

ASSEMBLY, No. 4197

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblywoman MILA M. JASEY

District 27 (Essex)

Co-Sponsored by:

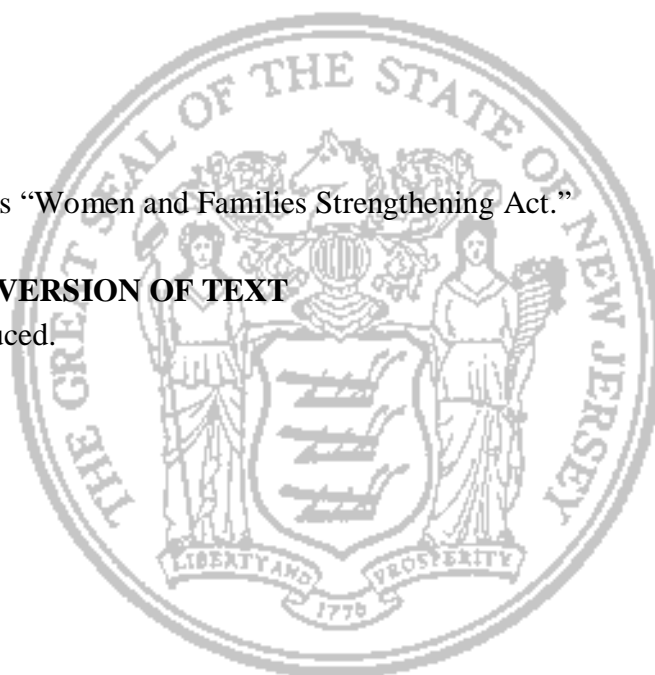
Assemblyman Schaer, Assemblywomen Pou and Rodriguez

SYNOPSIS

Establishes "Women and Families Strengthening Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/4/2009)

1 AN ACT concerning the sentencing and incarceration of convicted
2 offenders, addressing the impact of certain related matters on
3 women and families; amending and supplementing various parts
4 of the statutory law; and repealing section 3 of P.L.1999, c.427.

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

8
9 1. Section 5 of P.L.1997, c.14 (C.44:10-48) is amended to read
10 as follows:

11 5. a. Only those persons who are United States citizens or
12 eligible aliens shall be eligible for benefits under the Work First
13 New Jersey program. Single adults or couples without dependent
14 children who are legal aliens who meet federal requirements and
15 have applied for citizenship, shall not receive benefits for more than
16 six months unless (1) they attain citizenship, or (2) they have passed
17 the English language and civics components for citizenship, and are
18 awaiting final determination of citizenship by the federal
19 Immigration and Naturalization Service.

20 b. The following persons shall not be eligible for assistance and
21 shall not be considered to be members of an assistance unit:

22 (1) non-needy caretakers, except that the eligibility of a
23 dependent child shall not be affected by the income or resources of
24 a non-needy caretaker;

25 (2) Supplemental Security Income recipients, except for the
26 purposes of receiving emergency assistance benefits pursuant to
27 section 8 of P.L.1997, c.14 (C.44:10-51);

28 (3) illegal aliens;

29 (4) other aliens who are not eligible aliens;

30 (5) a person absent from the home who is incarcerated in a
31 federal, State, county or local corrective facility or under the
32 custody of correctional authorities, except as provided by regulation
33 of the commissioner;

34 (6) a person who: is fleeing to avoid prosecution, custody or
35 confinement after conviction, under the laws of the jurisdiction
36 from which the person has fled, for a crime or an attempt to commit
37 a crime which is a felony or a high misdemeanor under the laws of
38 the jurisdiction from which the person has fled; or is violating a
39 condition of probation or parole imposed under federal or state law;

40 (7) **[a person convicted on or after August 22, 1996 under**
41 **federal or state law of any offense which is classified as a felony or**
42 **crime, as appropriate, under the laws of the jurisdiction involved**
43 **and which has as an element the possession, use, or distribution of a**
44 **controlled substance as defined in section 102(6) of the federal**
45 **"Controlled Substances Act" (21 U.S.C.s.802 (6)); except that a**

