  
5 sentencing pursuant to subparagraph (a) of paragraph (5) of this  
6 subsection, the court shall aggregate all items involved, whether the  
7 act or acts constituting the violation occurred at the same time or at  
8 different times and, with respect to distribution, whether the act or  
9 acts of distribution were to the same person or several persons or  
10 occurred at different times, provided that each individual act was  
11 committed within the applicable statute of limitations. For purposes  
12 of determining the number of items depicting the sexual  
13 exploitation or abuse of a child for purposes of sentencing pursuant  
14 to subparagraph (b) of paragraph (5) of this subsection, the court  
15 shall aggregate all items involved, whether the possession of such  
16 items occurred at the same time or at different times, provided that  
17 each individual act was committed within the applicable statute of  
18 limitations.

19 (cf: P.L.2001, c.291, s.1)]<sup>1</sup>

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

22 2C:24-4. Endangering Welfare of Children.

23 a. (1) Any person having a legal duty for the care of a child or  
24 who has assumed responsibility for the care of a child who engages  
25 in sexual conduct which would impair or debauch the morals of the  
26 child[, or who causes the child harm that would make the child an  
27 abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and  
28 section 1 of P.L.1974, c.119 (C.9:6-8.21)] is guilty of a crime of the  
29 second degree. Any other person who engages in conduct or who  
30 causes harm as described in this [subsection] paragraph to a child  
31 [under the age of 18] is guilty of a crime of the third degree.

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

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

40 "Child" means any person under 18 years of age.

41 "Distribute" means to sell, or to manufacture, give, provide,  
42 lend, trade, mail, deliver, publish, circulate, disseminate, present,  
43 exhibit, display, share, advertise, offer, or make available via the  
44 Internet or by any other means, whether for pecuniary gain or not.  
45 The term also includes an agreement or attempt to distribute.

46 "File-sharing program" means a computer program, application,  
47 software or operating system that allows the user of a computer on

1 which such program, application, software or operating system is  
2 installed to designate files as available for searching by and copying  
3 to one or more other computers, to transmit such designated files  
4 directly to one or more other computers, and to request the  
5 transmission of such designated files directly from one or more  
6 other computers. The term "file-sharing program" includes but is  
7 not limited to a computer program, application or software that  
8 enables a computer user to participate in a peer-to-peer network.

9 "Internet" means the international computer network of both  
10 federal and non-federal interoperable packet switched data  
11 networks.

12 "Item depicting the sexual exploitation or abuse of a child"  
13 means a photograph, film, video, an electronic, electromagnetic or  
14 digital recording, an image stored or maintained in a computer  
15 program or file or in a portion of a file, or any other reproduction or  
16 reconstruction which depicts a child engaging in a prohibited sexual  
17 act or in the simulation of such an act.

18 "Peer-to-peer network" means a connection of computer systems  
19 through which files are shared directly between the systems on a  
20 network without the need of a central server.

21 "Prohibited sexual act" means

- 22 (a) Sexual intercourse; or
- 23 (b) Anal intercourse; or
- 24 (c) Masturbation; or
- 25 (d) Bestiality; or
- 26 (e) Sadism; or
- 27 (f) Masochism; or
- 28 (g) Fellatio; or
- 29 (h) Cunnilingus; or
- 30 (i) Nudity, if depicted for the purpose of sexual stimulation or
- 31 gratification of any person who may view such depiction; or
- 32 (j) Any act of sexual penetration or sexual contact as defined in
- 33 N.J.S.2C:14-1.

34 "Reproduction" means, but is not limited to, computer generated  
35 images.

36 (2) (Deleted by amendment, P.L.2001, c.291).

37 (3) A person commits a crime of the **【second】** first degree if he  
38 causes or permits a child to engage in a prohibited sexual act or in  
39 the simulation of such an act if the person knows, has reason to  
40 know or intends that the prohibited act may be photographed,  
41 filmed, reproduced, or reconstructed in any manner, including on  
42 the Internet, or may be part of an exhibition or performance. **【If the**  
43 **person is a parent, guardian or other person legally charged with the**  
44 **care or custody of the child, the person shall be guilty of a crime of**  
45 **the first degree.】**

46 (4) **【Any person who】** A person commits a crime of the second  
47 degree if he photographs or films a child in a prohibited sexual act  
48 or in the simulation of such an act or who uses any device,



1 including a computer, to reproduce or reconstruct the image of a  
2 child in a prohibited sexual act or in the simulation of such an act  
3 **【is guilty of a crime of the second degree】.**

4 (5) (a) **【Any person who knowingly receives for the purpose of**  
5 **selling or who knowingly sells, procures, manufactures, gives,**  
6 **provides, lends, trades, mails, delivers, transfers, publishes,**  
7 **distributes, circulates, disseminates, presents, exhibits, advertises,**  
8 **offers or agrees to offer, through any means, including the Internet,**  
9 **any photograph, film, videotape, computer program or file, video**  
10 **game or any other reproduction or reconstruction which depicts a**  
11 **child engaging in a prohibited sexual act or in the simulation of**  
12 **such an act, is guilty of a crime of the second degree】** A person  
13 commits a crime of the second degree if, by any means, including  
14 but not limited to the Internet, he:

15 (i) knowingly distributes an item depicting the sexual  
16 exploitation or abuse of a child;

17 (ii) knowingly possesses an item depicting the sexual  
18 exploitation or abuse of a child with the intent to distribute that  
19 item; or

20 (iii) knowingly stores or maintains an item depicting the sexual  
21 exploitation or abuse of a child using a file-sharing program which  
22 is designated as available for searching by or copying to one or  
23 more other computers.

24 In a prosecution under sub-subparagraph (iii) of this  
25 subparagraph, the State shall not be required to offer proof that an  
26 item depicting the sexual exploitation or abuse of a child had  
27 actually been searched, copied, transmitted or viewed by another  
28 user of the file-sharing program, or by any other person, and it shall  
29 be no defense that the defendant did not intend to distribute the item  
30 to another user of the file-sharing program or to any other person.  
31 Nor shall the State be required to prove that the defendant was  
32 aware that the item depicting the sexual exploitation or abuse of a  
33 child was available for searching or copying to one or more other  
34 computers, and the defendant shall be strictly liable for failing to  
35 designate the item as not available for searching or copying by one  
36 or more other computers.

37 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
38 6, a person whose offense under this subparagraph involved 25 or  
39 more items depicting the sexual exploitation or abuse of a child  
40 shall be sentenced to a mandatory minimum term of imprisonment,  
41 which shall be fixed at, or between, one-third and one-half of the  
42 sentence imposed by the court or five years, whichever is greater,  
43 during which the defendant shall be ineligible for parole.

44 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
45 6, a person convicted of a second or subsequent offense under this  
46 subparagraph shall be sentenced to an extended term of  
47 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
48 subparagraph, an offense is considered a second or subsequent

1 offense if the actor has at any time been convicted pursuant to  
2 paragraph (3), (4) or (5) of this subsection, or under any similar  
3 statute of the United States, this State or any other state for an  
4 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
5 this subsection.

6 For purposes of this subparagraph, the term “possess” includes  
7 receiving, viewing, or having under one’s control, through any  
8 means, including the Internet.

9 (b) **【Any person who】** A person commits a crime of the third  
10 degree if he knowingly possesses **【or】**, knowingly views **【any**  
11 photograph, film, videotape, computer program or file, video game  
12 or any other reproduction or reconstruction which depicts a child  
13 engaging in a prohibited sexual act or in the simulation of such an  
14 act, including on the Internet, is guilty of a crime of the third  
15 degree】 , or knowingly has under his control, through any means,  
16 including the Internet, an item depicting the sexual exploitation or  
17 abuse of a child.

18 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-  
19 1, in any instance where a person was convicted of an offense under  
20 this subparagraph that involved 100 or more items depicting the  
21 sexual exploitation or abuse of a child, the court shall impose a  
22 sentence of imprisonment unless, having regard to the character and  
23 condition of the defendant, it is of the opinion that imprisonment  
24 would be a serious injustice which overrides the need to deter such  
25 conduct by others.

26 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
27 6, a person convicted of a second or subsequent offense under this  
28 subparagraph shall be sentenced to an extended term of  
29 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
30 subparagraph, an offense is considered a second or subsequent  
31 offense if the actor has at any time been convicted pursuant to  
32 paragraph (3), (4) or (5) of this subsection, or under any similar  
33 statute of the United States, this State or any other state for an  
34 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
35 this subsection.

36 Nothing in this subparagraph shall be construed to preclude or  
37 limit any prosecution or conviction for the offense set forth in  
38 subparagraph (a) of this paragraph.

39 (6) For purposes of this subsection, a person who is depicted as  
40 or presents the appearance of being under the age of 18 in any  
41 photograph, film, videotape, computer program or file, video game  
42 or any other reproduction or reconstruction shall be rebuttably  
43 presumed to be under the age of 18. If the child who is depicted as  
44 engaging in, or who is caused to engage in, a prohibited sexual act  
45 or simulation of a prohibited sexual act is under the age of 18, the  
46 actor shall be strictly liable and it shall not be a defense that the  
47 actor did not know that the child was under the age of 18, nor shall

1 it be a defense that the actor believed that the child was 18 years of  
2 age or older, even if such a mistaken belief was reasonable.

3 (7) For aggregation purposes, each depiction of the sexual  
4 exploitation or abuse of a child shall be considered a separate item,  
5 and each individual act of distribution of an item depicting the  
6 sexual exploitation or abuse of a child shall be considered a  
7 separate item. For purposes of determining the number of items  
8 depicting the sexual exploitation or abuse of a child for purposes of  
9 sentencing pursuant to subparagraph (a) of paragraph (5) of this  
10 subsection, the court shall aggregate all items involved, whether the  
11 act or acts constituting the violation occurred at the same time or at  
12 different times and, with respect to distribution, whether the act or  
13 acts of distribution were to the same person or several persons or  
14 occurred at different times, provided that each individual act was  
15 committed within the applicable statute of limitations. For purposes  
16 of determining the number of items depicting the sexual  
17 exploitation or abuse of a child for purposes of sentencing pursuant  
18 to subparagraph (b) of paragraph (5) of this subsection, the court  
19 shall aggregate all items involved, whether the possession of such  
20 items occurred at the same time or at different times, provided that  
21 each individual act was committed within the applicable statute of  
22 limitations.<sup>1</sup>

23 (cf: P.L.2013, c.51, s.13)

24  
25 2. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to  
26 read as follows:

27 2. a. Notwithstanding any provision of law to the contrary, a  
28 judge imposing sentence on a person who has been convicted of  
29 aggravated sexual assault, sexual assault, aggravated criminal  
30 sexual contact, kidnapping pursuant to paragraph (2) of subsection  
31 c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging  
32 in sexual conduct which would impair or debauch the morals of the  
33 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the  
34 welfare of a child pursuant to paragraph (3) of subsection b. of  
35 N.J.S.2C:24-4, luring or an attempt to commit any of these offenses  
36 shall include, in addition to any sentence authorized by this Code, a  
37 special sentence of parole supervision for life. Notwithstanding any  
38 provision of law to the contrary, a court imposing sentence on a  
39 person who has been convicted of endangering the welfare of a  
40 child pursuant to paragraph (4) or (5) of subsection b. of  
41 N.J.S.2C:24-4, or an attempt to commit either of these offenses  
42 shall include, upon motion of the prosecutor, a special sentence of  
43 parole supervision for life in addition to any sentence authorized by  
44 Title 2C of the New Jersey Statutes, unless the court finds on the  
45 record that the special sentence is not needed to protect the  
46 community or deter the defendant from future criminal activity.

47 b. The special sentence of parole supervision for life required  
48 by this section shall commence immediately upon the defendant's

1 release from incarceration. If the defendant is serving a sentence of  
2 incarceration for another offense at the time he completes the  
3 custodial portion of the sentence imposed on the present offense,  
4 the special sentence of parole supervision for life shall not  
5 commence until the defendant is actually released from  
6 incarceration for the other offense. Persons serving a special  
7 sentence of parole supervision for life shall remain in the legal  
8 custody of the Commissioner of Corrections, shall be supervised by  
9 the Division of Parole of the State Parole Board, shall be subject to  
10 the provisions and conditions set forth in subsection c. of section 3  
11 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and  
12 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and  
13 30:4-123.65), and shall be subject to conditions appropriate to  
14 protect the public and foster rehabilitation. Such conditions may  
15 include the requirement that the person comply with the conditions  
16 set forth in subsection f. of this section concerning use of a  
17 computer or other device with access to the Internet. If the  
18 defendant violates a condition of a special sentence of parole  
19 supervision for life, the defendant shall be subject to the provisions  
20 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60  
21 through 30:4-123.63 and 30:4-123.65), and for the purpose of  
22 calculating the limitation on time served pursuant to section 21 of  
23 P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon  
24 the defendant related to the special sentence of parole supervision  
25 for life shall be deemed to be a term of life imprisonment. When the  
26 court suspends the imposition of sentence on a defendant who has  
27 been convicted of any offense enumerated in subsection a. of this  
28 section, the court may not suspend imposition of the special  
29 sentence of parole supervision for life, which shall commence  
30 immediately, with the Division of Parole of the State Parole Board  
31 maintaining supervision over that defendant, including the  
32 defendant's compliance with any conditions imposed by the court  
33 pursuant to N.J.S.2C:45-1, in accordance with the provisions of this  
34 subsection. Nothing contained in this subsection shall prevent the  
35 court from at any time proceeding under the provisions of  
36 N.J.S.2C:45-1 through 2C:45-4 against any such defendant for a  
37 violation of any conditions imposed by the court when it suspended  
38 imposition of sentence, or prevent the Division of Parole from  
39 proceeding under the provisions of sections 16 through 19 and 21 of  
40 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-  
41 123.65) against any such defendant for a violation of any conditions  
42 of the special sentence of parole supervision for life, including the  
43 conditions imposed by the court pursuant to N.J.S.2C:45-1. In any  
44 such proceeding by the Division of Parole, the provisions of  
45 subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b)  
46 authorizing revocation and return to prison shall be applicable to  
47 such a defendant, notwithstanding that the defendant may not have

1 been sentenced to or served any portion of a custodial term for  
2 conviction of an offense enumerated in subsection a. of this section.

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

15 d. A person who violates a condition of a special sentence  
16 imposed pursuant to this section without good cause is guilty of a  
17 crime of the fourth degree. Notwithstanding any other law to the  
18 contrary, a person sentenced pursuant to this subsection shall be  
19 sentenced to a term of imprisonment, unless the court is clearly  
20 convinced that the interests of justice so far outweigh the need to  
21 deter this conduct and the interest in public safety that a sentence to  
22 imprisonment would be a manifest injustice. Nothing in this  
23 subsection shall preclude subjecting a person who violates any  
24 condition of a special sentence of parole supervision for life to the  
25 provisions of sections 16 through 19 and 21 of P.L.1979, c.441  
26 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65) pursuant to  
27 the provisions of subsection c. of section 3 of P.L.1997, c.117  
28 (C.30:4-123.51b).

29 e. A person who, while serving a special sentence of parole  
30 supervision for life imposed pursuant to this section, commits a  
31 violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5,  
32 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, section 1 of  
33 P.L.1993, c.291 (C.2C:13-6), N.J.S.2C:14-2, N.J.S.2C:14-3,  
34 N.J.S.2C:24-4, N.J.S.2C:18-2 when the offense is a crime of the  
35 second degree, or subsection a. of N.J.S.2C:39-4 shall be sentenced  
36 to an extended term of imprisonment as set forth in N.J.S.2C:43-7,  
37 which term shall, notwithstanding the provisions of N.J.S.2C:43-7  
38 or any other law, be served in its entirety prior to the person's  
39 resumption of the term of parole supervision for life.

40 f. The special sentence of parole supervision for life required  
41 by this section may include any of the following Internet access  
42 conditions:

43 (1) Prohibit the person from accessing or using a computer or  
44 any other device with Internet capability without the prior written  
45 approval of the court except the person may use a computer or any  
46 other device with Internet capability in connection with that  
47 person's employment or search for employment with the prior  
48 approval of the person's parole officer;

1 (2) Require the person to submit to periodic unannounced  
2 examinations of the person's computer or any other device with  
3 Internet capability by a parole officer, law enforcement officer or  
4 assigned computer or information technology specialist, including  
5 the retrieval and copying of all data from the computer or device  
6 and any internal or external peripherals and removal of such  
7 information, equipment or device to conduct a more thorough  
8 inspection;

9 (3) Require the person to submit to the installation on the  
10 person's computer or device with Internet capability, at the person's  
11 expense, one or more hardware or software systems to monitor the  
12 Internet use; **[and]**

13 (4) Require the person to submit to any other appropriate  
14 restrictions concerning the person's use or access of a computer or  
15 any other device with Internet capability**[.]** ; and

16 (5) Require the person to disclose all passwords used by the  
17 person to access any data, information, image, program, signal or  
18 file on the person's computer or any other device with Internet  
19 capability.

20 (cf: P.L.2007, c.219, s.3)

21  
22 3. N.J.S.2C:52-2 is amended to read as follows:

23 2C:52-2. Indictable Offenses.

24 a. In all cases, except as herein provided, wherein a person has  
25 been convicted of a crime under the laws of this State and who has  
26 not been convicted of any prior or subsequent crime, whether within  
27 this State or any other jurisdiction, and has not been adjudged a  
28 disorderly person or petty disorderly person on more than two  
29 occasions may, after the expiration of a period of 10 years from the  
30 date of his conviction, payment of fine, satisfactory completion of  
31 probation or parole, or release from incarceration, whichever is  
32 later, present a duly verified petition as provided in **[section]**  
33 N.J.S.2C:52-7 to the Superior Court in the county in which the  
34 conviction was entered praying that such conviction and all records  
35 and information pertaining thereto be expunged.

36 Notwithstanding the provisions of the preceding paragraph, a  
37 petition may be filed and presented, and the court may grant an  
38 expungement pursuant to this section, although less than 10 years  
39 has expired in accordance with the requirements of the preceding  
40 paragraph where the court finds:

41 (1) less than 10 years has expired from the satisfaction of a fine,  
42 but the 10-year time requirement is otherwise satisfied, and the  
43 court finds that the person substantially complied with any payment  
44 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so  
45 due to compelling circumstances affecting his ability to satisfy the  
46 fine; or

47 (2) at least five years has expired from the date of his  
48 conviction, payment of fine, satisfactory completion of probation or

1 parole, or release from incarceration, whichever is later; the person  
2 has not been convicted of a crime, disorderly persons offense, or  
3 petty disorderly persons offense since the time of the conviction;  
4 and the court finds in its discretion that expungement is in the  
5 public interest, giving due consideration to the nature of the  
6 offense, and the applicant's character and conduct since conviction.

7 In determining whether compelling circumstances exist for the  
8 purposes of paragraph (1) of this subsection, a court may consider  
9 the amount of the fine or fines imposed, the person's age at the time  
10 of the offense, the person's financial condition and other relevant  
11 circumstances regarding the person's ability to pay.

12 Although subsequent convictions for no more than two  
13 disorderly or petty disorderly offenses shall not be an absolute bar  
14 to relief, the nature of those conviction or convictions and the  
15 circumstances surrounding them shall be considered by the court  
16 and may be a basis for denial of relief if they or either of them  
17 constitute a continuation of the type of unlawful activity embodied  
18 in the criminal conviction for which expungement is sought.

19 b. Records of conviction pursuant to statutes repealed by this  
20 Code for the crimes of murder, manslaughter, treason, anarchy,  
21 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,  
22 robbery, embracery, or a conspiracy or any attempt to commit any  
23 of the foregoing, or aiding, assisting or concealing persons accused  
24 of the foregoing crimes, shall not be expunged.

25 Records of conviction for the following crimes specified in the  
26 New Jersey Code of Criminal Justice shall not be subject to  
27 expungement: **【Section】** N.J.S. 2C:11-1 et seq. (Criminal  
28 Homicide), except death by auto as specified in **【section】** N.J.S.  
29 2C:11-5; **【section】** N.J.S. 2C:13-1 (Kidnapping); **【section 2C:13-6】**  
30 section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing);  
31 section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking);  
32 **【section】** N.J.S. 2C:14-2 (Sexual Assault or Aggravated Sexual  
33 Assault); **【section】** N.J.S. 2C:14-3a (Aggravated Criminal Sexual  
34 Contact); if the victim is a minor, **【section】** N.J.S. 2C:14-3b  
35 (Criminal Sexual Contact); if the victim is a minor and the offender  
36 is not the parent of the victim, **【section】** N.J.S. 2C:13-2 (Criminal  
37 Restraint) or **【section】** N.J.S. 2C:13-3 (False Imprisonment);  
38 **【section】** N.J.S. 2C:15-1 (Robbery); **【section】** N.J.S. 2C:17-1  
39 (Arson and Related Offenses); **【section】** N.J.S. 2C:24-4a.  
40 (Endangering the welfare of a child by engaging in sexual conduct  
41 which would impair or debauch the morals of the child); **【section】**  
42 N.J.S. 2C:24-4b(4) (Endangering the welfare of a child); **【section】**  
43 N.J.S. 2C:24-4b. (3) (Causing or permitting a child to engage in a  
44 prohibited sexual act); **【section】** N.J.S. 2C:24-4b.(5)(a) **【(Selling or**  
45 **manufacturing child pornography)】** (Distributing, possessing with  
46 intent to distribute or using a file-sharing program to store items  
47 depicting the sexual exploitation or abuse of a child); N.J.S. 2C:24-

1 4b.(5)(b) (Possessing items depicting the sexual exploitation or  
2 abuse of a child); [section] N.J.S. 2C:28-1 (Perjury); [section]  
3 N.J.S. 2C:28-2 (False Swearing); [section] N.J.S. 2C:34-1b.(4)  
4 (Knowingly promoting the prostitution of the actor's child); section  
5 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of  
6 section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing  
7 Chemical Weapons, Biological Agents or Nuclear or Radiological  
8 Devices); and conspiracies or attempts to commit such crimes.

