

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 ¹1. 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:

¹Assembly 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)]¹

21 ¹1. 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.¹

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.”