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 person convicted of any such offense which has as an element the
2 possession or use only of such a controlled substance may be
3 eligible for Work First New Jersey benefits, and food stamp
4 benefits under the federal "Food Stamp Act of 1977," Pub.L.95-113
5 (7 U.S.C.s.2011 et seq.), if the person enrolls in or has completed a
6 licensed residential drug treatment program. Eligibility for benefits
7 shall commence upon the person's enrollment in the drug treatment
8 program, and shall continue during the person's active participation
9 in, and upon completion of, the drug treatment program, except that
10 during the person's active participation in a drug treatment program
11 and the first 60 days after completion of a drug treatment program,
12 the commissioner shall provide for testing of the person to
13 determine if the person is free of any controlled substance. If the
14 person is determined to not be free of any controlled substance
15 during the 60-day period, the person's eligibility for benefits
16 pursuant to this paragraph shall be terminated; except that this
17 provision shall not apply to the use of methadone by a person who
18 is actively participating in a drug treatment program, as prescribed
19 by the drug treatment program. The commissioner, in consultation
20 with the Commissioner of Health and Senior Services, shall adopt
21 regulations to carry out the provisions of this paragraph, which shall
22 include the criteria for determining active participation in and
23 completion of a drug treatment program.

24 Cash benefits, less a personal needs allowance, for a person
25 receiving benefits under the Work First New Jersey program who is
26 enrolled in and actively participating in a licensed residential drug
27 treatment program shall be issued directly to the drug treatment
28 provider to offset the cost of treatment. Upon completion of the
29 drug treatment program, the cash benefits shall be then issued to the
30 person. In the case of a delay in issuing cash benefits to a person
31 receiving Work First New Jersey benefits who has completed the
32 drug treatment program, the drug treatment provider shall transmit
33 to the person those funds received on behalf of that person after
34 completion of the drug treatment program] (Deleted by amendment,
35 P.L. c.) (pending before the Legislature as this bill);

36 (8) a person found to have fraudulently misrepresented his
37 residence in order to obtain means-tested, public benefits in two or
38 more states or jurisdictions, who shall be ineligible for benefits for
39 a period of 10 years from the date of conviction in a federal or state
40 court; or

41 (9) a person who intentionally makes a false or misleading
42 statement or misrepresents, conceals or withholds facts for the
43 purpose of receiving benefits, who shall be ineligible for benefits
44 for a period of six months for the first violation, 12 months for the
45 second violation, and permanently for the third violation.

46 c. A person who makes a false statement with the intent to
47 qualify for benefits and by reason thereof receives benefits for

1 which the person is not eligible is guilty of a crime of the fourth
2 degree.

3 d. Pursuant to the authorization provided to the states under 21
4 U.S.C. s.862a(d)(1), this State elects to exempt all persons
5 domiciled in New Jersey from the application of 21 U.S.C.
6 s.862a(a).
7 (cf: P.L.1999, c.427, s.2)

8
9 2. (New section) a. All telephone service contracts for inmates
10 in State correctional facilities shall be subject to the procurement
11 provisions set forth in chapter 34 of Title 52 of the Revised
12 Statutes; provided, however, the State Treasurer shall contract with
13 the qualified vendor who proposes the lowest per minute rate and
14 does not impose a surcharge for each telephone call.

15 b. A State department shall not accept or receive revenue in
16 excess of its actual operating cost for establishing and administering
17 telephone services as provided in subsection a. of this section.

18 c. The Department of Corrections shall make available either a
19 prepaid or collect call system, or a combination thereof, for
20 telephone services for inmates.

21 d. Under a prepaid system, funds may be deposited into an
22 inmate account in order to pay for telephone calls, provided that
23 nothing in this section shall require the department to provide or
24 administer a prepaid system.

25 e. For the purposes of this section a "collect call system" shall
26 mean a call system pursuant to which recipients are billed for the
27 cost of an accepted telephone call initiated by an inmate.

28 f. The provider of the inmate telephone service, as an additional
29 means of payment, shall permit the recipient of inmate collect calls
30 to establish an account with that provider in order to deposit funds
31 for advance payment of those collect calls.

32 g. The department shall establish rules and regulations or
33 departmental procedures to ensure that any inmate telephone call
34 system established by this act provides reasonable security
35 measures to preserve the safety and security of each State
36 correctional facility, staff member, and person outside a facility
37 who may receive inmate telephone calls.

38
39 3. N.J.S.2C:44-6 is amended to read as follows:

40 2C:44-6 Procedure on sentence; presentence investigation and
41 report.