9 Records of conviction for any crime committed by a person  
10 holding any public office, position or employment, elective or  
11 appointive, under the government of this State or any agency or  
12 political subdivision thereof and any conspiracy or attempt to  
13 commit such a crime shall not be subject to expungement if the  
14 crime involved or touched such office, position or employment.

15 c. In the case of conviction for the sale or distribution of a  
16 controlled dangerous substance or possession thereof with intent to  
17 sell, expungement shall be denied except where the crimes involve:

18 (1) Marijuana, where the total quantity sold, distributed or  
19 possessed with intent to sell was 25 grams or less;

20 (2) Hashish, where the total quantity sold, distributed or  
21 possessed with intent to sell was five grams or less; or

22 (3) Any controlled dangerous substance provided that the  
23 conviction is of the third or fourth degree, where the court finds that  
24 expungement is consistent with the public interest, giving due  
25 consideration to the nature of the offense and the petitioner's  
26 character and conduct since conviction.

27 d. In the case of a State licensed physician or podiatrist  
28 convicted of an offense involving drugs or alcohol or pursuant to  
29 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the  
30 court shall notify the State Board of Medical Examiners upon  
31 receipt of a petition for expungement of the conviction and records  
32 and information pertaining thereto.

33 (cf: PL.2009, c.188, s.1)

34  
35 4. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended as  
36 follows:

37 2. a. A court imposing a sentence of incarceration for a crime  
38 of the first or second degree enumerated in subsection d. of this  
39 section shall fix a minimum term of 85% of the sentence imposed,  
40 during which the defendant shall not be eligible for parole.

41 b. The minimum term required by subsection a. of this section  
42 shall be fixed as a part of every sentence of incarceration imposed  
43 upon every conviction of a crime enumerated in subsection d. of  
44 this section, whether the sentence of incarceration is determined  
45 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any  
46 other provision of law, and shall be calculated based upon the  
47 sentence of incarceration actually imposed. The provisions of  
48 subsection a. of this section shall not be construed or applied to



1 reduce the time that must be served before eligibility for parole by  
2 an inmate sentenced to a mandatory minimum period of  
3 incarceration. Solely for the purpose of calculating the minimum  
4 term of parole ineligibility pursuant to subsection a. of this section,  
5 a sentence of life imprisonment shall be deemed to be 75 years.

6 c. Notwithstanding any other provision of law to the contrary  
7 and in addition to any other sentence imposed, a court imposing a  
8 minimum period of parole ineligibility of 85 percent of the sentence  
9 pursuant to this section shall also impose a five-year term of parole  
10 supervision if the defendant is being sentenced for a crime of the  
11 first degree, or a three-year term of parole supervision if the  
12 defendant is being sentenced for a crime of the second degree. The  
13 term of parole supervision shall commence upon the completion of  
14 the sentence of incarceration imposed by the court pursuant to  
15 subsection a. of this section unless the defendant is serving a  
16 sentence of incarceration for another crime at the time he completes  
17 the sentence of incarceration imposed pursuant to subsection a., in  
18 which case the term of parole supervision shall commence  
19 immediately upon the defendant's release from incarceration.  
20 During the term of parole supervision the defendant shall remain in  
21 release status in the community in the legal custody of the  
22 Commissioner of the Department of Corrections and shall be  
23 supervised by the State Parole Board as if on parole and shall be  
24 subject to the provisions and conditions of section 3 of P.L.1997,  
25 c.117 (C.30:4-123.51b).

26 d. The court shall impose sentence pursuant to subsection a. of  
27 this section upon conviction of the following crimes or an attempt  
28 or conspiracy to commit any of these crimes:

- 29 (1) N.J.S.2C:11-3, murder;
- 30 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 31 (3) N.J.S.2C:11-5, vehicular homicide;
- 32 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 33 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),  
34 disarming a law enforcement officer;
- 35 (6) N.J.S.2C:13-1, kidnapping;
- 36 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 37 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of  
38 subsection c. of N.J.S.2C:14-2, sexual assault;
- 39 (9) N.J.S.2C:15-1, robbery;
- 40 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 41 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated  
42 arson;
- 43 (12) N.J.S.2C:18-2, burglary;
- 44 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 45 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),  
46 booby traps in manufacturing or distribution facilities;
- 47 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 48 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

1 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or  
2 possessing chemical weapons, biological agents or nuclear or  
3 radiological devices; **[or]**

4 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first  
5 degree; or

6 (19) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or  
7 permitting a child to engage in a prohibited sexual act, knowing that  
8 the act may be reproduced or reconstructed in any manner, or be  
9 part of an exhibition or performance.

10 e. (Deleted by amendment, P.L.2001, c.129).

11 (cf: P.L. 2007, c.341, s.6)

12

13 5. This act shall take effect immediately.

14

15

16

17

18 \_\_\_\_\_  
19 Revises statutes and enhances penalties for offenses involving  
20 child pornography; makes crime of causing a child to engage in a  
prohibited sexual act subject to “No Early Release Act.”

# SENATE, No. 2493

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 28, 2013

**Sponsored by:**

**Senator KEVIN J. O'TOOLE**

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

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator DONALD NORCROSS**

**District 5 (Camden and Gloucester)**

**Co-Sponsored by:**

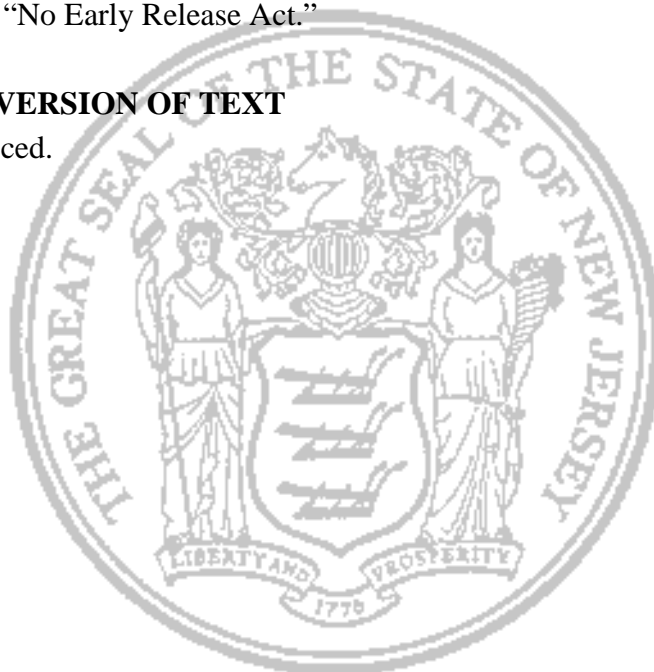
**Senators Bateman, Cardinale, Pou, Scutari, Addiego, Allen, Beach, Beck, A.R.Bucco, Cunningham, Greenstein, Madden, Oroho, Pennacchio, Ruiz, Sarlo, Stack, Turner, Van Drew and Weinberg**

**SYNOPSIS**

Revises statutes and enhances penalties for offenses involving child pornography; makes crime of causing a child to engage in a prohibited sexual act subject to "No Early Release Act."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/19/2013)**

1 AN ACT concerning the sexual exploitation or abuse of a child and  
2 amending various parts of the statutory law.

3

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

6

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

8 2C:24-4. Endangering Welfare of Children.

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

18 (2) Any person having a legal duty for the care of a child or who  
19 has assumed responsibility for the care of a child who causes the  
20 child harm that would make the child an abused or neglected child  
21 as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c.119, s.1 (C.9:6-  
22 8.21) is guilty of a crime of the second degree. Any other person  
23 who engages in conduct or who causes harm as described in this  
24 paragraph to a child is guilty of a crime of the third degree.

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

26 “Child” means any person under **[16] 18** years of age.

27 “Distribute” means to sell, or to manufacture, give, provide,  
28 lend, trade, mail, deliver, publish, circulate, disseminate, present,  
29 exhibit, display, share, advertise, offer, or make available via the  
30 Internet or by any other means, whether for pecuniary gain or not.  
31 The term also includes an agreement or attempt to distribute.

32 “File-sharing program” means a computer program, application,  
33 software or operating system that allows the user of a computer on  
34 which such program, application, software or operating system is  
35 installed to designate files as available for searching by and copying  
36 to one or more other computers, to transmit such designated files  
37 directly to one or more other computers, and to request the  
38 transmission of such designated files directly from one or more  
39 other computers. The term “file-sharing program” includes but is  
40 not limited to a computer program, application or software that  
41 enables a computer user to participate in a peer-to-peer network.

42 “Internet” means the international computer network of both  
43 federal and non-federal interoperable packet switched data  
44 networks.

**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       “Item depicting the sexual exploitation or abuse of a child”  
2 means a photograph, film, video, an electronic, electromagnetic or  
3 digital recording, an image stored or maintained in a computer  
4 program or file or in a portion of a file, or any other reproduction or  
5 reconstruction which depicts a child engaging in a prohibited sexual  
6 act or in the simulation of such an act.

7       “Peer-to-peer network” means a connection of computer systems  
8 through which files are shared directly between the systems on a  
9 network without the need of a central server.

10       “Prohibited sexual act” means

11       (a) Sexual intercourse; or

12       (b) Anal intercourse; or

13       (c) Masturbation; or

14       (d) Bestiality; or

15       (e) Sadism; or

16       (f) Masochism; or

17       (g) Fellatio; or

18       (h) Cunnilingus;

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

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

23       “Reproduction” means, but is not limited to, computer generated  
24 images.

25       (2) (Deleted by amendment, P.L.2001, c.291).

26       (3) A person commits a crime of the **【second】** first degree if he  
27 causes or permits a child to engage in a prohibited sexual act or in  
28 the simulation of such an act if the person knows, has reason to  
29 know or intends that the prohibited act may be photographed,  
30 filmed, reproduced, or reconstructed in any manner, including on  
31 the Internet, or may be part of an exhibition or performance. **【If the**  
32 **person is a parent, guardian or other person legally charged with the**  
33 **care or custody of the child, the person shall be guilty of a crime of**  
34 **the first degree.】**

35       (4) **【Any person who】** A person commits a crime of the second  
36 degree if he photographs or films a child in a prohibited sexual act  
37 or in the simulation of such an act or who uses any device,  
38 including a computer, to reproduce or reconstruct the image of a  
39 child in a prohibited sexual act or in the simulation of such an act  
40 **【is guilty of a crime of the second degree】**.

41       (5) (a) **【Any person who knowingly receives for the purpose of**  
42 **selling or who knowingly sells, procures, manufactures, gives,**  
43 **provides, lends, trades, mails, delivers, transfers, publishes,**  
44 **distributes, circulates, disseminates, presents, exhibits, advertises,**  
45 **offers, or agrees to offer, through any means, including the Internet,**  
46 **any photograph, film, videotape, computer program or file, video**  
47 **game or any other reproduction or reconstruction which depicts a**

1 child engaging in a prohibited sexual act or in the simulation of  
2 such an act is guilty of a crime of the second degree.】 A person  
3 commits a crime of the second degree if, by any means, including  
4 but not limited to the Internet, he:

5 (1) knowingly distributes an item depicting the sexual  
6 exploitation or abuse of a child;

7 (2) knowingly possesses an item depicting the sexual  
8 exploitation or abuse of a child with the intent to distribute that  
9 item; or

10 (3) using a file-sharing program, knowingly stores or maintains  
11 an item depicting the sexual exploitation or abuse of a child which  
12 is designated as available for searching by or copying to one or  
13 more other computers.

14 In a prosecution under subparagraph (a) of paragraph (3) of this  
15 subsection, the State shall not be required to offer proof that an item  
16 depicting the sexual exploitation or abuse of a child had actually  
17 been searched, copied, transmitted or viewed by another user of the  
18 file-sharing program, or by any other person, and it shall be no  
19 defense that the defendant did not intend to distribute the item to  
20 another user of the file-sharing program or to any other person. Nor  
21 shall the State be required to prove that the defendant was aware  
22 that the item depicting the sexual exploitation or abuse of a child  
23 was available for searching or copying to one or more other  
24 computers, and the defendant shall be strictly liable for failing to  
25 designate the item as not available for searching or copying by one  
26 or more other computers.

27 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
28 6, a person whose offense under this subparagraph involved 25 or  
29 more items depicting the sexual exploitation or abuse of a child  
30 shall be sentenced to a mandatory minimum term of imprisonment,  
31 which shall be fixed at, or between, one-third and one-half of the  
32 sentence imposed by the court or five years, whichever is greater,  
33 during which the defendant shall be ineligible for parole.

34 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
35 6, a person convicted of a second or subsequent offense under this  
36 subparagraph shall be sentenced to an extended term of  
37 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
38 subparagraph, an offense is considered a second or subsequent  
39 offense if the actor has at any time been convicted pursuant to  
40 paragraph (3), (4) or (5) of this subsection, or under any similar  
41 statute of the United States, this State or any other state for an  
42 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
43 this subsection.

44 For purposes of this subparagraph, the term “possess” includes  
45 receiving, viewing, or having under one’s control, through any  
46 means, including the Internet.

47 (b) **【Any person who】** A person commits a crime of the third  
48 degree if he knowingly possesses, receives, views or 【knowingly

1 views any photograph, film, videotape, computer program or file,  
2 video game or any other reproduction or reconstruction which  
3 depicts a child engaging in a prohibited sexual act or in the  
4 simulation of such an act, including on the Internet, is guilty of a  
5 crime of the fourth degree] has under his control, through any  
6 means, including the Internet, an item depicting the sexual  
7 exploitation or abuse of a child.

8 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-  
9 1, in any instance where a person was convicted of an offense under  
10 this subparagraph that involved 100 or more items depicting the  
11 sexual exploitation or abuse of a child, the court shall impose a  
12 sentence of imprisonment unless, having regard to the character and  
13 condition of the defendant, it is of the opinion that imprisonment  
14 would be a serious injustice which overrides the need to deter such  
15 conduct by others.

16 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
17 6, a person convicted of a second or subsequent offense under this  
18 subparagraph shall be sentenced to an extended term of  
19 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
20 subparagraph, an offense is considered a second or subsequent  
21 offense if the actor has at any time been convicted pursuant to  
22 paragraph (3), (4) or (5) of this subsection, or under any similar  
23 statute of the United States, this State or any other state for an  
24 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
25 this subsection.

26 Nothing in this subparagraph shall be construed to preclude or  
27 limit any prosecution or conviction for the offense set forth in  
28 subparagraph (a) of this paragraph.

29 (6) For purposes of this subsection, a person who is depicted as  
30 or presents the appearance of being under the age of **[16] 18** in any  
31 photograph, film, videotape, computer program or file, video game  
32 or any other reproduction or reconstruction shall be rebuttably  
33 presumed to be under the age of **[16] 18**.

34 If the child who is depicted as engaging in, or who is caused to  
35 engage in, a prohibited sexual act or simulation of a prohibited  
36 sexual act is under the age of **[16] 18**, the actor shall be strictly  
37 liable and it shall not be a defense that the actor did not know that  
38 the child was under the age of **[16] 18**, nor shall it be a defense that  
39 the actor believed that the child was **[16] 18** years of age or older,  
40 even if such a mistaken belief was reasonable.

41 (7) For aggregation purposes, each depiction of the sexual  
42 exploitation or abuse of a child shall be considered a separate item,  
43 and each individual act of distribution of an item depicting the  
44 sexual exploitation or abuse of a child shall be considered a  
45 separate item. For purposes of determining the number of items  
46 depicting the sexual exploitation or abuse of a child for purposes of  
47 sentencing pursuant to subparagraph (a) of paragraph (5) of this

1 subsection, the court shall aggregate all items involved, whether the  
2 act or acts constituting the violation occurred at the same time or at  
3 different times and, with respect to distribution, whether the act or  
4 acts of distribution were to the same person or several persons or  
5 occurred at different times, provided that each individual act was  
6 committed within the applicable statute of limitations. For purposes  
7 of determining the number of items depicting the sexual  
8 exploitation or abuse of a child for purposes of sentencing pursuant  
9 to subparagraph (b) of paragraph (5) of this subsection, the court  
10 shall aggregate all items involved, whether the possession of such  
11 items occurred at the same time or at different times, provided that  
12 each individual act was committed within the applicable statute of  
13 limitations.

14 (cf: P.L.2001, c.291, s.1)

15

16 2. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to  
17 read as follows:

18 2. a. Notwithstanding any provision of law to the contrary, a  
19 judge imposing sentence on a person who has been convicted of  
20 aggravated sexual assault, sexual assault, aggravated criminal  
21 sexual contact, kidnapping pursuant to paragraph (2) of subsection  
22 c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging  
23 in sexual conduct which would impair or debauch the morals of the  
24 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the  
25 welfare of a child pursuant to paragraph (3) of subsection b. of  
26 N.J.S.2C:24-4, luring or an attempt to commit any of these offenses  
27 shall include, in addition to any sentence authorized by this Code, a  
28 special sentence of parole supervision for life. Notwithstanding any  
29 provision of law to the contrary, a court imposing sentence on a  
30 person who has been convicted of endangering the welfare of a  
31 child pursuant to paragraph (4) or (5) of subsection b. of  
32 N.J.S.2C:24-4, or an attempt to commit either of these offenses  
33 shall include, upon motion of the prosecutor, a special sentence of  
34 parole supervision for life in addition to any sentence authorized by  
35 Title 2C of the New Jersey Statutes, unless the court finds on the  
36 record that the special sentence is not needed to protect the  
37 community or deter the defendant from future criminal activity.

38 b. The special sentence of parole supervision for life required  
39 by this section shall commence immediately upon the defendant's  
40 release from incarceration. If the defendant is serving a sentence of  
41 incarceration for another offense at the time he completes the  
42 custodial portion of the sentence imposed on the present offense,  
43 the special sentence of parole supervision for life shall not  
44 commence until the defendant is actually released from  
45 incarceration for the other offense. Persons serving a special  
46 sentence of parole supervision for life shall remain in the legal  
47 custody of the Commissioner of Corrections, shall be supervised by  
48 the Division of Parole of the State Parole Board, shall be subject to



1 the provisions and conditions set forth in subsection c. of section 3  
2 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and  
3 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and  
4 30:4-123.65), and shall be subject to conditions appropriate to  
5 protect the public and foster rehabilitation. Such conditions may  
6 include the requirement that the person comply with the conditions  
7 set forth in subsection f. of this section concerning use of a  
8 computer or other device with access to the Internet. If the  
9 defendant violates a condition of a special sentence of parole  
10 supervision for life, the defendant shall be subject to the provisions  
11 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60  
12 through 30:4-123.63 and 30:4-123.65), and for the purpose of  
13 calculating the limitation on time served pursuant to section 21 of  
14 P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon  
15 the defendant related to the special sentence of parole supervision  
16 for life shall be deemed to be a term of life imprisonment. When the  
17 court suspends the imposition of sentence on a defendant who has  
18 been convicted of any offense enumerated in subsection a. of this  
19 section, the court may not suspend imposition of the special  
20 sentence of parole supervision for life, which shall commence  
21 immediately, with the Division of Parole of the State Parole Board  
22 maintaining supervision over that defendant, including the  
23 defendant's compliance with any conditions imposed by the court  
24 pursuant to N.J.S.2C:45-1, in accordance with the provisions of this  
25 subsection. Nothing contained in this subsection shall prevent the  
26 court from at any time proceeding under the provisions of  
27 N.J.S.2C:45-1 through 2C:45-4 against any such defendant for a  
28 violation of any conditions imposed by the court when it suspended  
29 imposition of sentence, or prevent the Division of Parole from  
30 proceeding under the provisions of sections 16 through 19 and 21 of  
31 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-  
32 123.65) against any such defendant for a violation of any conditions  
33 of the special sentence of parole supervision for life, including the  
34 conditions imposed by the court pursuant to N.J.S.2C:45-1. In any  
35 such proceeding by the Division of Parole, the provisions of  
36 subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b)  
37 authorizing revocation and return to prison shall be applicable to  
38 such a defendant, notwithstanding that the defendant may not have  
39 been sentenced to or served any portion of a custodial term for  
40 conviction of an offense enumerated in subsection a. of this section.

41 c. A person sentenced to a term of parole supervision for life  
42 may petition the Superior Court for release from that parole  
43 supervision. The judge may grant a petition for release from a  
44 special sentence of parole supervision for life only upon proof by  
45 clear and convincing evidence that the person has not committed a  
46 crime for 15 years since the last conviction or release from  
47 incarceration, whichever is later, and that the person is not likely to  
48 pose a threat to the safety of others if released from parole

1 supervision. Notwithstanding the provisions of section 22 of  
2 P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of  
3 parole supervision for life may be released from that parole  
4 supervision term only by court order as provided in this subsection.

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

19 e. A person who, while serving a special sentence of parole  
20 supervision for life imposed pursuant to this section, commits a  
21 violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5,  
22 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, section 1 of  
23 P.L.1993, c.291 (C.2C:13-6), N.J.S.2C:14-2, N.J.S.2C:14-3,  
24 N.J.S.2C:24-4, N.J.S.2C:18-2 when the offense is a crime of the  
25 second degree, or subsection a. of N.J.S.2C:39-4 shall be sentenced  
26 to an extended term of imprisonment as set forth in N.J.S.2C:43-7,  
27 which term shall, notwithstanding the provisions of N.J.S.2C:43-7  
28 or any other law, be served in its entirety prior to the person's  
29 resumption of the term of parole supervision for life.

