

# SENATE, No. 14

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 9, 2007

**Sponsored by:**

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**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

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

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.

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

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

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

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

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

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

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

31 (1) the member's length of service;

32 (2) the basis for retirement;

33 (3) the extent to which the member's pension has vested;

34 (4) the duties of the particular member;

35 (5) the member's public employment history and record covered  
36 under the retirement system;

37 (6) any other public employment or service;

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

41 (8) the relationship between the misconduct and the member's  
42 public duties;

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

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

Matter underlined thus is new matter.

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

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

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

15

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (3) The Constitution so provides.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30

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

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

1 the following crimes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

38

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

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

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

3

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

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

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

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

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

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

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

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

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

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

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

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

9

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

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

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

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

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

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

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

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

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

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

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

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

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

1 for prosecution;

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

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

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

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

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

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

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

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

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

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

3

4

STATEMENT

5

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

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

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

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

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

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

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

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

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

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

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

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

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

36       (13) N.J.S.2C:28-1, perjury;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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