42 a. The court shall not impose sentence without first ordering a
43 presentence investigation of the defendant and according due
44 consideration to a written report of such investigation when
45 required by the Rules of Court. The court may order a presentence
46 investigation in any other case.

47 b. The presentence investigation shall include an analysis of the
48 circumstances attending the commission of the offense, the

1 defendant's history of delinquency or criminality, family situation,
2 financial resources, including whether or not the defendant is an
3 enrollee or covered person under a health insurance contract, policy
4 or plan, debts, including any amount owed for a fine, assessment or
5 restitution ordered in accordance with the provisions of Title 2C,
6 any obligation of child support including any child support
7 delinquencies, employment history, personal habits, the disposition
8 of any charge made against any codefendants, the defendant's
9 history of civil commitment, any disposition which arose out of
10 charges suspended pursuant to N.J.S.2C:4-6 including the records
11 of the disposition of those charges and any acquittal by reason of
12 insanity pursuant to N.J.S.2C:4-1, and any other matters that the
13 probation officer deems relevant or the court directs to be included.
14 The defendant shall disclose any information concerning any
15 history of civil commitment. The report shall also include a
16 medical history of the defendant and a complete psychological
17 evaluation of the defendant in any case in which the defendant is
18 being sentenced for a first or second degree crime involving
19 violence and:

20 (1) the defendant has a prior acquittal by reason of insanity
21 pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to
22 N.J.S.2C:4-6; or

23 (2) the defendant has a prior conviction for murder pursuant to
24 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant
25 to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1,
26 endangering the welfare of a child which would constitute a crime
27 of the second degree pursuant to N.J.S.2C:24-4, or stalking which
28 would constitute a crime of the third degree pursuant to P.L.1992,
29 c.209 (C.2C:12-10); or

30 (3) the defendant has a prior diagnosis of psychosis.

31 The court, in its discretion and considering all the appropriate
32 circumstances, may waive the medical history and psychological
33 examination in any case in which a term of imprisonment including
34 a period of parole ineligibility is imposed. In any case involving a
35 conviction of N.J.S.2C:24-4, endangering the welfare of a child;
36 N.J.S.2C:18-3, criminal trespass, where the trespass was committed
37 in a school building or on school property; section 1 of P.L.1993,
38 c.291 (C.2C:13-6), attempting to lure or entice a child with purpose
39 to commit a criminal offense; section 1 of P.L.1992, c.209
40 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the
41 victim of the offense is a child under the age of 18, the investigation
42 shall include a report on the defendant's mental condition.

43 The presentence report shall also include a report on any
44 compensation paid by the Victims of Crime Compensation **[Board]**
45 Office as a result of the commission of the offense and, in any case
46 where the victim chooses to provide one, a statement by the victim
47 of the offense for which the defendant is being sentenced. The
48 statement may include the nature and extent of any physical harm or

1 psychological or emotional harm or trauma suffered by the victim,
2 the extent of any loss to include loss of earnings or ability to work
3 suffered by the victim and the effect of the crime upon the victim's
4 family. The probation department shall notify the victim or nearest
5 relative of a homicide victim of his right to make a statement for
6 inclusion in the presentence report if the victim or relative so
7 desires. Any such statement shall be made within 20 days of
8 notification by the probation department.

9 The presentence report shall specifically include an assessment
10 of the gravity and seriousness of harm inflicted on the victim,
11 including whether or not the defendant knew or reasonably should
12 have known that the victim of the offense was particularly
13 vulnerable or incapable of resistance due to advanced age,
14 disability, ill-health, or extreme youth, or was for any other reason
15 substantially incapable of exercising normal physical or mental
16 power of resistance.

17 c. If, after the presentence investigation, the court desires
18 additional information concerning an offender convicted of an
19 offense before imposing sentence, it may order any additional
20 psychological or medical testing of the defendant.

21 d. Disclosure of any presentence investigation report or
22 psychiatric examination report shall be in accordance with law and
23 the Rules of Court, except that information concerning the
24 defendant's financial resources shall be made available upon request
25 to the Victims of Crime Compensation **[Board]** Office or to any
26 officer authorized under the provisions of section 3 of P.L.1979,
27 c.396 (C.2C:46-4) to collect payment on an assessment, restitution
28 or fine and that information concerning the defendant's coverage
29 under any health insurance contract, policy or plan shall be made
30 available, as appropriate to the Commissioner of **[the Department**
31 **of]** Corrections and to the chief administrative officer of a county
32 jail in accordance with the provisions of P.L.1995, c.254 (C.30:7E-
33 1 et al.).