30 f. The special sentence of parole supervision for life required  
31 by this section may include any of the following Internet access  
32 conditions:

33 (1) Prohibit the person from accessing or using a computer or  
34 any other device with Internet capability without the prior written  
35 approval of the court except the person may use a computer or any  
36 other device with Internet capability in connection with that  
37 person's employment or search for employment with the prior  
38 approval of the person's parole officer;

39 (2) Require the person to submit to periodic unannounced  
40 examinations of the person's computer or any other device with  
41 Internet capability by a parole officer, law enforcement officer or  
42 assigned computer or information technology specialist, including  
43 the retrieval and copying of all data from the computer or device  
44 and any internal or external peripherals and removal of such  
45 information, equipment or device to conduct a more thorough  
46 inspection;

47 (3) Require the person to submit to the installation on the  
48 person's computer or device with Internet capability, at the person's

1 expense, one or more hardware or software systems to monitor the  
2 Internet use; **[and]**

3 (4) Require the person to submit to any other appropriate  
4 restrictions concerning the person's use or access of a computer or  
5 any other device with Internet capability**[.] ; and**

6 (5) Require the person to disclose all passwords used by the  
7 person to access any data, information, image, program, signal or  
8 file on the person's computer or any other device with Internet  
9 capability.

10 (cf: P.L.2007, c.219, s.3)

11

12 3. N.J.S.2C:52-2 is amended to read as follows:

13 2C:52-2. Indictable Offenses.

14 a. In all cases, except as herein provided, wherein a person has  
15 been convicted of a crime under the laws of this State and who has  
16 not been convicted of any prior or subsequent crime, whether within  
17 this State or any other jurisdiction, and has not been adjudged a  
18 disorderly person or petty disorderly person on more than two  
19 occasions may, after the expiration of a period of 10 years from the  
20 date of his conviction, payment of fine, satisfactory completion of  
21 probation or parole, or release from incarceration, whichever is  
22 later, present a duly verified petition as provided in **[section]**  
23 N.J.S.2C:52-7 to the Superior Court in the county in which the  
24 conviction was entered praying that such conviction and all records  
25 and information pertaining thereto be expunged.

26 Notwithstanding the provisions of the preceding paragraph, a  
27 petition may be filed and presented, and the court may grant an  
28 expungement pursuant to this section, although less than 10 years  
29 has expired in accordance with the requirements of the preceding  
30 paragraph where the court finds:

31 (1) less than 10 years has expired from the satisfaction of a fine,  
32 but the 10-year time requirement is otherwise satisfied, and the  
33 court finds that the person substantially complied with any payment  
34 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so  
35 due to compelling circumstances affecting his ability to satisfy the  
36 fine; or

37 (2) at least five years has expired from the date of his  
38 conviction, payment of fine, satisfactory completion of probation or  
39 parole, or release from incarceration, whichever is later; the person  
40 has not been convicted of a crime, disorderly persons offense, or  
41 petty disorderly persons offense since the time of the conviction;  
42 and the court finds in its discretion that expungement is in the  
43 public interest, giving due consideration to the nature of the  
44 offense, and the applicant's character and conduct since conviction.

45 In determining whether compelling circumstances exist for the  
46 purposes of paragraph (1) of this subsection, a court may consider  
47 the amount of the fine or fines imposed, the person's age at the time

1 of the offense, the person's financial condition and other relevant  
2 circumstances regarding the person's ability to pay.

3 Although subsequent convictions for no more than two  
4 disorderly or petty disorderly offenses shall not be an absolute bar  
5 to relief, the nature of those conviction or convictions and the  
6 circumstances surrounding them shall be considered by the court  
7 and may be a basis for denial of relief if they or either of them  
8 constitute a continuation of the type of unlawful activity embodied  
9 in the criminal conviction for which expungement is sought.

10 b. Records of conviction pursuant to statutes repealed by this  
11 Code for the crimes of murder, manslaughter, treason, anarchy,  
12 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,  
13 robbery, embracery, or a conspiracy or any attempt to commit any  
14 of the foregoing, or aiding, assisting or concealing persons accused  
15 of the foregoing crimes, shall not be expunged.

16 Records of conviction for the following crimes specified in the  
17 New Jersey Code of Criminal Justice shall not be subject to  
18 expungement: **【Section】** N.J.S. 2C:11-1 et seq. (Criminal  
19 Homicide), except death by auto as specified in **【section】** N.J.S.  
20 2C:11-5; **【section】** N.J.S. 2C:13-1 (Kidnapping); **【section 2C:13-6】**  
21 section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing);  
22 section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking);  
23 **【section】** N.J.S. 2C:14-2 (Sexual Assault or Aggravated Sexual  
24 Assault); **【section】** N.J.S. 2C:14-3a (Aggravated Criminal Sexual  
25 Contact); if the victim is a minor, **【section】** N.J.S. 2C:14-3b  
26 (Criminal Sexual Contact); if the victim is a minor and the offender  
27 is not the parent of the victim, **【section】** N.J.S. 2C:13-2 (Criminal  
28 Restraint) or **【section】** N.J.S. 2C:13-3 (False Imprisonment);  
29 **【section】** N.J.S. 2C:15-1 (Robbery); **【section】** N.J.S. 2C:17-1  
30 (Arson and Related Offenses); **【section】** N.J.S. 2C:24-4a.  
31 (Endangering the welfare of a child by engaging in sexual conduct  
32 which would impair or debauch the morals of the child); **【section】**  
33 N.J.S. 2C:24-4b(4) (Endangering the welfare of a child); **【section】**  
34 N.J.S. 2C:24-4b. (3) (Causing or permitting a child to engage in a  
35 prohibited sexual act); **【section】** N.J.S. 2C:24-4b.(5)(a) **【(Selling or**  
36 **manufacturing child pornography)】** (Distributing, possessing with  
37 intent to distribute or using a file-sharing program to store items  
38 depicting the sexual exploitation or abuse of a child); N.J.S. 2C:24-  
39 4b.(5)(b) (Possessing items depicting the sexual exploitation or  
40 abuse of a child); **【section】** N.J.S. 2C:28-1 (Perjury); **【section】**  
41 N.J.S. 2C:28-2 (False Swearing); **【section】** N.J.S. 2C:34-1b.(4)  
42 (Knowingly promoting the prostitution of the actor's child); section  
43 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of  
44 section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing  
45 Chemical Weapons, Biological Agents or Nuclear or Radiological  
46 Devices); and conspiracies or attempts to commit such crimes.

1 Records of conviction for any crime committed by a person  
2 holding any public office, position or employment, elective or  
3 appointive, under the government of this State or any agency or  
4 political subdivision thereof and any conspiracy or attempt to  
5 commit such a crime shall not be subject to expungement if the  
6 crime involved or touched such office, position or employment.

7 c. In the case of conviction for the sale or distribution of a  
8 controlled dangerous substance or possession thereof with intent to  
9 sell, expungement shall be denied except where the crimes involve:

10 (1) Marijuana, where the total quantity sold, distributed or  
11 possessed with intent to sell was 25 grams or less;

12 (2) Hashish, where the total quantity sold, distributed or  
13 possessed with intent to sell was five grams or less; or

14 (3) Any controlled dangerous substance provided that the  
15 conviction is of the third or fourth degree, where the court finds that  
16 expungement is consistent with the public interest, giving due  
17 consideration to the nature of the offense and the petitioner's  
18 character and conduct since conviction.

19 d. In the case of a State licensed physician or podiatrist  
20 convicted of an offense involving drugs or alcohol or pursuant to  
21 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the  
22 court shall notify the State Board of Medical Examiners upon  
23 receipt of a petition for expungement of the conviction and records  
24 and information pertaining thereto.

25 (cf: PL.2009, c.188, s.1)

26

27 4. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended as  
28 follows:

29 2. a. A court imposing a sentence of incarceration for a crime  
30 of the first or second degree enumerated in subsection d. of this  
31 section shall fix a minimum term of 85% of the sentence imposed,  
32 during which the defendant shall not be eligible for parole.

33 b. The minimum term required by subsection a. of this section  
34 shall be fixed as a part of every sentence of incarceration imposed  
35 upon every conviction of a crime enumerated in subsection d. of  
36 this section, whether the sentence of incarceration is determined  
37 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any  
38 other provision of law, and shall be calculated based upon the  
39 sentence of incarceration actually imposed. The provisions of  
40 subsection a. of this section shall not be construed or applied to  
41 reduce the time that must be served before eligibility for parole by  
42 an inmate sentenced to a mandatory minimum period of  
43 incarceration. Solely for the purpose of calculating the minimum  
44 term of parole ineligibility pursuant to subsection a. of this section,  
45 a sentence of life imprisonment shall be deemed to be 75 years.

46 c. Notwithstanding any other provision of law to the contrary  
47 and in addition to any other sentence imposed, a court imposing a  
48 minimum period of parole ineligibility of 85 percent of the sentence

1 pursuant to this section shall also impose a five-year term of parole  
2 supervision if the defendant is being sentenced for a crime of the  
3 first degree, or a three-year term of parole supervision if the  
4 defendant is being sentenced for a crime of the second degree. The  
5 term of parole supervision shall commence upon the completion of  
6 the sentence of incarceration imposed by the court pursuant to  
7 subsection a. of this section unless the defendant is serving a  
8 sentence of incarceration for another crime at the time he completes  
9 the sentence of incarceration imposed pursuant to subsection a., in  
10 which case the term of parole supervision shall commence  
11 immediately upon the defendant's release from incarceration.  
12 During the term of parole supervision the defendant shall remain in  
13 release status in the community in the legal custody of the  
14 Commissioner of the Department of Corrections and shall be  
15 supervised by the State Parole Board as if on parole and shall be  
16 subject to the provisions and conditions of section 3 of P.L.1997,  
17 c.117 (C.30:4-123.51b).

18 d. The court shall impose sentence pursuant to subsection a. of  
19 this section upon conviction of the following crimes or an attempt  
20 or conspiracy to commit any of these crimes:

- 21 (1) N.J.S.2C:11-3, murder;
- 22 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 23 (3) N.J.S.2C:11-5, vehicular homicide;
- 24 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 25 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),  
26 disarming a law enforcement officer;
- 27 (6) N.J.S.2C:13-1, kidnapping;
- 28 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 29 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of  
30 subsection c. of N.J.S.2C:14-2, sexual assault;
- 31 (9) N.J.S.2C:15-1, robbery;
- 32 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 33 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated  
34 arson;
- 35 (12) N.J.S.2C:18-2, burglary;
- 36 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 37 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),  
38 booby traps in manufacturing or distribution facilities;
- 39 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 40 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
- 41 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or  
42 possessing chemical weapons, biological agents or nuclear or  
43 radiological devices; **[or]**
- 44 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first  
45 degree; or
- 46 (19) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or  
47 permitting a child to engage in a prohibited sexual act, knowing that

1 the act may be reproduced or reconstructed in any manner, or be  
2 part of an exhibition or performance.

3 e. (Deleted by amendment, P.L.2001, c.129).  
4 (cf: P.L. 2007, c.341, s.6)

5

6 5. This act shall take effect immediately.

7

8

9

STATEMENT

10

11 This bill revises the statutes concerning child pornography, to  
12 update and more closely harmonize State law with federal law  
13 governing these offenses.

14 This bill incorporates new terminology for child pornography;  
15 establishes new gradations and enhanced penalties applicable to  
16 child pornography possession, manufacturing and distribution  
17 offenses; and bases sentencing provisions on the number of items of  
18 child pornography involved, similar to federal law.

19 Unlike federal law, current State law makes no distinction  
20 between the collector of child pornography who possesses and  
21 views thousands of computer files or items and the individual who  
22 may possess or view only a handful of such files or items. The  
23 federal law grades child pornography possession based upon the  
24 number of files possessed, imposing more severe punishment on  
25 those who possess more files. Those who collect such items in  
26 large quantities bear a greater share of the responsibility for making  
27 the market more profitable and creating a demand that further  
28 encourages the creation of new child pornography, subjecting even  
29 more children to exploitation. Current State law also makes no  
30 specific provision for repeat child pornography offenders.  
31 Moreover, current State law does not adequately address situations  
32 enabled by evolving computer technology, such as file-sharing  
33 programs and peer-to-peer networks that permit remote sharing of  
34 child pornography images among collectors.

35 This bill revises current law as follows:

36 • Divides the child endangerment offense in N.J.S.2C:24-4 into  
37 two separate components. This revision will establish separate  
38 provisions for the offense of engaging in sexual conduct which  
39 would impair or debauch the morals of the child and for the offense  
40 of causing the child such harm that would make him or her an  
41 abused or neglected child. This provision also will simplify  
42 classification of the offender under Megan's Law.

43 • Upgrades from a crime of the second degree to a crime of the  
44 first degree crime the crime of causing or permitting a child to  
45 engage in a prohibited sex act or simulation for child pornography  
46 purposes, regardless of the offender's relationship to the child.  
47 Under current law, it is a first degree crime only if the offender is a  
48 parent, guardian and person with care or custody of the child.

- 1       • Increases the age benchmark of “child” from 16 to 18, to  
2 conform New Jersey to the federal standard and the majority of  
3 other states.
- 4       • Replaces current terminology used to describe child  
5 pornography items with the more visceral phrase “item depicting  
6 the sexual exploitation or abuse of a child,” which is defined as a  
7 photograph, film, video, an electronic, electromagnetic or digital  
8 recording, an image stored or maintained in a computer program or  
9 file or in a portion of a file, or any other reproduction or  
10 reconstruction which depicts a child engaging in a prohibited sexual  
11 act or in the simulation of such an act. This is a technical and  
12 clarifying revision to the statute.
- 13       • Reformulates the provisions governing the sale of child  
14 pornography to more closely parallel the penalty structure for  
15 distribution of drugs under chapter 35 of Title 2C of the New Jersey  
16 Statutes, creating a provision penalizing distribution and another  
17 provision penalizing possession with intent to distribute.
- 18       • Defines the term “distribute” as to sell, or to manufacture, give,  
19 provide, lend, trade, mail, deliver, publish, circulate, disseminate,  
20 present, exhibit, display, share, advertise, offer, or make available  
21 via the Internet or by any other means, whether or not for pecuniary  
22 gain. This also is a technical and clarifying revision to the statute.  
23 In addition, the definition specifies that it includes an agreement or  
24 attempt to distribute.
- 25       • Incorporates a provision to specifically address making child  
26 pornography items available through the use of a file-sharing  
27 program, which may be a computer program, application or  
28 software that enables the user to participate in a peer to-peer  
29 network. Under the bill’s provisions, it would be a crime of the  
30 second degree for a person, using a file-sharing program, to  
31 knowingly store or maintain an item depicting the sexual  
32 exploitation or abuse of a child which is designated as available for  
33 searching by or copying to one or more other computers. These  
34 file-sharing programs allow the user of a computer on which they  
35 are installed to designate files as available for searching by and  
36 copying to one or more other computers, to transmit those files  
37 directly to one or more other computers, and to request the  
38 transmission of such designated files directly from one or more  
39 other computers.
- 40       • Makes a defendant strictly liable for failing to designate an item  
41 of child pornography as not available on the file-sharing program;  
42 no proof would be required to show actual sharing or intent to  
43 distribute.
- 44       • Enhances penalties for distribution offenses. For offenses  
45 involving 25 or more items, the offender would be sentenced to a  
46 mandatory minimum term of imprisonment with a period of parole  
47 ineligibility. Repeat offenders who had been convicted of any New



1 Jersey, federal, or other jurisdiction's child pornography  
2 distribution or possession offense would receive an extended term.

3 • Enhances criminal penalties for possession offenses. These  
4 offenses would be upgraded from a crime of the fourth degree to a  
5 crime of the third degree. For possession offenses involving 100 or  
6 more items, the offender would face a mandatory term of  
7 imprisonment, unless the court finds imprisonment would be a  
8 serious injustice which overrides the need to deter such conduct by  
9 others. Repeat offenders who had been convicted of any New  
10 Jersey, federal, or other jurisdiction's child pornography  
11 distribution or possession offense would receive an extended term.

12 • Subjects persons convicted of child pornography distribution  
13 and possession offenses to a special sentence of parole supervision  
14 for life pursuant to N.J.S.2C:43-6.4. The court, upon motion of the  
15 prosecutor, would impose the special sentence unless the court finds  
16 that such a sentence is not needed to protect the community or deter  
17 the defendant from future criminal activity.

18 • Adds child pornography possession to the crimes that cannot be  
19 expunged under N.J.S. 2C:52-2.

20 Finally, the bill adds the crime of causing or permitting a child to  
21 engage in a prohibited sexual act, knowing or intending that the  
22 prohibited act be reproduced or reconstructed in some manner or be  
23 part of an exhibition or performance, to the list of crimes subject to  
24 the provisions of the No Early Release Act (section 2 of P.L.1997,  
25 c.117 (C.2C:43-7.2)). Persons convicted of a crime under the No  
26 Early Release Act must serve 85% of their court imposed sentence  
27 before becoming eligible for parole consideration.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE, No. 2493

# STATE OF NEW JERSEY

DATED: MARCH 11, 2013

The Senate Judiciary Committee reports favorably Senate Bill No. 2493.

This bill revises statutes concerning child sexual abuse and child pornography by: reorganizing certain child endangerment offenses (in subsection a. of N.J.S.2C:24-4) to separate harmful acts making a child “abused” or “neglected” from those sexual acts which impair or debauch a child’s morals; increasing the age benchmark, from 16 to 18 years of age, of a child for which the child endangerment offenses focused on sexual exploitation or abuse may be applied against an offender; incorporating new terminology for child pornography, referring to such as “item[s] depicting the sexual exploitation or abuse of a child”; expanding the scope of criminal possession or viewing of such items; expanding the scope of criminal distribution of such items, particularly with respect to computer file-sharing programs and peer-to-peer networks; upgrading offenses and respective penalties associated with child endangerment focused on sexual exploitation or abuse; and, adding under “Megan’s Law,” in section 2 of P.L.1994, c.130 (C.2C:43-6.4), the availability of parole supervision for life for a person convicted of possessing, reproducing, or distributing an item depicting sexual exploitation or abuse.

Regarding the expanded scope of criminal possessing or viewing, the bill provides that a person commits a crime if that person knowingly possesses, receives, views or has under the person’s control, “through any means, including the Internet,” an item depicting the sexual exploitation or abuse of a child. This expansion, to reference possession of such items “through any means, including the Internet,” is also applied to the newly expanded scope of criminal distribution in the context of possessing with the intent to distribute.

Further regarding criminal distribution, the bill adds the “display” of an item of sexual exploitation or abuse as falling under the definition of distribution, and further indicates that any statutorily described form of distribution, e.g., “give,” “publish,” or “offer,” may establish criminal liability “whether [done] for pecuniary gain or not.” The bill also addresses newer means of distributing by using computer file-sharing programs, which allow a person using a computer on which such a program is installed to designate files as available for searching by, and copying to, one or more other computers, to transmit

designated files directly to one or more other computers, and to request transmission of designated files directly from one or more other computers. Such programs may be utilized to share and distribute files by various means, including over the Internet or directly between computer systems on a network without the need of a central server, referred to in the bill as a “peer-to-peer network.”

As to distribution using a file-sharing program, the bill additionally provides that in a prosecution: (1) the State would not be required to offer proof that an item of sexual exploitation or abuse had actually been searched, copied, transmitted, or viewed by another user of the file-sharing program; (2) it would be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or any other person; and (3) the State would not be required to prove that the defendant was aware that the item was available for searching and copying, and the defendant would be strictly liable regarding the criminal distribution for failing to designate the item as not available for sharing. These provisions may address scenarios in which a person has installed a file-sharing program on a computer, which typically defaults to permit the sharing of files, and never changes the program setting; this subsequently allows any items of sexual exploitation or abuse contained in designated share files on that computer to be accessed, copied, and transmitted to one or more other computers without any other overt act on the part of the person, since the person never took action to modify the file-sharing program’s default settings to block such sharing.

Concerning the upgrading of offenses and respective penalties, as well as the availability of parole supervision for life under “Megan’s Law”:

- *N.J.S.2C:24-4, subsection b.(3)*: The crime of causing or permitting a child to engage in a prohibited sexual act, knowing or intending that the sexual act be reproduced or part of an exhibition or performance, is upgraded to be a crime of the first degree, regardless of the relationship between the offender and the child. Under current law, this crime is generally a crime of the second degree, except in cases in which the offender is a parent, guardian, or other person legally charged with a child’s care or custody, in which case it is considered a crime of the first degree. A crime of the first degree is ordinarily punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both. The court imposing the term of imprisonment would, pursuant to the provisions of the “No Early Release Act,” in section 2 of P.L.1997, c.117 (C.2C:43-7.2), fix a minimum term of 85% of the sentence imposed, during which the offender would be ineligible for parole.

Also, an offender who commits or attempted to commit this crime is subject under current law to a special sentence of parole supervision for life under “Megan’s Law,” in section 2 of P.L.1994, c.130 (C.2C:43-6.4), and this is unchanged by the bill.

- *N.J.S.2C:24-4, subsection b.(4)*: The crime of reproducing, by photographs or other means, or reproducing using any device (including a computer), a child engaging in a prohibited sexual act would remain a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

The bill would, however, establish that an offender who commits or attempted to commit this crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(a)*: The crime of distribution, possessing with the intent to distribute, or distribution using a file-sharing program (described above) of any items of sexual exploitation or abuse would be graded a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; under the bill, if this offense involved 25 or more items depicting sexual exploitation or abuse, then the offender would be sentenced to a mandatory minimum term of imprisonment fixed at, or between, one-third to one-half of the sentence imposed or five years, whichever is greater, during which the offender would be ineligible for parole. For aggregation purposes, each depiction of the sexual exploitation or abuse would be considered a separate item, and the court would be required to aggregate all items involved, whether the act or acts constituting the offense occurred at the same time or at different times, and with respect to distribution, whether such act or acts of distribution were to the same person or several persons, or occurred at different times. Further, as added by the bill, a record of conviction for a distribution offense would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count towards establishing (see *N.J.S.2C:24-4, subsection b.(3) and (4)* above), the person would be sentenced to an extended term of imprisonment of between 10 and 20 years pursuant to the provisions of *N.J.S.2C:43-7*.

Also, the bill would establish that an offender who commits or attempted to commit a distribution crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or to deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(b)*: The crime of possession of any items of sexual exploitation or abuse would be upgraded from a crime of the fourth degree to a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of

three to five years, a fine of up to \$15,000, or both; under the bill, if this offense involved 100 or more items depicting sexual exploitation or abuse, then any generally applicable presumption against imprisonment (see N.J.S.2C:44-1, subsection e.) would not apply and the offender would be required to serve a sentence of imprisonment, unless the court was of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. For aggregation purposes, each depiction of the sexual exploitation or abuse would be considered a separate item, and the court would be required to aggregate all items involved, whether the possession occurred at the same time or at different times. Further, as added by the bill, a record of conviction for possession would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count towards establishing (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between five and 10 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill would establish that an offender who commits or attempted to commit the crime of possession would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

Finally, for all of the above described offenses, the bill increases the age benchmark, from 16 to 18 years of age, of a child for which prosecution under these various child endangerment offenses may be brought against an offender.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 2493

# STATE OF NEW JERSEY

DATED: MARCH 18, 2013

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2493.

The bill revises statutes concerning child sexual abuse and child pornography. Specifically, the bill:

(1) reorganizes the statute concerning certain child endangerment offenses (in subsection a. of N.J.S.2C:24-4) to distinguish the acts causing harm to a child that is “abuse” or “neglect,” from those sexual acts which impair or debauch a child’s morals;

(2) increases the age that applies for child victims, from 16 to 18 years of age, for which the child endangerment offenses focused on sexual exploitation or abuse apply against an offender;

(3) incorporates new terminology for child pornography, referring to “item[s] depicting the sexual exploitation or abuse of a child”;

(4) expands the scope of criminal possession or viewing of such items;

(5) expands the scope of criminal distribution of such items, particularly with respect to computer file-sharing programs and peer-to-peer networks;

(6) upgrades offenses and respective penalties associated with child endangerment focused on sexual exploitation or abuse; and

(7) adds under “Megan’s Law,” in section 2 of P.L.1994, c.130 (C.2C:43-6.4), the availability of parole supervision for life for a person convicted of possessing, reproducing, or distributing an item depicting sexual exploitation or abuse.

Regarding the expanded scope of criminal possessing or viewing, the bill provides that a person commits a crime if that person knowingly possesses, receives, views or has under the person’s control, “through any means, including the Internet,” an item depicting the sexual exploitation or abuse of a child. This expansion, to reference possession of such items “through any means, including the Internet,” is also applied to the newly expanded scope of criminal distribution in the context of possessing with the intent to distribute.

Further regarding criminal distribution, the bill adds the “display” of an item of sexual exploitation or abuse as falling under the definition of distribution, and further indicates that any statutorily described form of distribution, e.g., “give,” “publish,” or “offer,” may establish criminal liability “whether [done] for pecuniary gain or not.”

The bill also addresses newer means of distributing by using computer file-sharing programs, which allow a person using a computer on which such a program is installed to designate files as available for searching by, and copying to, one or more other computers, to transmit designated files directly to one or more other computers, and to request transmission of designated files directly from one or more other computers. Such programs may be utilized to share and distribute files by various means, including over the Internet or directly between computer systems on a network without the need of a central server, referred to in the bill as a “peer-to-peer network.”

As to distribution using a file-sharing program, the bill additionally provides that in a prosecution: (1) the State would *not* be required to offer proof that an item of sexual exploitation or abuse had actually been searched, copied, transmitted, or viewed by another user of the file-sharing program; (2) it would be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or any other person; and (3) the State would not be required to prove that the defendant was aware that the item was available for searching and copying, and the defendant would be strictly liable regarding the criminal distribution for failing to designate the item as not available for sharing. These provisions may address scenarios in which a person has installed a file-sharing program on a computer, which typically defaults to permit the sharing of files, and never changes the program setting; this subsequently allows any items of sexual exploitation or abuse contained in designated share files on that computer to be accessed, copied, and transmitted to one or more other computers without any other overt act on the part of the person, since the person never took action to modify the file-sharing program’s default settings to block such sharing.

Concerning the upgrading of offenses and respective penalties, as well as the availability of parole supervision for life under “Megan’s Law”:

- *N.J.S.2C:24-4, subsection b.(3)*: The crime of causing or permitting a child to engage in a prohibited sexual act, knowing or intending that the sexual act be reproduced or part of an exhibition or performance, is upgraded to be a crime of the first degree, regardless of the relationship between the offender and the child. Under current law, this crime is generally a crime of the second degree, except in cases in which the offender is a parent, guardian, or other person legally charged with a child’s care or custody, in which case it is considered a crime of the first degree. A crime of the first degree is ordinarily punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both. The court imposing the term of imprisonment would, pursuant to the provisions of the “No Early Release Act,” in section 2 of P.L.1997, c.117 (C.2C:43-7.2), fix a minimum term of 85% of the sentence imposed, during which the offender would be ineligible for parole.

Also, an offender who commits or attempted to commit this crime is subject under current law to a special sentence of parole supervision for life under “Megan’s Law,” in section 2 of P.L.1994, c.130 (C.2C:43-6.4), and this is unchanged by the bill.

- *N.J.S.2C:24-4, subsection b.(4)*: The crime of reproducing, by photographs or other means, or reproducing using any device (including a computer), a child engaging in a prohibited sexual act would remain a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

The bill would, however, establish that an offender who commits or attempted to commit this crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(a)*: The crime of distribution, possessing with the intent to distribute, or distribution using a file-sharing program (described above) of any items of sexual exploitation or abuse would be graded a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; under the bill, if this offense involved 25 or more items depicting sexual exploitation or abuse, then the offender would be sentenced to a mandatory minimum term of imprisonment fixed at, or between, one-third to one-half of the sentence imposed or five years, whichever is greater, during which the offender would be ineligible for parole. For aggregation purposes, each depiction of the sexual exploitation or abuse would be considered a separate item, and the court would be required to aggregate all items involved, whether the act or acts constituting the offense occurred at the same time or at different times, and with respect to distribution, whether such act or acts of distribution were to the same person or several persons, or occurred at different times. Further, as added by the bill, a record of conviction for a distribution offense would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between 10 and 20 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill would establish that an offender who commits or attempted to commit a distribution crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or to deter the offender from future criminal activity.



- *N.J.S.2C:24-4, subsection b.(5)(b)*: The crime of possession of any items of sexual exploitation or abuse would be upgraded from a crime of the fourth degree to a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both; under the bill, if this offense involved 100 or more items depicting sexual exploitation or abuse, then any generally applicable presumption against imprisonment (see N.J.S.2C:44-1, subsection e.) would *not* apply and the offender would be required to serve a sentence of imprisonment, unless the court was of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. For aggregation purposes, each depiction of the sexual exploitation or abuse would be considered a separate item, and the court would be required to aggregate all items involved, whether the possession occurred at the same time or at different times. Further, as added by the bill, a record of conviction for possession would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between five and 10 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill would establish that an offender who commits or attempted to commit the crime of possession would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

Finally, for all of the above described offenses, the bill increases the age benchmark, from 16 to 18 years of age, of a child for which prosecution under these various child endangerment offenses may be brought against an offender.

#### FISCAL IMPACT:

The OLS also notes that there is not enough information to determine the number of offenders who would be subject to the new and enhanced penalties enumerated under the bill. However, for those offenders who are convicted and sentenced under the bill, the average cost to house an inmate in a State correctional facility would be \$43,000 per year.

**FISCAL NOTE**  
**SENATE, No. 2493**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: MARCH 21, 2013

**SUMMARY**

- Synopsis:** Revises statutes and enhances penalties for offenses involving child pornography; makes crime of causing a child to engage in a prohibited sexual act subject to “No Early Release Act.”
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** Department of Corrections, State Parole Board, Judiciary.

**Executive Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The Department of Corrections (DOC) projects that assuming institutional space would be available to house the inmates subject to the No Early Release Act (NERA), this portion of the bill would only have a marginal cost in increase in inmate food, wages and clothing. The DOC also notes that in some aspects, the bill would widen the prosecution’s net increasing the number of committed offenders. Because these are new categories of offenses, there is no data with which to determine the number of additional individuals who would be committed to the custody of the DOC.
- The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.
- The Administrative Office of the Courts (AOC) states that the Judiciary is unable to estimate how many new cases may be created as a result of the bill’s expansion of the benchmark age which defines a child. As a result, an estimate regarding the fiscal impact the bill would have on the Judiciary is not feasible.

**BILL DESCRIPTION**

Senate Bill No. 2493 of 2013 revises the statutes concerning child pornography, to update and more closely harmonize State law with federal law governing these offenses.

This bill incorporates new terminology for child pornography; establishes new gradations and enhanced penalties applicable to child pornography possession, manufacturing and distribution offenses; and bases sentencing provisions on the number of items of child pornography involved, similar to federal law.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

The DOC states that the bill implements a number of provisions regarding child pornography (2C:24-4B). In 2012, there were 14 individuals committed to the DOC on a child pornography conviction.

The DOC states that based on FY 2012 commitments, the department would require an additional 11 bed spaces to house those inmates who would be subject to the NERA, which mandates that offenders under NERA must serve 85 percent of the sentence imposed. The department projects that assuming institutional space would be available to house the additional 11 inmates, the bill's enactment would only have a marginal cost increase for inmate food, wages and clothing. The DOC also notes that in some aspects, the bill would widen the prosecution's net increasing the number of committed offenders. Because these are new categories of offenses, there is no data with which to determine the number of additional individuals who would be committed to the custody of the DOC.

#### **State Parole Board**

The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.

#### **Judiciary**

The AOC states that the Judiciary does not collect data which could identify the number of cases that might be impacted by the revised gradations or enhanced penalties specified in the bill. Further, the Judiciary is unable to estimate how many new cases may be created as a result of the bill's expansion of the benchmark age which defines a child. As a result, an estimate regarding the fiscal impact the bill would have on the Judiciary is not feasible.

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

The OLS concurs with the Executive estimate.

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### SENATE, No. 2493

# STATE OF NEW JERSEY

DATED: MAY 6, 2013

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 2493.

Senate Bill No. 2493 revises this State's statutes concerning child sexual abuse and child pornography.

Specifically, the bill:

(1) reorganizes the statute concerning certain child endangerment offenses (in subsection a. of N.J.S.2C:24-4) to distinguish the acts causing harm to a child that is "abuse" or "neglect," from those sexual acts which impair or debauch a child's morals;

(2) increases the age that applies for child victims, from 16 to 18 years of age, for which the child endangerment offenses focused on sexual exploitation or abuse apply against an offender;

(3) incorporates new terminology for child pornography, referring to "item[s] depicting the sexual exploitation or abuse of a child";

(4) expands the scope of criminal possession or viewing of such items;

(5) expands the scope of criminal distribution of such items, particularly with respect to computer file-sharing programs and peer-to-peer networks;

(6) upgrades offenses and respective penalties associated with child endangerment focused on sexual exploitation or abuse; and

(7) adds under "Megan's Law," in section 2 of P.L.1994, c.130 (C.2C:43-6.4), the availability of parole supervision for life for a person convicted of possessing, reproducing, or distributing an item depicting sexual exploitation or abuse.

Regarding the expanded scope of criminal possessing or viewing, the bill provides that a person commits a crime if that person knowingly possesses, receives, views or has under the person's control, "through any means, including the Internet," an item depicting the sexual exploitation or abuse of a child. This expansion, to reference possession of such items "through any means, including the Internet," is also applied to the newly expanded scope of criminal distribution in the context of possessing with the intent to distribute.

Further regarding criminal distribution, the bill adds the "display" of an item of sexual exploitation or abuse as falling under the definition of distribution, and further indicates that any statutorily described form of distribution, e.g., "give," "publish," or "offer," may

establish criminal liability “whether [done] for pecuniary gain or not.” The bill also addresses newer means of distributing by using computer file-sharing programs, which allow a person using a computer on which such a program is installed to designate files as available for searching by, and copying to, one or more other computers, to transmit designated files directly to one or more other computers, and to request transmission of designated files directly from one or more other computers. Such programs may be utilized to share and distribute files by various means, including over the Internet or directly between computer systems on a network without the need of a central server, referred to in the bill as a “peer-to-peer network.”

As to distribution using a file-sharing program, the bill additionally provides that in a prosecution: (1) the State would *not* be required to offer proof that an item of sexual exploitation or abuse had actually been searched, copied, transmitted, or viewed by another user of the file-sharing program; (2) it would be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or any other person; and (3) the State would not be required to prove that the defendant was aware that the item was available for searching and copying, and the defendant would be strictly liable regarding the criminal distribution for failing to designate the item as not available for sharing. These provisions may address scenarios in which a person has installed a file-sharing program on a computer, which typically defaults to permit the sharing of files, and never changes the program setting; this subsequently allows any items of sexual exploitation or abuse contained in designated share files on that computer to be accessed, copied, and transmitted to one or more other computers without any other overt act on the part of the person, since the person never took action to modify the file-sharing program’s default settings to block such sharing.

Concerning the upgrading of offenses and respective penalties, as well as the availability of parole supervision for life under “Megan’s Law”:

- *N.J.S.2C:24-4, subsection b.(3)*: The crime of causing or permitting a child to engage in a prohibited sexual act, knowing or intending that the sexual act be reproduced or part of an exhibition or performance, is upgraded to be a crime of the first degree, regardless of the relationship between the offender and the child. Under current law, this crime is generally a crime of the second degree, except in cases in which the offender is a parent, guardian, or other person legally charged with a child’s care or custody, in which case it is considered a crime of the first degree. A crime of the first degree is ordinarily punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both. The court imposing the term of imprisonment would, pursuant to the provisions of the “No Early Release Act,” in section 2 of P.L.1997, c.117 (C.2C:43-7.2), fix a

minimum term of 85% of the sentence imposed, during which the offender would be ineligible for parole.

Also, an offender who commits or attempted to commit this crime is subject under current law to a special sentence of parole supervision for life under “Megan’s Law,” in section 2 of P.L.1994, c.130 (C.2C:43-6.4), and this is unchanged by the bill.

- *N.J.S.2C:24-4, subsection b.(4)*: The crime of reproducing, by photographs or other means, or reproducing using any device (including a computer), a child engaging in a prohibited sexual act would remain a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

The bill would, however, establish that an offender who commits or attempted to commit this crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(a)*: The crime of distribution, possessing with the intent to distribute, or distribution using a file-sharing program (described above) of any items of sexual exploitation or abuse would be graded a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; under the bill, if this offense involved 25 or more items depicting sexual exploitation or abuse, then the offender would be sentenced to a mandatory minimum term of imprisonment fixed at, or between, one-third to one-half of the sentence imposed or five years, whichever is greater, during which the offender would be ineligible for parole. For aggregation purposes, each depiction of the sexual exploitation or abuse would be considered a separate item, and the court would be required to aggregate all items involved, whether the act or acts constituting the offense occurred at the same time or at different times, and with respect to distribution, whether such act or acts of distribution were to the same person or several persons, or occurred at different times. Further, as added by the bill, a record of conviction for a distribution offense would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between 10 and 20 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill would establish that an offender who commits or attempted to commit a distribution crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed

to protect the community or to deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(b)*: The crime of possession of any items of sexual exploitation or abuse would be upgraded from a crime of the fourth degree to a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both; under the bill, if this offense involved 100 or more items depicting sexual exploitation or abuse, then any generally applicable presumption against imprisonment (see N.J.S.2C:44-1, subsection e.) would *not* apply and the offender would be required to serve a sentence of imprisonment, unless the court was of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. For aggregation purposes, each depiction of the sexual exploitation or abuse would be considered a separate item, and the court would be required to aggregate all items involved, whether the possession occurred at the same time or at different times. Further, as added by the bill, a record of conviction for possession would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between five and 10 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill would establish that an offender who commits or attempted to commit the crime of possession would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

Finally, for all of the above described offenses, the bill increases the age benchmark, from 16 to 18 years of age, of a child for which prosecution under these various child endangerment offenses may be brought against an offender.

As reported by the committee, this bill is identical to the Assembly committee substitute for Assembly Bill Nos. 3735 and 3740, which also was reported by the committee on this same date.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2493**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 6, 2013

The Assembly Appropriations Committee reports favorably Senate Bill No. 2493, with committee amendments.

As amended, the bill revises this State's statutes concerning child sexual abuse and child pornography.

Specifically, the bill:

(1) reorganizes the statute concerning certain child endangerment offenses (in subsection a. of N.J.S.2C:24-4) to distinguish the acts causing harm to a child that is "abuse" or "neglect," from those sexual acts which impair or debauch a child's morals;

(2) incorporates new terminology for child pornography, referring to "item[s] depicting the sexual exploitation or abuse of a child";

(3) expands the scope of criminal possession or viewing of such items;

(4) expands the scope of criminal distribution of such items, particularly with respect to computer file-sharing programs and peer-to-peer networks;

(5) upgrades offenses and respective penalties associated with child endangerment focused on sexual exploitation or abuse; and

(6) adds under "Megan's Law," in section 2 of P.L.1994, c.130 (C.2C:43-6.4), the availability of parole supervision for life for a person convicted of possessing, reproducing, or distributing an item depicting sexual exploitation or abuse.

Regarding the expanded scope of criminal possessing or viewing, the bill provides that a person commits a crime if that person knowingly possesses, receives, views or has under the person's control, "through any means, including the Internet," an item depicting the sexual exploitation or abuse of a child. This expansion, to reference possession of such items "through any means, including the Internet," is also applied to the newly expanded scope of criminal distribution in the context of possessing with the intent to distribute.

Further regarding criminal distribution, the bill adds the "display" of an item of sexual exploitation or abuse as falling under the definition of distribution, and further indicates that any statutorily described form of distribution, e.g., "give," "publish," or "offer," may establish criminal liability "whether [done] for pecuniary gain or not."



The bill also addresses newer means of distributing by using computer file-sharing programs, which allow a person using a computer on which such a program is installed to designate files as available for searching by, and copying to, one or more other computers, to transmit designated files directly to one or more other computers, and to request transmission of designated files directly from one or more other computers. Such programs may be utilized to share and distribute files by various means, including over the Internet or directly between computer systems on a network without the need of a central server, referred to in the bill as a “peer-to-peer network.”

As to distribution using a file-sharing program, the bill additionally provides that in a prosecution: (1) the State would *not* be required to offer proof that an item of sexual exploitation or abuse had actually been searched, copied, transmitted, or viewed by another user of the file-sharing program; (2) it would be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or any other person; and (3) the State would not be required to prove that the defendant was aware that the item was available for searching and copying, and the defendant would be strictly liable regarding the criminal distribution for failing to designate the item as not available for sharing. These provisions may address scenarios in which a person has installed a file-sharing program on a computer, which typically defaults to permit the sharing of files, and never changes the program setting; this subsequently allows any items of sexual exploitation or abuse contained in designated share files on that computer to be accessed, copied, and transmitted to one or more other computers without any other overt act on the part of the person, since the person never took action to modify the file-sharing program’s default settings to block such sharing.

Concerning the upgrading of offenses and respective penalties, as well as the availability of parole supervision for life under “Megan’s Law”:

- *N.J.S.2C:24-4, subsection b.(3)*: The crime of causing or permitting a child to engage in a prohibited sexual act, knowing or intending that the sexual act be reproduced or part of an exhibition or performance, is upgraded to be a crime of the first degree, regardless of the relationship between the offender and the child. Under current law, this crime is generally a crime of the second degree, except in cases in which the offender is a parent, guardian, or other person legally charged with a child’s care or custody, in which case it is considered a crime of the first degree. A crime of the first degree is ordinarily punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both. The court imposing the term of imprisonment would, pursuant to the provisions of the “No Early Release Act,” in section 2 of P.L.1997, c.117 (C.2C:43-7.2), fix a minimum term of 85% of the sentence imposed, during which the offender would be ineligible for parole.

Also, an offender who commits or attempted to commit this crime is subject under current law to a special sentence of parole supervision for life under “Megan’s Law,” in section 2 of P.L.1994, c.130 (C.2C:43-6.4), and this is unchanged by the bill.

- *N.J.S.2C:24-4, subsection b.(4)*: The crime of reproducing, by photographs or other means, or reproducing using any device (including a computer), a child engaging in a prohibited sexual act would remain a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

The bill, however, establishes that an offender who commits or attempts to commit this crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(a)*: The crime of distribution, possessing with the intent to distribute, or distribution using a file-sharing program (described above) of any items of sexual exploitation or abuse is graded a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; under the bill, if this offense involved 25 or more items depicting sexual exploitation or abuse, then the offender would be sentenced to a mandatory minimum term of imprisonment fixed at, or between, one-third to one-half of the sentence imposed or five years, whichever is greater, during which the offender would be ineligible for parole. For aggregation purposes, each depiction of the sexual exploitation or abuse will be considered a separate item, and the court would be required to aggregate all items involved, whether the act or acts constituting the offense occurred at the same time or at different times, and with respect to distribution, whether such act or acts of distribution were to the same person or several persons, or occurred at different times. Further, as added by the bill, a record of conviction for a distribution offense will be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between 10 and 20 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill establishes that an offender who commits or attempted to commit a distribution crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or to deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(b)*: The crime of possession of any items of sexual exploitation or abuse is a crime of the third degree, ordinarily punishable by a term of imprisonment of three to five years t, a fine of up to \$15,000, or both; under the bill, if this offense involved 100 or more items depicting sexual exploitation or abuse, then any generally applicable presumption against imprisonment (see N.J.S.2C:44-1, subsection e.) would *not* apply and the offender would be required to serve a sentence of imprisonment, unless the court was of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. For aggregation purposes, each depiction of the sexual exploitation or abuse will be considered a separate item, and the court would be required to aggregate all items involved, whether the possession occurred at the same time or at different times. Further, as added by the bill, a record of conviction for possession would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between five and 10 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill establishes that an offender who commits or attempts to commit the crime of possession would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

As amended and reported, this bill is identical to Senate Bill No. 2493, as also amended and reported by the committee.