34 e. The court shall not impose a sentence of imprisonment for an
35 extended term unless the ground therefor has been established at a
36 hearing after the conviction of the defendant and on written notice
37 to him of the ground proposed. The defendant shall have the right
38 to hear and controvert the evidence against him and to offer
39 evidence upon the issue.

40 f. (Deleted by amendment, P.L.1986, c.85).
41 (cf: P.L.1997, c.216, s.2)

42

43 4. (New section) a. There is established a Commission to
44 Examine Strategies for Strengthening the Familial Bond Between
45 Children and Incarcerated Parents.

46 The commission shall consist of 21 members as follows:

47 (1) two members of the Senate to be appointed by the President
48 of the Senate who shall each be of different political parties;

- 1 (2) two members of the General Assembly to be appointed by the
2 Speaker of the General Assembly who shall each be of different
3 political parties;
- 4 (3) the Commissioners of Corrections, Education, Community
5 Affairs, Human Services, and Children and Families, the Chairman
6 of the State Parole Board, and the Executive Director of the
7 Juvenile Justice Commission, or their designees, who shall serve
8 ex-officio;
- 9 (4) eight public members appointed by the Governor who shall
10 include a representative of the Association for Children of New
11 Jersey, a representative of Legal Services of New Jersey, a
12 representative of the law enforcement community, a child
13 protection services caseworker with experience in working with
14 children of incarcerated parents, a licensed social worker with
15 experience or expertise in working with incarcerated parents and
16 their families, a parent of a child whose other parent is incarcerated,
17 a person whose parent has been incarcerated, and a member of the
18 clergy; and
- 19 (5) two public members with an interest in children's issues, one
20 of whom one shall be appointed by the President of the Senate and
21 one of whom shall be appointed by the Speaker of the General
22 Assembly.
- 23 b. Vacancies in the membership of the commission shall be filled
24 in the same manner provided for in the original appointments. The
25 public members of the commission shall serve without
26 compensation but may be reimbursed for travel and other
27 miscellaneous expenses necessary to perform their duties, within
28 the limits of funds made available to the commission for its
29 purposes.
- 30 c. The commission shall organize as soon as practicable but no
31 later than 60 days following the appointment of its members and
32 shall select a chairperson and vice-chairperson from among the
33 members. The chairperson shall appoint a secretary who need not
34 be a member of the commission.
- 35 d. The commission may meet at the call of its chair and hold
36 hearings at the times and in the places it may deem appropriate and
37 necessary to fulfill its charge. The commission shall be entitled to
38 call to its assistance and avail itself of the services of the employees
39 of any State, county or municipal department, board, bureau,
40 commission or agency as it may require and as may be available to
41 it for its purposes.
- 42 e. The commission may seek the advice of experts, such as
43 persons specializing in the fields of psychology, education, criminal
44 or family law or other related fields as deemed appropriate by the
45 membership of the commission.
- 46 f. The Office of Legislative Services shall provide staff services
47 and other necessary support to the commission.
- 48 g. The commission shall examine the policies, procedures and

1 operations of the State and county correctional systems in order to
2 develop recommendations regarding the most effective methods of:

3 (1) developing strategies for strengthening the familial bond
4 between children and incarcerated parents, when strengthening the
5 familial bond is in the best interests of the child; and

6 (2) reducing antisocial behavior and attachment disorders of
7 children of incarcerated parents and the intergenerational cycle of
8 criminality common among families of incarcerated parents.

9 h. The commission shall present a report of its findings and
10 recommendations to the Governor and the Legislature no later than
11 12 months after the date of its initial meeting. The commission
12 shall expire 30 days after the filing of the report.