#### FISCAL IMPACT:

The Department of Corrections (DOC) projects that assuming institutional space would be available to house the inmates subject to the “No Early Release Act” (NERA), this portion of the bill would cause a marginal increase in inmate food, wages and clothing costs. The DOC also notes that in some aspects, the bill potentially increases the number of individuals subject to prosecution, conviction and commitment. Because these are new categories of offenses, there are no data with which to determine the number of additional individuals who would be committed to the custody of the DOC. In 2012, there were 14 individuals committed to the DOC on a child pornography conviction.

The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.

The Administrative Office of the Courts states that the Judiciary is unable to estimate how many new cases may be created as a result of the bill's expansion of the benchmark age which defines a child.

COMMITTEE AMENDMENTS:

The amendments conform the bill to section 13 of P.L.2013, c.51. This law concerning the State's human trafficking laws incorporated certain provisions previously contained in the bill. The law amended the definition of a "child" in the child endangerment statute, N.J.S.2C:24-4, to include any person under 18 years of age, rather than any person under 16 years of age. The law also upgraded the crime of knowingly possessing or knowingly viewing a photograph or computer program depicting a child engaging in a prohibited sexual act from a crime of the fourth to a crime of the third degree.

The amendments also make technical corrections to the numbering of subdivisions in subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4.

**FISCAL NOTE**  
 [First Reprint]  
**SENATE, No. 2493**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: JUNE 21, 2013

**SUMMARY**

- Synopsis:** Revises statutes and enhances penalties for offenses involving child pornography; makes crime of causing a child to engage in a prohibited sexual act subject to “No Early Release Act.”
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** Department of Corrections, State Parole Board, Judiciary.

**Executive Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>	Indeterminate Increase - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The Department of Corrections (DOC) projects that assuming institutional space would be available to house the inmates subject to the “No Early Release Act” (NERA), this portion of the bill would cause a marginal increase in inmate food, wages and clothing costs. The DOC also notes that in some aspects, the bill potentially increases the number of individuals subject to prosecution, conviction and commitment. Because these are new categories of offenses, there is no data with which to determine the number of additional individuals who would be committed to the custody of the DOC.
- The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.
- The Administrative Office of the Courts states that the Judiciary is unable to estimate how many new cases may be created as a result of the bill’s expansion of the benchmark age which defines a child. As a result, no estimate of the fiscal impact the bill would have on the Judiciary is feasible.

## **BILL DESCRIPTION**

Senate Bill No. 2493 (1R) of 2013 revises the statutes concerning child pornography, to update and more closely align State law with federal law governing these offenses.

This bill incorporates new terminology for child pornography; establishes new gradations and enhanced penalties applicable to child pornography possession, manufacturing and distribution offenses; and bases sentencing provisions on the number of items of child pornography involved, similar to federal law.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

The DOC states that the bill implements a number of provisions regarding child pornography (2C:24-4B). In 2012, there were 14 individuals committed to the DOC on a child pornography conviction.

The DOC estimates that based on FY 2012 commitments, the department would require an additional 11 bed spaces over five years to house those inmates who would be subject to the NERA, which mandates that offenders under NERA must serve 85 percent of the sentence imposed. The department projects that assuming institutional space would be available to house the additional 11 inmates, the bill's enactment would only have a marginal cost increase for inmate food, wages and clothing. The DOC also notes that the bill potentially increases the number of persons subject to prosecution, thus increasing the number of committed offenders. Because these are new categories of offenses, there is no data with which to determine the number of additional individuals who might be committed to the custody of the DOC.

#### **State Parole Board**

The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.

#### **Judiciary**

The Administrative Office of the Courts states that the Judiciary does not collect data which could identify the number of cases that might be impacted by the revised gradations or enhanced penalties specified in the bill. Further, the Judiciary is unable to estimate how many new cases may be created as a result of the bill's expansion of the benchmark age which defines a child. As a result, an estimate regarding the fiscal impact the bill would have on the Judiciary is not feasible.

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

The OLS concurs with the Executive estimate. The OLS also notes that for each additional offender convicted and sentenced to a State prison facility, the DOC would incur additional housing costs. According to DOC data, the average annual fixed per capita cost to house an inmate in a State prison facility totals \$42,531. This fixed cost includes marginal costs of \$8.17 per day, or \$2,982 annually for inmate food, wages and clothing.

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY, No. 3735

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 7, 2013

**Sponsored by:**

**Assemblyman CHARLES MAINOR**

**District 31 (Hudson)**

**Assemblyman DAVID P. RIBLE**

**District 30 (Monmouth and Ocean)**

**Assemblyman SCOTT T. RUMANA**

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

**SYNOPSIS**

Revises statutes and enhances penalties for offenses involving child pornography.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/15/2013)**



1 AN ACT concerning the sexual exploitation or abuse of a child and  
2 amending various parts of the statutory law.

3

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

6

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

8 2C:24-4. Endangering Welfare of Children.

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

18 (2) Any person having a legal duty for the care of a child or who  
19 has assumed responsibility for the care of a child who causes the  
20 child harm that would make the child an abused or neglected child  
21 as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c.119, s.1 (C.9:6-  
22 8.21) is guilty of a crime of the second degree. Any other person  
23 who engages in conduct or who causes harm as described in this  
24 paragraph to a child is guilty of a crime of the third degree.

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

26 “Child” means any person under **【16】 18** years of age.

27 “Distribute” means to sell, or to manufacture, give, provide,  
28 lend, trade, mail, deliver, publish, circulate, disseminate, present,  
29 exhibit, display, share, advertise, offer, or make available via the  
30 Internet or by any other means, whether for pecuniary gain or not.  
31 The term also includes an agreement or attempt to distribute.

32 “File-sharing program” means a computer program, application,  
33 software or operating system that allows the user of a computer on  
34 which such program, application, software or operating system is  
35 installed to designate files as available for searching by and copying  
36 to one or more other computers, to transmit such designated files  
37 directly to one or more other computers, and to request the  
38 transmission of such designated files directly from one or more  
39 other computers. The term “file-sharing program” includes but is  
40 not limited to a computer program, application or software that  
41 enables a computer user to participate in a peer-to-peer network.

42 “Internet” means the international computer network of both  
43 federal and non-federal interoperable packet switched data  
44 networks.

**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       “Item depicting the sexual exploitation or abuse of a child”  
2 means a photograph, film, video, an electronic, electromagnetic or  
3 digital recording, an image stored or maintained in a computer  
4 program or file or in a portion of a file, or any other reproduction or  
5 reconstruction which depicts a child engaging in a prohibited sexual  
6 act or in the simulation of such an act.

7       “Peer-to-peer network” means a connection of computer systems  
8 through which files are shared directly between the systems on a  
9 network without the need of a central server.

10       “Prohibited sexual act” means

11       (a) Sexual intercourse; or

12       (b) Anal intercourse; or

13       (c) Masturbation; or

14       (d) Bestiality; or

15       (e) Sadism; or

16       (f) Masochism; or

17       (g) Fellatio; or

18       (h) Cunnilingus;

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

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

23       “Reproduction” means, but is not limited to, computer generated  
24 images.

25       (2) (Deleted by amendment, P.L.2001, c.291).

26       (3) A person commits a crime of the **【second】** first degree if he  
27 causes or permits a child to engage in a prohibited sexual act or in  
28 the simulation of such an act if the person knows, has reason to  
29 know or intends that the prohibited act may be photographed,  
30 filmed, reproduced, or reconstructed in any manner, including on  
31 the Internet, or may be part of an exhibition or performance. **【If the**  
32 **person is a parent, guardian or other person legally charged with the**  
33 **care or custody of the child, the person shall be guilty of a crime of**  
34 **the first degree.】**

35       (4) **【Any person who】** A person commits a crime of the second  
36 degree if he photographs or films a child in a prohibited sexual act  
37 or in the simulation of such an act or who uses any device,  
38 including a computer, to reproduce or reconstruct the image of a  
39 child in a prohibited sexual act or in the simulation of such an act  
40 **【is guilty of a crime of the second degree】.**

41       (5) (a) **【Any person who knowingly receives for the purpose of**  
42 **selling or who knowingly sells, procures, manufactures, gives,**  
43 **provides, lends, trades, mails, delivers, transfers, publishes,**  
44 **distributes, circulates, disseminates, presents, exhibits, advertises,**  
45 **offers, or agrees to offer, through any means, including the Internet,**  
46 **any photograph, film, videotape, computer program or file, video**  
47 **game or any other reproduction or reconstruction which depicts a**

1 child engaging in a prohibited sexual act or in the simulation of  
2 such an act is guilty of a crime of the second degree.】 A person  
3 commits a crime of the second degree if, by any means, including  
4 but not limited to the Internet, he:

5 (1) knowingly distributes an item depicting the sexual  
6 exploitation or abuse of a child;

7 (2) knowingly possesses an item depicting the sexual  
8 exploitation or abuse of a child with the intent to distribute that  
9 item; or

10 (3) using a file-sharing program, knowingly stores or maintains  
11 an item depicting the sexual exploitation or abuse of a child which  
12 is designated as available for searching by or copying to one or  
13 more other computers.

14 In a prosecution under subparagraph (a) of paragraph (3) of this  
15 subsection, the State shall not be required to offer proof that an item  
16 depicting the sexual exploitation or abuse of a child had actually  
17 been searched, copied, transmitted or viewed by another user of the  
18 file-sharing program, or by any other person, and it shall be no  
19 defense that the defendant did not intend to distribute the item to  
20 another user of the file-sharing program or to any other person. Nor  
21 shall the State be required to prove that the defendant was aware  
22 that the item depicting the sexual exploitation or abuse of a child  
23 was available for searching or copying to one or more other  
24 computers, and the defendant shall be strictly liable for failing to  
25 designate the item as not available for searching or copying by one  
26 or more other computers.

27 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
28 6, a person whose offense under this subparagraph involved 25 or  
29 more items depicting the sexual exploitation or abuse of a child  
30 shall be sentenced to a mandatory minimum term of imprisonment,  
31 which shall be fixed at, or between, one-third and one-half of the  
32 sentence imposed by the court or five years, whichever is greater,  
33 during which the defendant shall be ineligible for parole.

34 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
35 6, a person convicted of a second or subsequent offense under this  
36 subparagraph shall be sentenced to an extended term of  
37 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
38 subparagraph, an offense is considered a second or subsequent  
39 offense if the actor has at any time been convicted pursuant to  
40 paragraph (3), (4) or (5) of this subsection, or under any similar  
41 statute of the United States, this State or any other state for an  
42 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
43 this subsection.

44 For purposes of this subparagraph, the term “possess” includes  
45 receiving, viewing, or having under one’s control, through any  
46 means, including the Internet.

47 (b) **【Any person who】** A person commits a crime of the third  
48 degree if he knowingly possesses, receives, views or 【knowingly

1 views any photograph, film, videotape, computer program or file,  
2 video game or any other reproduction or reconstruction which  
3 depicts a child engaging in a prohibited sexual act or in the  
4 simulation of such an act, including on the Internet, is guilty of a  
5 crime of the fourth degree **】** has under his control, through any  
6 means, including the Internet, an item depicting the sexual  
7 exploitation or abuse of a child.

8 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-  
9 1, in any instance where a person was convicted of an offense under  
10 this subparagraph that involved 100 or more items depicting the  
11 sexual exploitation or abuse of a child, the court shall impose a  
12 sentence of imprisonment unless, having regard to the character and  
13 condition of the defendant, it is of the opinion that imprisonment  
14 would be a serious injustice which overrides the need to deter such  
15 conduct by others.

16 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
17 6, a person convicted of a second or subsequent offense under this  
18 subparagraph shall be sentenced to an extended term of  
19 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
20 subparagraph, an offense is considered a second or subsequent  
21 offense if the actor has at any time been convicted pursuant to  
22 paragraph (3), (4) or (5) of this subsection, or under any similar  
23 statute of the United States, this State or any other state for an  
24 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
25 this subsection.

26 Nothing in this subparagraph shall be construed to preclude or  
27 limit any prosecution or conviction for the offense set forth in  
28 subparagraph (a) of this paragraph.

29 (6) For purposes of this subsection, a person who is depicted as  
30 or presents the appearance of being under the age of **【16】 18** in any  
31 photograph, film, videotape, computer program or file, video game  
32 or any other reproduction or reconstruction shall be rebuttably  
33 presumed to be under the age of **【16】 18**.

34 If the child who is depicted as engaging in, or who is caused to  
35 engage in, a prohibited sexual act or simulation of a prohibited  
36 sexual act is under the age of **【16】 18**, the actor shall be strictly  
37 liable and it shall not be a defense that the actor did not know that  
38 the child was under the age of **【16】 18**, nor shall it be a defense that  
39 the actor believed that the child was **【16】 18** years of age or older,  
40 even if such a mistaken belief was reasonable.

41 (7) For aggregation purposes, each depiction of the sexual  
42 exploitation or abuse of a child shall be considered a separate item,  
43 and each individual act of distribution of an item depicting the  
44 sexual exploitation or abuse of a child shall be considered a  
45 separate item. For purposes of determining the number of items  
46 depicting the sexual exploitation or abuse of a child for purposes of  
47 sentencing pursuant to subparagraph (a) of paragraph (5) of this

1 subsection, the court shall aggregate all items involved, whether the  
2 act or acts constituting the violation occurred at the same time or at  
3 different times and, with respect to distribution, whether the act or  
4 acts of distribution were to the same person or several persons or  
5 occurred at different times, provided that each individual act was  
6 committed within the applicable statute of limitations. For purposes  
7 of determining the number of items depicting the sexual  
8 exploitation or abuse of a child for purposes of sentencing pursuant  
9 to subparagraph (b) of paragraph (5) of this subsection, the court  
10 shall aggregate all items involved, whether the possession of such  
11 items occurred at the same time or at different times, provided that  
12 each individual act was committed within the applicable statute of  
13 limitations.

14 (cf: P.L.2001, c.291, s.1)

15

16 2. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to  
17 read as follows:

18 2. a. Notwithstanding any provision of law to the contrary, a  
19 judge imposing sentence on a person who has been convicted of  
20 aggravated sexual assault, sexual assault, aggravated criminal  
21 sexual contact, kidnapping pursuant to paragraph (2) of subsection  
22 c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging  
23 in sexual conduct which would impair or debauch the morals of the  
24 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the  
25 welfare of a child pursuant to paragraph (3) of subsection b. of  
26 N.J.S.2C:24-4, luring or an attempt to commit any of these offenses  
27 shall include, in addition to any sentence authorized by this Code, a  
28 special sentence of parole supervision for life. Notwithstanding any  
29 provision of law to the contrary, a court imposing sentence on a  
30 person who has been convicted of endangering the welfare of a  
31 child pursuant to paragraph (4) or (5) of subsection b. of  
32 N.J.S.2C:24-4, or an attempt to commit either of these offenses  
33 shall include, upon motion of the prosecutor, a special sentence of  
34 parole supervision for life in addition to any sentence authorized by  
35 Title 2C of the New Jersey Statutes, unless the court finds on the  
36 record that the special sentence is not needed to protect the  
37 community or deter the defendant from future criminal activity.

38 b. The special sentence of parole supervision for life required by  
39 this section shall commence immediately upon the defendant's  
40 release from incarceration. If the defendant is serving a sentence of  
41 incarceration for another offense at the time he completes the  
42 custodial portion of the sentence imposed on the present offense,  
43 the special sentence of parole supervision for life shall not  
44 commence until the defendant is actually released from  
45 incarceration for the other offense. Persons serving a special  
46 sentence of parole supervision for life shall remain in the legal  
47 custody of the Commissioner of Corrections, shall be supervised by  
48 the Division of Parole of the State Parole Board, shall be subject to

1 the provisions and conditions set forth in subsection c. of section 3  
2 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and  
3 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and  
4 30:4-123.65), and shall be subject to conditions appropriate to  
5 protect the public and foster rehabilitation. Such conditions may  
6 include the requirement that the person comply with the conditions  
7 set forth in subsection f. of this section concerning use of a  
8 computer or other device with access to the Internet. If the  
9 defendant violates a condition of a special sentence of parole  
10 supervision for life, the defendant shall be subject to the provisions  
11 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60  
12 through 30:4-123.63 and 30:4-123.65), and for the purpose of  
13 calculating the limitation on time served pursuant to section 21 of  
14 P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon  
15 the defendant related to the special sentence of parole supervision  
16 for life shall be deemed to be a term of life imprisonment. When the  
17 court suspends the imposition of sentence on a defendant who has  
18 been convicted of any offense enumerated in subsection a. of this  
19 section, the court may not suspend imposition of the special  
20 sentence of parole supervision for life, which shall commence  
21 immediately, with the Division of Parole of the State Parole Board  
22 maintaining supervision over that defendant, including the  
23 defendant's compliance with any conditions imposed by the court  
24 pursuant to N.J.S.2C:45-1, in accordance with the provisions of this  
25 subsection. Nothing contained in this subsection shall prevent the  
26 court from at any time proceeding under the provisions of  
27 N.J.S.2C:45-1 through 2C:45-4 against any such defendant for a  
28 violation of any conditions imposed by the court when it suspended  
29 imposition of sentence, or prevent the Division of Parole from  
30 proceeding under the provisions of sections 16 through 19 and 21 of  
31 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-  
32 123.65) against any such defendant for a violation of any conditions  
33 of the special sentence of parole supervision for life, including the  
34 conditions imposed by the court pursuant to N.J.S.2C:45-1. In any  
35 such proceeding by the Division of Parole, the provisions of  
36 subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b)  
37 authorizing revocation and return to prison shall be applicable to  
38 such a defendant, notwithstanding that the defendant may not have  
39 been sentenced to or served any portion of a custodial term for  
40 conviction of an offense enumerated in subsection a. of this section.

41 c. A person sentenced to a term of parole supervision for life  
42 may petition the Superior Court for release from that parole  
43 supervision. The judge may grant a petition for release from a  
44 special sentence of parole supervision for life only upon proof by  
45 clear and convincing evidence that the person has not committed a  
46 crime for 15 years since the last conviction or release from  
47 incarceration, whichever is later, and that the person is not likely to  
48 pose a threat to the safety of others if released from parole

1 supervision. Notwithstanding the provisions of section 22 of  
2 P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of  
3 parole supervision for life may be released from that parole  
4 supervision term only by court order as provided in this subsection.

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

19 e. A person who, while serving a special sentence of parole  
20 supervision for life imposed pursuant to this section, commits a  
21 violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5,  
22 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, section 1 of  
23 P.L.1993, c.291 (C.2C:13-6), N.J.S.2C:14-2, N.J.S.2C:14-3,  
24 N.J.S.2C:24-4, N.J.S.2C:18-2 when the offense is a crime of the  
25 second degree, or subsection a. of N.J.S.2C:39-4 shall be sentenced  
26 to an extended term of imprisonment as set forth in N.J.S.2C:43-7,  
27 which term shall, notwithstanding the provisions of N.J.S.2C:43-7  
28 or any other law, be served in its entirety prior to the person's  
29 resumption of the term of parole supervision for life.

30 f. The special sentence of parole supervision for life required by  
31 this section may include any of the following Internet access  
32 conditions:

33 (1) Prohibit the person from accessing or using a computer or  
34 any other device with Internet capability without the prior written  
35 approval of the court except the person may use a computer or any  
36 other device with Internet capability in connection with that  
37 person's employment or search for employment with the prior  
38 approval of the person's parole officer;

39 (2) Require the person to submit to periodic unannounced  
40 examinations of the person's computer or any other device with  
41 Internet capability by a parole officer, law enforcement officer or  
42 assigned computer or information technology specialist, including  
43 the retrieval and copying of all data from the computer or device  
44 and any internal or external peripherals and removal of such  
45 information, equipment or device to conduct a more thorough  
46 inspection;

47 (3) Require the person to submit to the installation on the  
48 person's computer or device with Internet capability, at the person's

1 expense, one or more hardware or software systems to monitor the  
2 Internet use; **[and]**

3 (4) Require the person to submit to any other appropriate  
4 restrictions concerning the person's use or access of a computer or  
5 any other device with Internet capability**[.]** ; **and**

6 (5) Require the person to disclose all passwords used by the  
7 person to access any data, information, image, program, signal or  
8 file on the person's computer or any other device with Internet  
9 capability.

10 (cf: P.L.2007, c.219, s.3)

11

12 3. N.J.S.2C:52-2 is amended to read as follows:

13 2C:52-2. Indictable Offenses.

14 a. In all cases, except as herein provided, wherein a person has  
15 been convicted of a crime under the laws of this State and who has  
16 not been convicted of any prior or subsequent crime, whether within  
17 this State or any other jurisdiction, and has not been adjudged a  
18 disorderly person or petty disorderly person on more than two  
19 occasions may, after the expiration of a period of 10 years from the  
20 date of his conviction, payment of fine, satisfactory completion of  
21 probation or parole, or release from incarceration, whichever is  
22 later, present a duly verified petition as provided in **[section]**  
23 N.J.S.2C:52-7 to the Superior Court in the county in which the  
24 conviction was entered praying that such conviction and all records  
25 and information pertaining thereto be expunged.

26 Notwithstanding the provisions of the preceding paragraph, a  
27 petition may be filed and presented, and the court may grant an  
28 expungement pursuant to this section, although less than 10 years  
29 has expired in accordance with the requirements of the preceding  
30 paragraph where the court finds:

31 (1) less than 10 years has expired from the satisfaction of a fine,  
32 but the 10-year time requirement is otherwise satisfied, and the  
33 court finds that the person substantially complied with any payment  
34 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so  
35 due to compelling circumstances affecting his ability to satisfy the  
36 fine; or

37 (2) at least five years has expired from the date of his conviction,  
38 payment of fine, satisfactory completion of probation or parole, or  
39 release from incarceration, whichever is later; the person has not  
40 been convicted of a crime, disorderly persons offense, or petty  
41 disorderly persons offense since the time of the conviction; and the  
42 court finds in its discretion that expungement is in the public  
43 interest, giving due consideration to the nature of the offense, and  
44 the applicant's character and conduct since conviction.

45 In determining whether compelling circumstances exist for the  
46 purposes of paragraph (1) of this subsection, a court may consider  
47 the amount of the fine or fines imposed, the person's age at the time



1 of the offense, the person's financial condition and other relevant  
2 circumstances regarding the person's ability to pay.

3 Although subsequent convictions for no more than two  
4 disorderly or petty disorderly offenses shall not be an absolute bar  
5 to relief, the nature of those conviction or convictions and the  
6 circumstances surrounding them shall be considered by the court  
7 and may be a basis for denial of relief if they or either of them  
8 constitute a continuation of the type of unlawful activity embodied  
9 in the criminal conviction for which expungement is sought.

10 b. Records of conviction pursuant to statutes repealed by this  
11 Code for the crimes of murder, manslaughter, treason, anarchy,  
12 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,  
13 robbery, embracery, or a conspiracy or any attempt to commit any  
14 of the foregoing, or aiding, assisting or concealing persons accused  
15 of the foregoing crimes, shall not be expunged.

16 Records of conviction for the following crimes specified in the  
17 New Jersey Code of Criminal Justice shall not be subject to  
18 expungement: **【Section】** N.J.S. 2C:11-1 et seq. (Criminal  
19 Homicide), except death by auto as specified in **【section】** N.J.S.  
20 2C:11-5; **【section】** N.J.S. 2C:13-1 (Kidnapping); **【section 2C:13-6】**  
21 section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing);  
22 section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking);  
23 **【section】** N.J.S. 2C:14-2 (Sexual Assault or Aggravated Sexual  
24 Assault); **【section】** N.J.S. 2C:14-3a (Aggravated Criminal Sexual  
25 Contact); if the victim is a minor, **【section】** N.J.S. 2C:14-3b  
26 (Criminal Sexual Contact); if the victim is a minor and the offender  
27 is not the parent of the victim, **【section】** N.J.S. 2C:13-2 (Criminal  
28 Restraint) or **【section】** N.J.S. 2C:13-3 (False Imprisonment);  
29 **【section】** N.J.S. 2C:15-1 (Robbery); **【section】** N.J.S. 2C:17-1  
30 (Arson and Related Offenses); **【section】** N.J.S. 2C:24-4a.  
31 (Endangering the welfare of a child by engaging in sexual conduct  
32 which would impair or debauch the morals of the child); **【section】**  
33 N.J.S. 2C:24-4b(4) (Endangering the welfare of a child); **【section】**  
34 N.J.S. 2C:24-4b. (3) (Causing or permitting a child to engage in a  
35 prohibited sexual act); **【section】** N.J.S. 2C:24-4b.(5)(a) **【(Selling or**  
36 **manufacturing child pornography)】** (Distributing, possessing with  
37 intent to distribute or using a file-sharing program to store items  
38 depicting the sexual exploitation or abuse of a child); N.J.S. 2C:24-  
39 4b.(5)(b) (Possessing items depicting the sexual exploitation or  
40 abuse of a child); **【section】** N.J.S. 2C:28-1 (Perjury); **【section】**  
41 N.J.S. 2C:28-2 (False Swearing); **【section】** N.J.S. 2C:34-1b.(4)  
42 (Knowingly promoting the prostitution of the actor's child); section  
43 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of  
44 section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing  
45 Chemical Weapons, Biological Agents or Nuclear or Radiological  
46 Devices); and conspiracies or attempts to commit such crimes.

1       Records of conviction for any crime committed by a person  
2 holding any public office, position or employment, elective or  
3 appointive, under the government of this State or any agency or  
4 political subdivision thereof and any conspiracy or attempt to  
5 commit such a crime shall not be subject to expungement if the  
6 crime involved or touched such office, position or employment.

7       c. In the case of conviction for the sale or distribution of a  
8 controlled dangerous substance or possession thereof with intent to  
9 sell, expungement shall be denied except where the crimes involve:

10       (1) Marijuana, where the total quantity sold, distributed or  
11 possessed with intent to sell was 25 grams or less;

12       (2) Hashish, where the total quantity sold, distributed or  
13 possessed with intent to sell was five grams or less; or

14       (3) Any controlled dangerous substance provided that the  
15 conviction is of the third or fourth degree, where the court finds that  
16 expungement is consistent with the public interest, giving due  
17 consideration to the nature of the offense and the petitioner's  
18 character and conduct since conviction.

19       d. In the case of a State licensed physician or podiatrist convicted  
20 of an offense involving drugs or alcohol or pursuant to section 14 or  
21 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the court shall  
22 notify the State Board of Medical Examiners upon receipt of a  
23 petition for expungement of the conviction and records and  
24 information pertaining thereto.

25       (cf: PL.2009, c.188, s.1)

26

27       4. This act shall take effect immediately.

28

29

30

#### STATEMENT

31

32       This bill revises the statutes concerning child pornography, to  
33 update and more closely harmonize State law with federal law  
34 governing these offenses.

35       This bill incorporates new terminology for child pornography;  
36 establishes new gradations and enhanced penalties applicable to  
37 child pornography possession, manufacturing and distribution  
38 offenses; and bases sentencing provisions on the number of items of  
39 child pornography involved, similar to federal law.

40       Unlike federal law, current State law makes no distinction  
41 between the collector of child pornography who possesses and  
42 views thousands of computer files or items and the individual who  
43 may possess or view only a handful of such files or items. The  
44 federal law grades child pornography possession based upon the  
45 number of files possessed, imposing more severe punishment on  
46 those who possess more files. Those who collect such items in  
47 large quantities bear a greater share of the responsibility for making  
48 the market more profitable and creating a demand that further

1 encourages the creation of new child pornography, subjecting even  
2 more children to exploitation. Current State law also makes no  
3 specific provision for repeat child pornography offenders.  
4 Moreover, current State law does not adequately address situations  
5 enabled by evolving computer technology, such as file-sharing  
6 programs and peer-to-peer networks that permit remote sharing of  
7 child pornography images among collectors.

8 This bill revises current law as follows:

9 • Divides the child endangerment offense in N.J.S.2C:24-4 into  
10 two separate components. This revision will establish separate  
11 provisions for the offense of engaging in sexual conduct which  
12 would impair or debauch the morals of the child and for the offense  
13 of causing the child such harm that would make him or her an  
14 abused or neglected child. This provision also will simplify  
15 classification of the offender under Megan's Law.

16 • Upgrades from a crime of the second degree to a crime of the  
17 first degree the crime of causing or permitting a child to engage in a  
18 prohibited sex act or simulation for child pornography purposes,  
19 regardless of the offender's relationship to the child. Under current  
20 law, it is a first degree crime only if the offender is a parent,  
21 guardian and person with care or custody of the child.

22 • Increases the age benchmark of "child" from 16 to 18, to  
23 conform New Jersey to the federal standard and the majority of  
24 other states.

25 • Replaces current terminology used to describe child  
26 pornography items with the more visceral phrase "item depicting  
27 the sexual exploitation or abuse of a child," which is defined as a  
28 photograph, film, video, an electronic, electromagnetic or digital  
29 recording, an image stored or maintained in a computer program or  
30 file or in a portion of a file, or any other reproduction or  
31 reconstruction which depicts a child engaging in a prohibited sexual  
32 act or in the simulation of such an act. This is a technical and  
33 clarifying revision to the statute.

34 • Reformulates the provisions governing the sale of child  
35 pornography to more closely parallel the penalty structure for  
36 distribution of drugs under chapter 35 of Title 2C of the New Jersey  
37 Statutes, creating a provision penalizing distribution and another  
38 provision penalizing possession with intent to distribute.

39 • Defines the term "distribute" as to sell, or to manufacture, give,  
40 provide, lend, trade, mail, deliver, publish, circulate, disseminate,  
41 present, exhibit, display, share, advertise, offer, or make available  
42 via the Internet or by any other means, whether or not for pecuniary  
43 gain. This also is a technical and clarifying revision to the statute.  
44 In addition, the definition specifies that it includes an agreement or  
45 attempt to distribute.

46 • Incorporates a provision to specifically address making child  
47 pornography items available through the use of a file-sharing  
48 program, which may be a computer program, application or

1 software that enables the user to participate in a peer to-peer  
2 network. Under the bill's provisions, it would be a crime of the  
3 second degree for a person, using a file-sharing program, to  
4 knowingly store or maintain an item depicting the sexual  
5 exploitation or abuse of a child which is designated as available for  
6 searching by or copying to one or more other computers. These  
7 file-sharing programs allow the user of a computer on which they  
8 are installed to designate files as available for searching by and  
9 copying to one or more other computers, to transmit those files  
10 directly to one or more other computers, and to request the  
11 transmission of such designated files directly from one or more  
12 other computers.

13 •Makes a defendant strictly liable for failing to designate an item  
14 of child pornography as not available on the file-sharing program;  
15 no proof would be required to show actual sharing or intent to  
16 distribute.

17 • Enhances penalties for distribution offenses. For offenses  
18 involving 25 or more items, the offender would be sentenced to a  
19 mandatory minimum term of imprisonment with a period of parole  
20 ineligibility. Repeat offenders who had been convicted of any New  
21 Jersey, federal, or other jurisdiction's child pornography  
22 distribution or possession offense would receive an extended term.

23 • Enhances criminal penalties for possession offenses. These  
24 offenses would be upgraded from a crime of the fourth degree to a  
25 crime of the third degree. For possession offenses involving 100 or  
26 more items, the offender would face a mandatory term of  
27 imprisonment, unless the court finds imprisonment would be a  
28 serious injustice which overrides the need to deter such conduct by  
29 others. Repeat offenders who had been convicted of any New  
30 Jersey, federal, or other jurisdiction's child pornography  
31 distribution or possession offense would receive an extended term.

32 • Subjects persons convicted of child pornography distribution  
33 and possession offenses to a special sentence of parole supervision  
34 for life pursuant to N.J.S.2C:43-6.4. The court, upon motion of the  
35 prosecutor, would impose the special sentence unless the court finds  
36 that such a sentence is not needed to protect the community or deter  
37 the defendant from future criminal activity.

38 • Adds child pornography possession to the crimes that cannot be  
39 expunged under N.J.S.2C:52-2.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 3735 and 3740

# STATE OF NEW JERSEY

DATED: MAY 6, 2013

The Assembly Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3735 and 3740.

This Assembly committee substitute revises this State's statutes concerning child sexual abuse and child pornography.

Specifically, the committee substitute:

(1) reorganizes the statute concerning certain child endangerment offenses (in subsection a. of N.J.S.2C:24-4) to distinguish the acts causing harm to a child that is "abuse" or "neglect," from those sexual acts which impair or debauch a child's morals;

(2) increases the age that applies for child victims, from 16 to 18 years of age, for which the child endangerment offenses focused on sexual exploitation or abuse apply against an offender;

(3) incorporates new terminology for child pornography, referring to "item[s] depicting the sexual exploitation or abuse of a child";

(4) expands the scope of criminal possession or viewing of such items;

(5) expands the scope of criminal distribution of such items, particularly with respect to computer file-sharing programs and peer-to-peer networks;

(6) upgrades offenses and respective penalties associated with child endangerment focused on sexual exploitation or abuse; and

(7) adds under "Megan's Law," in section 2 of P.L.1994, c.130 (C.2C:43-6.4), the availability of parole supervision for life for a person convicted of possessing, reproducing, or distributing an item depicting sexual exploitation or abuse.

Regarding the expanded scope of criminal possessing or viewing, the committee substitute provides that a person commits a crime if that person knowingly possesses, receives, views or has under the person's control, "through any means, including the Internet," an item depicting the sexual exploitation or abuse of a child. This expansion, to reference possession of such items "through any means, including the Internet," is also applied to the newly expanded scope of criminal distribution in the context of possessing with the intent to distribute.

Further regarding criminal distribution, the committee substitute adds the “display” of an item of sexual exploitation or abuse as falling under the definition of distribution, and further indicates that any statutorily described form of distribution, e.g., “give,” “publish,” or “offer,” may establish criminal liability “whether [done] for pecuniary gain or not.” The committee substitute also addresses newer means of distributing by using computer file-sharing programs, which allow a person using a computer on which such a program is installed to designate files as available for searching by, and copying to, one or more other computers, to transmit designated files directly to one or more other computers, and to request transmission of designated files directly from one or more other computers. Such programs may be utilized to share and distribute files by various means, including over the Internet or directly between computer systems on a network without the need of a central server, referred to in the committee substitute as a “peer-to-peer network.”

As to distribution using a file-sharing program, the committee substitute additionally provides that in a prosecution: (1) the State would *not* be required to offer proof that an item of sexual exploitation or abuse had actually been searched, copied, transmitted, or viewed by another user of the file-sharing program; (2) it would be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or any other person; and (3) the State would not be required to prove that the defendant was aware that the item was available for searching and copying, and the defendant would be strictly liable regarding the criminal distribution for failing to designate the item as not available for sharing. These provisions may address scenarios in which a person has installed a file-sharing program on a computer, which typically defaults to permit the sharing of files, and never changes the program setting; this subsequently allows any items of sexual exploitation or abuse contained in designated share files on that computer to be accessed, copied, and transmitted to one or more other computers without any other overt act on the part of the person, since the person never took action to modify the file-sharing program’s default settings to block such sharing.

Concerning the upgrading of offenses and respective penalties, as well as the availability of parole supervision for life under “Megan’s Law”:

- *N.J.S.2C:24-4, subsection b.(3)*: The crime of causing or permitting a child to engage in a prohibited sexual act, knowing or intending that the sexual act be reproduced or part of an exhibition or performance, is upgraded to be a crime of the first degree, regardless of the relationship between the offender and the child. Under current law, this crime is generally a crime of the second degree, except in cases in which the offender is a parent, guardian, or other person legally charged with a child’s care or custody, in which case it is considered a crime of the first degree. A crime of the first degree is

ordinarily punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both. The court imposing the term of imprisonment would, pursuant to the provisions of the “No Early Release Act,” in section 2 of P.L.1997, c.117 (C.2C:43-7.2), fix a minimum term of 85% of the sentence imposed, during which the offender would be ineligible for parole.

Also, an offender who commits or attempted to commit this crime is subject under current law to a special sentence of parole supervision for life under “Megan’s Law,” in section 2 of P.L.1994, c.130 (C.2C:43-6.4), and this is unchanged by the committee substitute.

- *N.J.S.2C:24-4, subsection b.(4)*: The crime of reproducing, by photographs or other means, or reproducing using any device (including a computer), a child engaging in a prohibited sexual act would remain a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

The committee substitute would, however, establish that an offender who commits or attempted to commit this crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(a)*: The crime of distribution, possessing with the intent to distribute, or distribution using a file-sharing program (described above) of any items of sexual exploitation or abuse would be graded a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; under the committee substitute, if this offense involved 25 or more items depicting sexual exploitation or abuse, then the offender would be sentenced to a mandatory minimum term of imprisonment fixed at, or between, one-third to one-half of the sentence imposed or five years, whichever is greater, during which the offender would be ineligible for parole. For aggregation purposes, each depiction of the sexual exploitation or abuse would be considered a separate item, and the court would be required to aggregate all items involved, whether the act or acts constituting the offense occurred at the same time or at different times, and with respect to distribution, whether such act or acts of distribution were to the same person or several persons, or occurred at different times. Further, as added by the committee substitute, a record of conviction for a distribution offense would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see *N.J.S.2C:24-4, subsection b.(3) and (4)* above), the person would be sentenced to an extended term of imprisonment of between 10 and 20 years pursuant to the provisions of *N.J.S.2C:43-7*.

Also, the committee substitute would establish that an offender who commits or attempted to commit a distribution crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or to deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(b)*: The crime of possession of any items of sexual exploitation or abuse would be upgraded from a crime of the fourth degree to a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both; under the committee substitute, if this offense involved 100 or more items depicting sexual exploitation or abuse, then any generally applicable presumption against imprisonment (see N.J.S.2C:44-1, subsection e.) would *not* apply and the offender would be required to serve a sentence of imprisonment, unless the court was of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. For aggregation purposes, each depiction of the sexual exploitation or abuse would be considered a separate item, and the court would be required to aggregate all items involved, whether the possession occurred at the same time or at different times. Further, as added by the committee substitute, a record of conviction for possession would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between five and 10 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the committee substitute would establish that an offender who commits or attempted to commit the crime of possession would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

Finally, for all of the above described offenses, the committee substitute increases the age benchmark, from 16 to 18 years of age, of a child for which prosecution under these various child endangerment offenses may be brought against an offender.

As reported by the committee, this committee substitute is identical to Senate Bill No. 2493, also reported by the committee on this same date.



# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3735 and 3740**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 6, 2013

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 3735 and 3740 (ACS), with committee amendments.

As amended, the bill revises this State's statutes concerning child sexual abuse and child pornography.

Specifically, the bill:

(1) reorganizes the statute concerning certain child endangerment offenses (in subsection a. of N.J.S.2C:24-4) to distinguish the acts causing harm to a child that is "abuse" or "neglect," from those sexual acts which impair or debauch a child's morals;

(2) incorporates new terminology for child pornography, referring to "item[s] depicting the sexual exploitation or abuse of a child";

(3) expands the scope of criminal possession or viewing of such items;

(4) expands the scope of criminal distribution of such items, particularly with respect to computer file-sharing programs and peer-to-peer networks;

(5) upgrades offenses and respective penalties associated with child endangerment focused on sexual exploitation or abuse; and

(6) adds under "Megan's Law," in section 2 of P.L.1994, c.130 (C.2C:43-6.4), the availability of parole supervision for life for a person convicted of possessing, reproducing, or distributing an item depicting sexual exploitation or abuse.

Regarding the expanded scope of criminal possessing or viewing, the bill provides that a person commits a crime if that person knowingly possesses, receives, views or has under the person's control, "through any means, including the Internet," an item depicting the sexual exploitation or abuse of a child. This expansion, to reference possession of such items "through any means, including the Internet," is also applied to the newly expanded scope of criminal distribution in the context of possessing with the intent to distribute.

Further regarding criminal distribution, the bill adds the "display" of an item of sexual exploitation or abuse as falling under the definition of distribution, and further indicates that any statutorily

described form of distribution, e.g., “give,” “publish,” or “offer,” may establish criminal liability “whether [done] for pecuniary gain or not.” The bill also addresses newer means of distributing by using computer file-sharing programs, which allow a person using a computer on which such a program is installed to designate files as available for searching by, and copying to, one or more other computers, to transmit designated files directly to one or more other computers, and to request transmission of designated files directly from one or more other computers. Such programs may be utilized to share and distribute files by various means, including over the Internet or directly between computer systems on a network without the need of a central server, referred to in the bill as a “peer-to-peer network.”

As to distribution using a file-sharing program, the bill additionally provides that in a prosecution: (1) the State would *not* be required to offer proof that an item of sexual exploitation or abuse had actually been searched, copied, transmitted, or viewed by another user of the file-sharing program; (2) it would be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or any other person; and (3) the State would not be required to prove that the defendant was aware that the item was available for searching and copying, and the defendant would be strictly liable regarding the criminal distribution for failing to designate the item as not available for sharing. These provisions may address scenarios in which a person has installed a file-sharing program on a computer, which typically defaults to permit the sharing of files, and never changes the program setting; this subsequently allows any items of sexual exploitation or abuse contained in designated share files on that computer to be accessed, copied, and transmitted to one or more other computers without any other overt act on the part of the person, since the person never took action to modify the file-sharing program’s default settings to block such sharing.

Concerning the upgrading of offenses and respective penalties, as well as the availability of parole supervision for life under “Megan’s Law”:

- *N.J.S.2C:24-4, subsection b.(3)*: The crime of causing or permitting a child to engage in a prohibited sexual act, knowing or intending that the sexual act be reproduced or part of an exhibition or performance, is upgraded to be a crime of the first degree, regardless of the relationship between the offender and the child. Under current law, this crime is generally a crime of the second degree, except in cases in which the offender is a parent, guardian, or other person legally charged with a child’s care or custody, in which case it is considered a crime of the first degree. A crime of the first degree is ordinarily punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both. The court imposing the term of imprisonment would, pursuant to the provisions of the “No Early Release Act,” in section 2 of P.L.1997, c.117 (C.2C:43-7.2), fix a

minimum term of 85% of the sentence imposed, during which the offender would be ineligible for parole.

Also, an offender who commits or attempted to commit this crime is subject under current law to a special sentence of parole supervision for life under “Megan’s Law,” in section 2 of P.L.1994, c.130 (C.2C:43-6.4), and this is unchanged by the bill.

- *N.J.S.2C:24-4, subsection b.(4)*: The crime of reproducing, by photographs or other means, or reproducing using any device (including a computer), a child engaging in a prohibited sexual act would remain a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

The bill, however, establishes that an offender who commits or attempts to commit this crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(a)*: The crime of distribution, possessing with the intent to distribute, or distribution using a file-sharing program (described above) of any items of sexual exploitation or abuse is graded a crime of the second degree, ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; under the bill, if this offense involved 25 or more items depicting sexual exploitation or abuse, then the offender would be sentenced to a mandatory minimum term of imprisonment fixed at, or between, one-third to one-half of the sentence imposed or five years, whichever is greater, during which the offender would be ineligible for parole. For aggregation purposes, each depiction of the sexual exploitation or abuse will be considered a separate item, and the court would be required to aggregate all items involved, whether the act or acts constituting the offense occurred at the same time or at different times, and with respect to distribution, whether such act or acts of distribution were to the same person or several persons, or occurred at different times. Further, as added by the bill, a record of conviction for a distribution offense will be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between 10 and 20 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill establishes that an offender who commits or attempted to commit a distribution crime would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed

to protect the community or to deter the offender from future criminal activity.

- *N.J.S.2C:24-4, subsection b.(5)(b)*: The crime of possession of any items of sexual exploitation or abuse is a crime of the third degree, ordinarily punishable by a term of imprisonment of three to five years t, a fine of up to \$15,000, or both; under the bill, if this offense involved 100 or more items depicting sexual exploitation or abuse, then any generally applicable presumption against imprisonment (see N.J.S.2C:44-1, subsection e.) would *not* apply and the offender would be required to serve a sentence of imprisonment, unless the court was of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. For aggregation purposes, each depiction of the sexual exploitation or abuse will be considered a separate item, and the court would be required to aggregate all items involved, whether the possession occurred at the same time or at different times. Further, as added by the bill, a record of conviction for possession would be ineligible for expungement.

As to a person convicted of a second or subsequent offense, for which a prior conviction for causing or permitting the reproduction of a prohibited sexual act or reproducing such act could count (see N.J.S.2C:24-4, subsection b.(3) and (4) above), the person would be sentenced to an extended term of imprisonment of between five and 10 years pursuant to the provisions of N.J.S.2C:43-7.

Also, the bill establishes that an offender who commits or attempts to commit the crime of possession would be subject, upon motion by the prosecutor, to a special sentence of parole supervision for life unless the court finds that such special sentence is not needed to protect the community or deter the offender from future criminal activity.

As amended and reported, this bill is identical to Senate Bill No. 2493, as also amended and reported by the committee.

#### FISCAL IMPACT:

The Department of Corrections (DOC) projects that assuming institutional space would be available to house the inmates subject to the “No Early Release Act” (NERA), this portion of the bill would cause a marginal increase in inmate food, wages and clothing costs. The DOC also notes that in some aspects, the bill potentially increases the number of individuals subject to prosecution, conviction and commitment. Because these are new categories of offenses, there are no data with which to determine the number of additional individuals who would be committed to the custody of the DOC. In 2012, there were 14 individuals committed to the DOC on a child pornography conviction.

The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.

The Administrative Office of the Courts states that the Judiciary is unable to estimate how many new cases may be created as a result of the bill's expansion of the benchmark age which defines a child.

COMMITTEE AMENDMENTS:

The amendments conform the bill to section 13 of P.L.2013, c.51. This law concerning the State's human trafficking laws incorporated certain provisions previously contained in the bill. The law amended the definition of a "child" in the child endangerment statute, N.J.S.2C:24-4, to include any person under 18 years of age, rather than any person under 16 years of age. The law also upgraded the crime of knowingly possessing or knowingly viewing a photograph or computer program depicting a child engaging in a prohibited sexual act from a crime of the fourth to a crime of the third degree.

The amendments also make technical corrections to the numbering of subdivisions in subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4.

# FISCAL NOTE

[First Reprint]

## ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 3735 and 3740 STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 13, 2013

### SUMMARY

- Synopsis:** Revises statutes and enhances penalties for offenses involving child pornography; makes crime of causing a child to engage in a prohibited sexual act subject to “No Early Release Act.”
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** Department of Corrections, State Parole Board, Judiciary.

### Executive 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 Cost</b>	Indeterminate Increase - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The Department of Corrections (DOC) projects that assuming institutional space would be available to house the inmates subject to the “No Early Release Act” (NERA), this portion of the bill would cause a marginal increase in inmate food, wages and clothing costs. The DOC also notes that in some aspects, the bill potentially increases the number of individuals subject to prosecution, conviction and commitment. Because these are new categories of offenses, there is no data with which to determine the number of additional individuals who would be committed to the custody of the DOC.
- The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.
- The Administrative Office of the Courts (AOC) states that the Judiciary is unable to estimate how many new cases may be created as a result of the bill’s expansion of the benchmark age which defines a child. As a result, no estimate of the fiscal impact the bill would have on the Judiciary is feasible.

## **BILL DESCRIPTION**

The First Reprint of the Assembly Committee Substitute for Assembly Bill Nos. 3735 and 3740 of 2013 revises the statutes concerning child pornography, to update and more closely align State law with federal law governing these offenses.

This bill incorporates new terminology for child pornography; establishes new gradations and enhanced penalties applicable to child pornography possession, manufacturing and distribution offenses; and bases sentencing provisions on the number of items of child pornography involved, similar to federal law.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

The DOC states that the bill implements a number of provisions regarding child pornography (2C:24-4B). In 2012, there were 14 individuals committed to the DOC on a child pornography conviction.

The DOC estimates that based on FY 2012 commitments, the department would require an additional 11 bed spaces over five years to house those inmates who would be subject to the NERA, which mandates that offenders under NERA must serve 85 percent of the sentence imposed. The department projects that assuming institutional space would be available to house the additional 11 inmates, the bill's enactment would only have a marginal cost increase for inmate food, wages and clothing. The DOC also notes that the bill potentially increases the number of persons subject to prosecution, thus increasing the number of committed offenders. Because these are new categories of offenses, there is no data with which to determine the number of additional individuals who might be committed to the custody of the DOC.

#### **State Parole Board**

The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.

#### **Judiciary**

The AOC states that the Judiciary does not collect data which could identify the number of cases that might be impacted by the revised gradations or enhanced penalties specified in the bill. Further, the Judiciary is unable to estimate how many new cases may be created as a result of the bill's expansion of the benchmark age which defines a child. As a result, an estimate regarding the fiscal impact the bill would have on the Judiciary is not feasible.

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

The OLS concurs with the Executive estimate. The OLS also notes that for each additional offender convicted and sentenced to a State prison facility, the DOC would incur additional housing costs. According to DOC data, the average annual fixed per capita cost to house an inmate in a State prison facility totals \$42,531. This fixed cost includes marginal costs of \$8.17 per day, or \$2,982 annually for inmate food, wages and clothing

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



# ASSEMBLY, No. 3740

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 7, 2013

**Sponsored by:**

**Assemblyman DAVID C. RUSSO**

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

**Assemblyman SCOTT T. RUMANA**

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

**Assemblywoman MARLENE CARIDE**

**District 36 (Bergen and Passaic)**

**Assemblywoman MARY PAT ANGELINI**

**District 11 (Monmouth)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Morris, Somerset and Union)**

**Co-Sponsored by:**

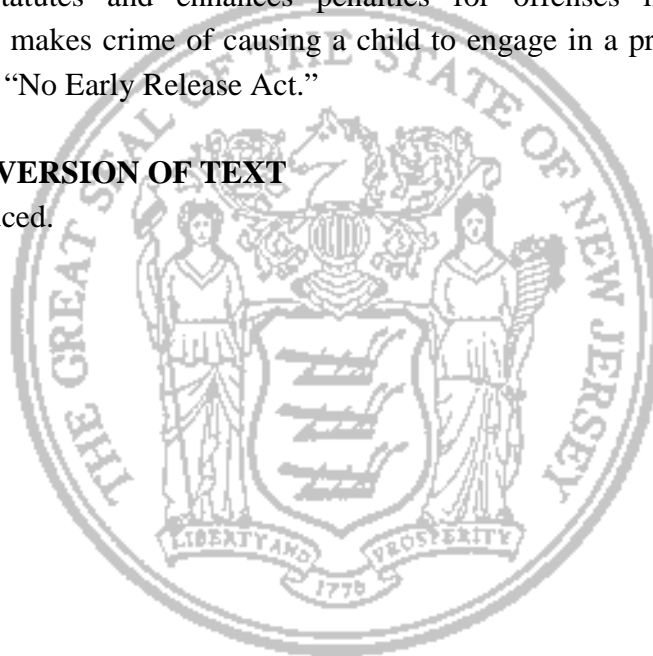
**Assemblywomen Handlin, N.Munoz and B.DeCroce**

**SYNOPSIS**

Revises statutes and enhances penalties for offenses involving child pornography; makes crime of causing a child to engage in a prohibited sexual act subject to "No Early Release Act."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/7/2013)**

1 AN ACT concerning the sexual exploitation or abuse of a child and  
2 amending various parts of the statutory law.

3

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

6

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

8 2C:24-4. Endangering Welfare of Children.

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

18 (2) Any person having a legal duty for the care of a child or who  
19 has assumed responsibility for the care of a child who causes the  
20 child harm that would make the child an abused or neglected child  
21 as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c.119, s.1 (C.9:6-  
22 8.21) is guilty of a crime of the second degree. Any other person  
23 who engages in conduct or who causes harm as described in this  
24 paragraph to a child is guilty of a crime of the third degree.

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

26 “Child” means any person under **[16] 18** years of age.

27 “Distribute” means to sell, or to manufacture, give, provide,  
28 lend, trade, mail, deliver, publish, circulate, disseminate, present,  
29 exhibit, display, share, advertise, offer, or make available via the  
30 Internet or by any other means, whether for pecuniary gain or not.  
31 The term also includes an agreement or attempt to distribute.

32 “File-sharing program” means a computer program, application,  
33 software or operating system that allows the user of a computer on  
34 which such program, application, software or operating system is  
35 installed to designate files as available for searching by and copying  
36 to one or more other computers, to transmit such designated files  
37 directly to one or more other computers, and to request the  
38 transmission of such designated files directly from one or more  
39 other computers. The term “file-sharing program” includes but is  
40 not limited to a computer program, application or software that  
41 enables a computer user to participate in a peer-to-peer network.

42 “Internet” means the international computer network of both  
43 federal and non-federal interoperable packet switched data  
44 networks.

**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       “Item depicting the sexual exploitation or abuse of a child”  
2 means a photograph, film, video, an electronic, electromagnetic or  
3 digital recording, an image stored or maintained in a computer  
4 program or file or in a portion of a file, or any other reproduction or  
5 reconstruction which depicts a child engaging in a prohibited sexual  
6 act or in the simulation of such an act.

7       “Peer-to-peer network” means a connection of computer systems  
8 through which files are shared directly between the systems on a  
9 network without the need of a central server.

10       “Prohibited sexual act” means

11       (a) Sexual intercourse; or

12       (b) Anal intercourse; or

13       (c) Masturbation; or

14       (d) Bestiality; or

15       (e) Sadism; or

16       (f) Masochism; or

17       (g) Fellatio; or

18       (h) Cunnilingus;

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

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

23       “Reproduction” means, but is not limited to, computer generated  
24 images.

25       (2) (Deleted by amendment, P.L.2001, c.291).

26       (3) A person commits a crime of the **second** first degree if he  
27 causes or permits a child to engage in a prohibited sexual act or in  
28 the simulation of such an act if the person knows, has reason to  
29 know or intends that the prohibited act may be photographed,  
30 filmed, reproduced, or reconstructed in any manner, including on  
31 the Internet, or may be part of an exhibition or performance. **【If the**  
32 **person is a parent, guardian or other person legally charged with the**  
33 **care or custody of the child, the person shall be guilty of a crime of**  
34 **the first degree.】**

35       (4) **【Any person who】** A person commits a crime of the second  
36 degree if he photographs or films a child in a prohibited sexual act  
37 or in the simulation of such an act or who uses any device,  
38 including a computer, to reproduce or reconstruct the image of a  
39 child in a prohibited sexual act or in the simulation of such an act  
40 **【is guilty of a crime of the second degree】.**

41       (5) (a) **【Any person who knowingly receives for the purpose of**  
42 **selling or who knowingly sells, procures, manufactures, gives,**  
43 **provides, lends, trades, mails, delivers, transfers, publishes,**  
44 **distributes, circulates, disseminates, presents, exhibits, advertises,**  
45 **offers, or agrees to offer, through any means, including the Internet,**  
46 **any photograph, film, videotape, computer program or file, video**  
47 **game or any other reproduction or reconstruction which depicts a**  
48 **child engaging in a prohibited sexual act or in the simulation of**

1 such an act is guilty of a crime of the second degree.】 A person  
2 commits a crime of the second degree if, by any means, including  
3 but not limited to the Internet, he:

4 (1) knowingly distributes an item depicting the sexual  
5 exploitation or abuse of a child;

6 (2) knowingly possesses an item depicting the sexual  
7 exploitation or abuse of a child with the intent to distribute that  
8 item; or

9 (3) using a file-sharing program, knowingly stores or maintains  
10 an item depicting the sexual exploitation or abuse of a child which  
11 is designated as available for searching by or copying to one or  
12 more other computers.

13 In a prosecution under subparagraph (a) of paragraph (3) of this  
14 subsection, the State shall not be required to offer proof that an item  
15 depicting the sexual exploitation or abuse of a child had actually  
16 been searched, copied, transmitted or viewed by another user of the  
17 file-sharing program, or by any other person, and it shall be no  
18 defense that the defendant did not intend to distribute the item to  
19 another user of the file-sharing program or to any other person. Nor  
20 shall the State be required to prove that the defendant was aware  
21 that the item depicting the sexual exploitation or abuse of a child  
22 was available for searching or copying to one or more other  
23 computers, and the defendant shall be strictly liable for failing to  
24 designate the item as not available for searching or copying by one  
25 or more other computers.

26 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
27 6, a person whose offense under this subparagraph involved 25 or  
28 more items depicting the sexual exploitation or abuse of a child  
29 shall be sentenced to a mandatory minimum term of imprisonment,  
30 which shall be fixed at, or between, one-third and one-half of the  
31 sentence imposed by the court or five years, whichever is greater,  
32 during which the defendant shall be ineligible for parole.

33 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
34 6, a person convicted of a second or subsequent offense under this  
35 subparagraph shall be sentenced to an extended term of  
36 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
37 subparagraph, an offense is considered a second or subsequent  
38 offense if the actor has at any time been convicted pursuant to  
39 paragraph (3), (4) or (5) of this subsection, or under any similar  
40 statute of the United States, this State or any other state for an  
41 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
42 this subsection.

43 For purposes of this subparagraph, the term “possess” includes  
44 receiving, viewing, or having under one’s control, through any  
45 means, including the Internet.

46 (b) **【Any person who】** A person commits a crime of the third  
47 degree if he knowingly possesses, receives, views or 【knowingly  
48 views any photograph, film, videotape, computer program or file,

1 video game or any other reproduction or reconstruction which  
2 depicts a child engaging in a prohibited sexual act or in the  
3 simulation of such an act, including on the Internet, is guilty of a  
4 crime of the fourth degree] has under his control, through any  
5 means, including the Internet, an item depicting the sexual  
6 exploitation or abuse of a child.

7 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-  
8 1, in any instance where a person was convicted of an offense under  
9 this subparagraph that involved 100 or more items depicting the  
10 sexual exploitation or abuse of a child, the court shall impose a  
11 sentence of imprisonment unless, having regard to the character and  
12 condition of the defendant, it is of the opinion that imprisonment  
13 would be a serious injustice which overrides the need to deter such  
14 conduct by others.

15 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
16 6, a person convicted of a second or subsequent offense under this  
17 subparagraph shall be sentenced to an extended term of  
18 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
19 subparagraph, an offense is considered a second or subsequent  
20 offense if the actor has at any time been convicted pursuant to  
21 paragraph (3), (4) or (5) of this subsection, or under any similar  
22 statute of the United States, this State or any other state for an  
23 offense that is substantially equivalent to paragraph (3), (4) or (5) of  
24 this subsection.

25 Nothing in this subparagraph shall be construed to preclude or  
26 limit any prosecution or conviction for the offense set forth in  
27 subparagraph (a) of this paragraph.

28 (6) For purposes of this subsection, a person who is depicted as  
29 or presents the appearance of being under the age of **[16] 18** in any  
30 photograph, film, videotape, computer program or file, video game  
31 or any other reproduction or reconstruction shall be rebuttably  
32 presumed to be under the age of **[16] 18**.

33 If the child who is depicted as engaging in, or who is caused to  
34 engage in, a prohibited sexual act or simulation of a prohibited  
35 sexual act is under the age of **[16] 18**, the actor shall be strictly  
36 liable and it shall not be a defense that the actor did not know that  
37 the child was under the age of **[16] 18**, nor shall it be a defense that  
38 the actor believed that the child was **[16] 18** years of age or older,  
39 even if such a mistaken belief was reasonable.

40 (7) For aggregation purposes, each depiction of the sexual  
41 exploitation or abuse of a child shall be considered a separate item,  
42 and each individual act of distribution of an item depicting the  
43 sexual exploitation or abuse of a child shall be considered a  
44 separate item. For purposes of determining the number of items  
45 depicting the sexual exploitation or abuse of a child for purposes of  
46 sentencing pursuant to subparagraph (a) of paragraph (5) of this  
47 subsection, the court shall aggregate all items involved, whether the  
48 act or acts constituting the violation occurred at the same time or at

1 different times and, with respect to distribution, whether the act or  
2 acts of distribution were to the same person or several persons or  
3 occurred at different times, provided that each individual act was  
4 committed within the applicable statute of limitations. For purposes  
5 of determining the number of items depicting the sexual  
6 exploitation or abuse of a child for purposes of sentencing pursuant  
7 to subparagraph (b) of paragraph (5) of this subsection, the court  
8 shall aggregate all items involved, whether the possession of such  
9 items occurred at the same time or at different times, provided that  
10 each individual act was committed within the applicable statute of  
11 limitations.

12 (cf: P.L.2001, c.291, s.1)

13

14 2. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to  
15 read as follows:

16 2. a. Notwithstanding any provision of law to the contrary, a  
17 judge imposing sentence on a person who has been convicted of  
18 aggravated sexual assault, sexual assault, aggravated criminal  
19 sexual contact, kidnapping pursuant to paragraph (2) of subsection  
20 c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging  
21 in sexual conduct which would impair or debauch the morals of the  
22 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the  
23 welfare of a child pursuant to paragraph (3) of subsection b. of  
24 N.J.S.2C:24-4, luring or an attempt to commit any of these offenses  
25 shall include, in addition to any sentence authorized by this Code, a  
26 special sentence of parole supervision for life. Notwithstanding any  
27 provision of law to the contrary, a court imposing sentence on a  
28 person who has been convicted of endangering the welfare of a  
29 child pursuant to paragraph (4) or (5) of subsection b. of  
30 N.J.S.2C:24-4, or an attempt to commit either of these offenses  
31 shall include, upon motion of the prosecutor, a special sentence of  
32 parole supervision for life in addition to any sentence authorized by  
33 Title 2C of the New Jersey Statutes, unless the court finds on the  
34 record that the special sentence is not needed to protect the  
35 community or deter the defendant from future criminal activity.

36 b. The special sentence of parole supervision for life required by  
37 this section shall commence immediately upon the defendant's  
38 release from incarceration. If the defendant is serving a sentence of  
39 incarceration for another offense at the time he completes the  
40 custodial portion of the sentence imposed on the present offense,  
41 the special sentence of parole supervision for life shall not  
42 commence until the defendant is actually released from  
43 incarceration for the other offense. Persons serving a special  
44 sentence of parole supervision for life shall remain in the legal  
45 custody of the Commissioner of Corrections, shall be supervised by  
46 the Division of Parole of the State Parole Board, shall be subject to  
47 the provisions and conditions set forth in subsection c. of section 3  
48 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and  
49 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and

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

38 c. A person sentenced to a term of parole supervision for life  
39 may petition the Superior Court for release from that parole  
40 supervision. The judge may grant a petition for release from a  
41 special sentence of parole supervision for life only upon proof by  
42 clear and convincing evidence that the person has not committed a  
43 crime for 15 years since the last conviction or release from  
44 incarceration, whichever is later, and that the person is not likely to  
45 pose a threat to the safety of others if released from parole  
46 supervision. Notwithstanding the provisions of section 22 of  
47 P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of  
48 parole supervision for life may be released from that parole  
49 supervision term only by court order as provided in this subsection.

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

15 e. A person who, while serving a special sentence of parole  
16 supervision for life imposed pursuant to this section, commits a  
17 violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5,  
18 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, section 1 of  
19 P.L.1993, c.291 (C.2C:13-6), N.J.S.2C:14-2, N.J.S.2C:14-3,  
20 N.J.S.2C:24-4, N.J.S.2C:18-2 when the offense is a crime of the  
21 second degree, or subsection a. of N.J.S.2C:39-4 shall be sentenced  
22 to an extended term of imprisonment as set forth in N.J.S.2C:43-7,  
23 which term shall, notwithstanding the provisions of N.J.S.2C:43-7  
24 or any other law, be served in its entirety prior to the person's  
25 resumption of the term of parole supervision for life.

26 f. The special sentence of parole supervision for life required by  
27 this section may include any of the following Internet access  
28 conditions:

29 (1) Prohibit the person from accessing or using a computer or  
30 any other device with Internet capability without the prior written  
31 approval of the court except the person may use a computer or any  
32 other device with Internet capability in connection with that  
33 person's employment or search for employment with the prior  
34 approval of the person's parole officer;

35 (2) Require the person to submit to periodic unannounced  
36 examinations of the person's computer or any other device with  
37 Internet capability by a parole officer, law enforcement officer or  
38 assigned computer or information technology specialist, including  
39 the retrieval and copying of all data from the computer or device  
40 and any internal or external peripherals and removal of such  
41 information, equipment or device to conduct a more thorough  
42 inspection;

43 (3) Require the person to submit to the installation on the  
44 person's computer or device with Internet capability, at the person's  
45 expense, one or more hardware or software systems to monitor the  
46 Internet use; **[and]**

47 (4) Require the person to submit to any other appropriate  
48 restrictions concerning the person's use or access of a computer or  
49 any other device with Internet capability**[.]** ; and



1       (5) Require the person to disclose all passwords used by the  
2 person to access any data, information, image, program, signal or  
3 file on the person's computer or any other device with Internet  
4 capability.

5 (cf: P.L.2007, c.219, s.3)

6  
7       3. N.J.S.2C:52-2 is amended to read as follows:

8       2C:52-2. Indictable Offenses.

9       a. In all cases, except as herein provided, wherein a person has  
10 been convicted of a crime under the laws of this State and who has  
11 not been convicted of any prior or subsequent crime, whether within  
12 this State or any other jurisdiction, and has not been adjudged a  
13 disorderly person or petty disorderly person on more than two  
14 occasions may, after the expiration of a period of 10 years from the  
15 date of his conviction, payment of fine, satisfactory completion of  
16 probation or parole, or release from incarceration, whichever is  
17 later, present a duly verified petition as provided in **[section]**  
18 N.J.S.2C:52-7 to the Superior Court in the county in which the  
19 conviction was entered praying that such conviction and all records  
20 and information pertaining thereto be expunged.

21       Notwithstanding the provisions of the preceding paragraph, a  
22 petition may be filed and presented, and the court may grant an  
23 expungement pursuant to this section, although less than 10 years  
24 has expired in accordance with the requirements of the preceding  
25 paragraph where the court finds:

26       (1) less than 10 years has expired from the satisfaction of a fine,  
27 but the 10-year time requirement is otherwise satisfied, and the  
28 court finds that the person substantially complied with any payment  
29 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so  
30 due to compelling circumstances affecting his ability to satisfy the  
31 fine; or

32       (2) at least five years has expired from the date of his conviction,  
33 payment of fine, satisfactory completion of probation or parole, or  
34 release from incarceration, whichever is later; the person has not  
35 been convicted of a crime, disorderly persons offense, or petty  
36 disorderly persons offense since the time of the conviction; and the  
37 court finds in its discretion that expungement is in the public  
38 interest, giving due consideration to the nature of the offense, and  
39 the applicant's character and conduct since conviction.

40       In determining whether compelling circumstances exist for the  
41 purposes of paragraph (1) of this subsection, a court may consider  
42 the amount of the fine or fines imposed, the person's age at the time  
43 of the offense, the person's financial condition and other relevant  
44 circumstances regarding the person's ability to pay.

45       Although subsequent convictions for no more than two  
46 disorderly or petty disorderly offenses shall not be an absolute bar  
47 to relief, the nature of those conviction or convictions and the  
48 circumstances surrounding them shall be considered by the court  
49 and may be a basis for denial of relief if they or either of them

1 constitute a continuation of the type of unlawful activity embodied  
2 in the criminal conviction for which expungement is sought.

3 b. Records of conviction pursuant to statutes repealed by this  
4 Code for the crimes of murder, manslaughter, treason, anarchy,  
5 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,  
6 robbery, embracery, or a conspiracy or any attempt to commit any  
7 of the foregoing, or aiding, assisting or concealing persons accused  
8 of the foregoing crimes, shall not be expunged.

9 Records of conviction for the following crimes specified in the  
10 New Jersey Code of Criminal Justice shall not be subject to  
11 expungement: **[Section]** N.J.S.2C:11-1 et seq. (Criminal  
12 Homicide), except death by auto as specified in **[section]**  
13 N.J.S.2C:11-5; **[section]** N.J.S.2C:13-1 (Kidnapping); **[section]**  
14 2C:13-6 **section 1 of P.L.1993, c.291 (C.2C:13-6)** (Luring or  
15 Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human  
16 Trafficking); **[section]** N.J.S.2C:14-2 (Sexual Assault or  
17 Aggravated Sexual Assault); **[section]** N.J.S.2C:14-3a (Aggravated  
18 Criminal Sexual Contact); if the victim is a minor, **[section]**  
19 N.J.S.2C:14-3b (Criminal Sexual Contact); if the victim is a minor  
20 and the offender is not the parent of the victim, **[section]**  
21 N.J.S.2C:13-2 (Criminal Restraint) or **[section]** N.J.S.2C:13-3  
22 (False Imprisonment); **[section]** N.J.S.2C:15-1 (Robbery);  
23 **[section]** N.J.S.2C:17-1 (Arson and Related Offenses); **[section]**  
24 N.J.S.2C:24-4a. (Endangering the welfare of a child by engaging in  
25 sexual conduct which would impair or debauch the morals of the  
26 child); **[section]** N.J.S.2C:24-4b(4) (Endangering the welfare of a  
27 child); **[section]** N.J.S.2C:24-4b. (3) (Causing or permitting a child  
28 to engage in a prohibited sexual act); **[section]** N.J.S.2C:24-  
29 4b.(5)(a) **[(Selling or manufacturing child pornography)]**  
30 **(Distributing, possessing with intent to distribute or using a file-**  
31 **sharing program to store items depicting the sexual exploitation or**  
32 **abuse of a child);** N.J.S.2C:24-4b.(5)(b) **(Possessing items depicting**  
33 **the sexual exploitation or abuse of a child);** **[section]** N.J.S.2C:28-1  
34 (Perjury); **[section]** N.J.S.2C:28-2 (False Swearing); **[section]**  
35 N.J.S.2C:34-1b.(4) (Knowingly promoting the prostitution of the  
36 actor's child); section 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism);  
37 subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing  
38 or Possessing Chemical Weapons, Biological Agents or Nuclear or  
39 Radiological Devices); and conspiracies or attempts to commit such  
40 crimes.

41 Records of conviction for any crime committed by a person  
42 holding any public office, position or employment, elective or  
43 appointive, under the government of this State or any agency or  
44 political subdivision thereof and any conspiracy or attempt to  
45 commit such a crime shall not be subject to expungement if the  
46 crime involved or touched such office, position or employment.

1 c. In the case of conviction for the sale or distribution of a  
2 controlled dangerous substance or possession thereof with intent to  
3 sell, expungement shall be denied except where the crimes involve:

4 (1) Marijuana, where the total quantity sold, distributed or  
5 possessed with intent to sell was 25 grams or less;

6 (2) Hashish, where the total quantity sold, distributed or  
7 possessed with intent to sell was five grams or less; or

8 (3) Any controlled dangerous substance provided that the  
9 conviction is of the third or fourth degree, where the court finds that  
10 expungement is consistent with the public interest, giving due  
11 consideration to the nature of the offense and the petitioner's  
12 character and conduct since conviction.

13 d. In the case of a State licensed physician or podiatrist convicted  
14 of an offense involving drugs or alcohol or pursuant to section 14 or  
15 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the court shall  
16 notify the State Board of Medical Examiners upon receipt of a  
17 petition for expungement of the conviction and records and  
18 information pertaining thereto.

19 (cf: PL.2009, c.188, s.1)

20

21 4. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended as  
22 follows:

23 2. a. A court imposing a sentence of incarceration for a crime of  
24 the first or second degree enumerated in subsection d. of this  
25 section shall fix a minimum term of 85% of the sentence imposed,  
26 during which the defendant shall not be eligible for parole.

27 b. The minimum term required by subsection a. of this section  
28 shall be fixed as a part of every sentence of incarceration imposed  
29 upon every conviction of a crime enumerated in subsection d. of  
30 this section, whether the sentence of incarceration is determined  
31 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any  
32 other provision of law, and shall be calculated based upon the  
33 sentence of incarceration actually imposed. The provisions of  
34 subsection a. of this section shall not be construed or applied to  
35 reduce the time that must be served before eligibility for parole by  
36 an inmate sentenced to a mandatory minimum period of  
37 incarceration. Solely for the purpose of calculating the minimum  
38 term of parole ineligibility pursuant to subsection a. of this section,  
39 a sentence of life imprisonment shall be deemed to be 75 years.

40 c. Notwithstanding any other provision of law to the contrary  
41 and in addition to any other sentence imposed, a court imposing a  
42 minimum period of parole ineligibility of 85 percent of the sentence  
43 pursuant to this section shall also impose a five-year term of parole  
44 supervision if the defendant is being sentenced for a crime of the  
45 first degree, or a three-year term of parole supervision if the  
46 defendant is being sentenced for a crime of the second degree. The  
47 term of parole supervision shall commence upon the completion of  
48 the sentence of incarceration imposed by the court pursuant to  
49 subsection a. of this section unless the defendant is serving a

1 sentence of incarceration for another crime at the time he completes  
2 the sentence of incarceration imposed pursuant to subsection a., in  
3 which case the term of parole supervision shall commence  
4 immediately upon the defendant's release from incarceration.  
5 During the term of parole supervision the defendant shall remain in  
6 release status in the community in the legal custody of the  
7 Commissioner of the Department of Corrections and shall be  
8 supervised by the State Parole Board as if on parole and shall be  
9 subject to the provisions and conditions of section 3 of P.L.1997,  
10 c.117 (C.30:4-123.51b).

11 d. The court shall impose sentence pursuant to subsection a. of  
12 this section upon conviction of the following crimes or an attempt  
13 or conspiracy to commit any of these crimes:

- 14 (1) N.J.S.2C:11-3, murder;
- 15 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 16 (3) N.J.S.2C:11-5, vehicular homicide;
- 17 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 18 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),  
19 disarming a law enforcement officer;
- 20 (6) N.J.S.2C:13-1, kidnapping;
- 21 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 22 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of  
23 subsection c. of N.J.S.2C:14-2, sexual assault;
- 24 (9) N.J.S.2C:15-1, robbery;
- 25 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 26 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated  
27 arson;
- 28 (12) N.J.S.2C:18-2, burglary;
- 29 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 30 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),  
31 booby traps in manufacturing or distribution facilities;
- 32 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 33 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
- 34 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or  
35 possessing chemical weapons, biological agents or nuclear or  
36 radiological devices; **[or]**
- 37 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first  
38 degree; or
- 39 (19) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or  
40 permitting a child to engage in a prohibited sexual act, knowing that  
41 the act may be reproduced or reconstructed in any manner, or be  
42 part of an exhibition or performance.

43 e. (Deleted by amendment, P.L.2001, c.129).  
44 (cf: P.L.2007, c.341, s.6)

45  
46 5. This act shall take effect immediately.

STATEMENT

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This bill revises the statutes concerning child pornography, to update and more closely harmonize State law with federal law governing these offenses.

This bill incorporates new terminology for child pornography; establishes new gradations and enhanced penalties applicable to child pornography possession, manufacturing and distribution offenses; and bases sentencing provisions on the number of items of child pornography involved, similar to federal law.

Unlike federal law, current State law makes no distinction between the collector of child pornography who possesses and views thousands of computer files or items and the individual who may possess or view only a handful of such files or items. The federal law grades child pornography possession based upon the number of files possessed, imposing more severe punishment on those who possess more files. Those who collect such items in large quantities bear a greater share of the responsibility for making the market more profitable and creating a demand that further encourages the creation of new child pornography, subjecting even more children to exploitation. Current State law also makes no specific provision for repeat child pornography offenders. Moreover, current State law does not adequately address situations enabled by evolving computer technology, such as file-sharing programs and peer-to-peer networks that permit remote sharing of child pornography images among collectors.

This bill revises current law as follows:

- Divides the child endangerment offense in N.J.S.2C:24-4 into two separate components. This revision will establish separate provisions for the offense of engaging in sexual conduct which would impair or debauch the morals of the child and for the offense of causing the child such harm that would make him or her an abused or neglected child. This provision also will simplify classification of the offender under Megan’s Law.
- Upgrades from a crime of the second degree to a crime of the first degree the crime of causing or permitting a child to engage in a prohibited sex act or simulation for child pornography purposes, regardless of the offender’s relationship to the child. Under current law, it is a first degree crime only if the offender is a parent, guardian and person with care or custody of the child.
- Increases the age benchmark of “child” from 16 to 18, to conform New Jersey to the federal standard and the majority of other states.
- Replaces current terminology used to describe child pornography items with the more visceral phrase “item depicting the sexual exploitation or abuse of a child,” which is defined as a photograph, film, video, an electronic, electromagnetic or digital recording, an image stored or maintained in a computer program or file or in a portion of a file, or any other reproduction or

1 reconstruction which depicts a child engaging in a prohibited sexual  
2 act or in the simulation of such an act. This is a technical and  
3 clarifying revision to the statute.

4 • Reformulates the provisions governing the sale of child  
5 pornography to more closely parallel the penalty structure for  
6 distribution of drugs under chapter 35 of Title 2C of the New Jersey  
7 Statutes, creating a provision penalizing distribution and another  
8 provision penalizing possession with intent to distribute.

9 • Defines the term “distribute” as to sell, or to manufacture, give,  
10 provide, lend, trade, mail, deliver, publish, circulate, disseminate,  
11 present, exhibit, display, share, advertise, offer, or make available  
12 via the Internet or by any other means, whether or not for pecuniary  
13 gain. This also is a technical and clarifying revision to the statute.  
14 In addition, the definition specifies that it also includes an  
15 agreement or attempt to distribute.

16 • Incorporates a provision to specifically address making child  
17 pornography items available through the use of a file-sharing  
18 program, which may be a computer program, application or  
19 software that enables the user to participate in a peer to-peer  
20 network. Under the bill’s provisions, it would be a crime of the  
21 second degree for a person, using a file-sharing program, to  
22 knowingly store or maintain an item depicting the sexual  
23 exploitation or abuse of a child which is designated as available for  
24 searching by or copying to one or more other computers. These  
25 file-sharing programs allow the user of a computer on which they  
26 are installed to designate files as available for searching by and  
27 copying to one or more other computers, to transmit those files  
28 directly to one or more other computers, and to request the  
29 transmission of such designated files directly from one or more  
30 other computers.

31 • Makes a defendant strictly liable for failing to designate an item  
32 of child pornography as not available on the file-sharing program;  
33 no proof would be required to show actual sharing or intent to  
34 distribute.

35 • Enhances penalties for distribution offenses. For offenses  
36 involving 25 or more items, the offender would be sentenced to a  
37 mandatory minimum term of imprisonment with a period of parole  
38 ineligibility. Repeat offenders who had been convicted of any New  
39 Jersey, federal, or other jurisdiction’s child pornography  
40 distribution or possession offense would receive an extended term.

41 • Enhances criminal penalties for possession offenses. These  
42 offenses would be upgraded from a crime of the fourth degree to a  
43 crime of the third degree. For possession offenses involving 100 or  
44 more items, the offender would face a mandatory term of  
45 imprisonment, unless the court finds imprisonment would be a  
46 serious injustice which overrides the need to deter such conduct by  
47 others. Repeat offenders who had been convicted of any New  
48 Jersey, federal, or other jurisdiction’s child pornography  
49 distribution or possession offense would receive an extended term.

1       • Subjects persons convicted of child pornography distribution  
2 and possession offenses to a special sentence of parole supervision  
3 for life pursuant to N.J.S.2C:43-6.4. The court, upon motion of the  
4 prosecutor, would impose the special sentence unless the court finds  
5 that such a sentence is not needed to protect the community or deter  
6 the defendant from future criminal activity.

7       • Adds child pornography possession to the crimes that cannot be  
8 expunged under N.J.S. 2C:52-2.

9       Finally, the bill adds the crime of causing or permitting a child to  
10 engage in a prohibited sexual act, knowing or intending that the  
11 prohibited act be reproduced or reconstructed in some manner or be  
12 part of an exhibition or performance, to the list of crimes subject to  
13 the provisions of the No Early Release Act (section 2 of P.L.1997,  
14 c.117 (C.2C:43-7.2)). Persons convicted of a crime under the No  
15 Early Release Act must serve 85% of their court imposed sentence  
16 before becoming eligible for parole consideration.

**FISCAL NOTE**  
**ASSEMBLY, No. 3740**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: MAY 9, 2013

**SUMMARY**

- Synopsis:** Revises statutes and enhances penalties for offenses involving child pornography; makes crime of causing a child to engage in a prohibited sexual act subject to “No Early Release Act.”
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** Department of Corrections, State Parole Board, Judiciary.

**Executive 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 Cost</b>	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The Department of Corrections (DOC) projects that assuming institutional space would be available to house the inmates subject to the No Early Release Act (NERA), this portion of the bill would only have a marginal cost in increase in inmate food, wages and clothing. The DOC also notes that in some aspects, the bill would widen the prosecution’s net increasing the number of committed offenders. Because these are new categories of offenses, there is no data with which to determine the number of additional individuals who would be committed to the custody of the DOC.
- The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.
- The Administrative Office of the Courts (AOC) states that the Judiciary is unable to estimate how many new cases may be created as a result of the bill’s expansion of the benchmark age which defines a child. As a result, an estimate regarding the fiscal impact the bill would have on the Judiciary is not feasible.



## **BILL DESCRIPTION**

Assembly Bill No. 3740 of 2013 revises the statutes concerning child pornography, to update and more closely harmonize State law with federal law governing these offenses.

This bill incorporates new terminology for child pornography; establishes new gradations and enhanced penalties applicable to child pornography possession, manufacturing and distribution offenses; and bases sentencing provisions on the number of items of child pornography involved, similar to federal law.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

The DOC states that the bill implements a number of provisions regarding child pornography (2C:24-4B). In 2012, there were 14 individuals committed to the DOC on a child pornography conviction.

The DOC states that based on FY 2012 commitments, the department would require an additional 11 bed spaces to house those inmates who would be subject to the NERA, which mandates that offenders under NERA must serve 85 percent of the sentence imposed. The department projects that assuming institutional space would be available to house the additional 11 inmates, the bill's enactment would only have a marginal cost increase for inmate food, wages and clothing. The DOC also notes that in some aspects, the bill would widen the prosecution's net increasing the number of committed offenders. Because these are new categories of offenses, there is no data with which to determine the number of additional individuals who would be committed to the custody of the DOC.

#### **State Parole Board**

The State Parole Board states that while there would most likely be some cost increases related to the implementation of the bill, they are difficult to project and probably would not be significant.

#### **Judiciary**

The AOC states that the Judiciary does not collect data which could identify the number of cases that might be impacted by the revised gradations or enhanced penalties specified in the bill. Further, the Judiciary is unable to estimate how many new cases may be created as a result of the bill's expansion of the benchmark age which defines a child. As a result, an estimate regarding the fiscal impact the bill would have on the Judiciary is not feasible.

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

The OLS concurs with the Executive estimate.

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

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## Governor Chris Christie Enacts Legislation Dramatically Strengthening New Jersey Child Pornography Laws

Wednesday, August 14, 2013

Tags: [Bill Action](#)

### Signs Other Public Safety Legislation, Including "Nikki's Law"

**Trenton, NJ** – Taking an uncompromising position on the need to protect innocent children from predators and a lifetime of victimization as targets of pomographers, Governor Chris Christie today signed legislation to strengthen penalties for offenses involving child pornography and subjects anyone convicted of using a child to engage in a sexual act to the state's "No Early Release Act." Governor Christie also acted on other public safety legislation today, including "Nikki's Law," requiring the placement of variable message signs on New Jersey highways to remind motorists of state law prohibiting texting while driving.

The child pomography legislation, S-2493, which passed both houses of the legislature unanimously, adds considerable teeth to state law and brings it up to the standard of much stricter federal laws in terms of enforcement and sentencing. Governor Christie, the former United States Attorney for New Jersey whose office prosecuted many such individuals, said New Jersey will now be able to provide both the punishment and deterrent value of federal law.

"I was always shocked to see some of our defendants get years or even decades in federal prison while some of the same criminal violations at the state level would result in no jail time," Governor Christie said. "These are among the most abhorrent crimes imaginable, in which digital images are made available to a worldwide audience of remorseless creators and consumers of these vile images of mere children. This is permanent victimization of a child or youthful victim already subjected to horrifying abuse."

The bill was first introduced by Senator Kevin O'Toole, who worked closely in developing the legislation with former Attorney General Jeffrey Chiesa, who also was a federal prosecutor alongside the Governor.

"Governor Christie's action today cements the most significant public safety measure passed by the state legislature in years," said Senator O'Toole. "This Act will flat out prevent and deter child pomography in New Jersey, where the prior laws did hardly anything to stop the most disturbing predators from destroying the lives of children while profiting off of their sick fixes."

Among the reforms enacted by the legislation:

- Imposes mandatory minimum prison sentences for convictions of distributing at least 25 images of child pomography, with a first-time offender serving at least five years and repeat offenders up to 10 years.
- Requires that anyone convicted of engaging a child in pomography serve at least 85 percent of their prison term (No Early Release Act).
- Removes ambiguity in current law that sharing child pomography via computer file-sharing or peer-to-peer software is considered distribution rather than possession.
- Makes it a first-degree crime for non-parents and guardians to engage a child in pomography. It already applies in that way to parents.

Below is the full list of bills signed by Governor Christie today:

**S-2493/A-3735 (O'Toole, Sweeney, Norcross/Mainor, Rible, Rumana, Wilson, Russo, Caride, Jimenez, Angelini, Bramnick)** - Revises statutes and enhances penalties for offenses involving child pomography; makes crime of causing a child to engage in a prohibited sexual act subject to "No Early Release Act"

**A-495/S-79 (Albano, Wilson, DiMaio/Sarlo, Bateman, Van Drew)** – Creates crime of threatening the life of certain animals; designated as Dano and Valder's Law

**A-606/S-1709 (Spencer, Coutinho, Quijano/Rice)** – Establishes crime of entering into certain restricted airport areas

**A-945/S-2405 (Riley, Benson, Lampitt/Madden, Beach)** – Allows person with diabetes to voluntarily make notation on drivers license

**A-3760/S-2597 (Oliver, Conaway, Eustace/Ruiz, Vitale)** – Requires that certain HIV testing be performed within 48 hours of request by victim

**A-3873/S-2406 (Wisniewski, Prieto, Moriarty, Conaway/Madden, Norcross)** – "Nikki's Law"; requires DOT Commissioner to erect signs and use variable message signs to inform motorists of State law prohibiting texting while driving

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**Press Contact:**  
Michael Drewniak  
Colin Reed  
609-777-2600

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