13

14 5. Section 5 of P.L.1976, c.98 (C.30:1B-5) is amended to read as
15 follows:

16 5. a. The commissioner may appoint one deputy and such
17 assistant commissioners as he shall deem necessary to serve at the
18 pleasure of the commissioner. Each deputy or assistant
19 commissioner shall exercise such powers and perform such duties
20 as the commissioner shall prescribe. The commissioner shall
21 designate one department official to exercise the powers and
22 perform the duties of the commissioner during his disability or
23 absence. Notwithstanding the provisions of this subsection, the
24 commissioner shall designate an assistant commissioner who shall
25 be responsible for establishing and monitoring polices affecting
26 incarcerated mothers with children.

27 b. The commissioner shall have the authority to establish,
28 organize and maintain in the department such administrative
29 divisions to perform all necessary personnel, planning, budget and
30 finance, facilities and equipment services for the department and to
31 assign such personnel thereto as he shall deem necessary.

32 (cf: P.L.1976, c.98, s.5)

33

34 6. (New section) During initial classification, the commissioner
35 shall make every effort to assign an inmate to a State correctional
36 facility in close proximity to the residence of the inmate's family.

37

38 7. (New section) The commissioner shall not confine a female
39 inmate in the same correctional facility as a male inmate if that
40 confinement subjects the female inmate to conditions more
41 oppressive or restrictive than conditions to which male inmates are
42 subjected.

43

44 8. (New section) The commissioner shall semiannually submit
45 all inmate complaints submitted to the department concerning
46 female inmates to the Director of the Division on Women in the
47 Department of Community Affairs established pursuant to the
48 "Division on Women Act of 1974," P.L.1974, c.87 (C.52:27D-43.8

1 et seq.). This shall be in addition to the requirement that the
2 commissioner semiannually compile and submit all records of all
3 inmate complaints to the Public Advocate pursuant to section 3 of
4 P.L. , c. (C.) (pending before the Legislature as section 3
5 of Assembly Bill No. 4199).

6
7 9. (New section) Disclosure of the contents of a presentence
8 report to a defendant sentenced to a period of incarceration shall
9 include the provision of information as to the enforcement of child
10 support orders and judgments; and procedures for the prospective
11 modification of orders.

12 The Probation Division of the court, or, upon transfer of the
13 defendant, the Department of Corrections through its Office of
14 Transitional Services, shall assist inmates in processing an
15 application for child support modification.

16
17 10. (New section) a. Whenever there is a change in the status
18 of an inmate incarcerated in a State correctional facility which
19 affects the visitation privileges of that inmate, the correctional
20 facility shall immediately post that change of status on its website.
21 This information shall remain on the website until those visitation
22 rights have been restored.

23 b. If the change in status in visitation is due to the relocation of
24 the inmate to another facility, the change shall be noted on the
25 website of the facility from which the inmate has been transferred
26 and shall remain on the website for two weeks. The posting shall
27 include the name, address, telephone number, and website address
28 of the facility to which the inmate has been transferred.

29
30 11. Section 3 of P.L.1999, c.427 (C.44:10-48.1) is repealed.

31
32 12. This act shall take effect on the first day of the fourth month
33 after enactment, except that section 2 shall take effect on April 1,
34 2010 and shall apply to any new or renewal contract for inmate
35 telephone services entered into on or after April 10, 2010; section 4
36 shall expire on the 30th day after the commission presents its report
37 to the Governor and the Legislature.

38
39
40 STATEMENT

41
42 This bill establishes the “Women and Families Strengthening
43 Act.” The purpose of the act is to enhance the chances of
44 successful reentry into society of formerly incarcerated persons.

45 First, the bill ends the prohibition in State law against certain
46 formerly incarcerated persons receiving Work First New Jersey and
47 food stamp benefits. By doing so, the State will assist needy
48 individuals who have paid their debt to society and are struggling to

1 re-enter the social and economic mainstream and become
2 productive citizens. The bill would also reverse current policy
3 under section 5 of P.L.1997, c.14 (C.44:10-48), that excludes
4 persons convicted of certain drug offenses from receiving cash
5 assistance benefits that are provided under the Work First New
6 Jersey program, which is the Temporary Assistance for Needy
7 Families (TANF) program in this State.

8 Under the bill, the State would be required to contract with the
9 lowest bidder for telephone service for inmates in State correctional
10 facilities. A bidder would not be authorized to impose a surcharge
11 on inmate telephone calls. The bill would prohibit a State
12 department from accepting or receiving revenue in excess of its
13 actual operating cost for establishing and administering inmate
14 telephone services. The Department of Corrections would be
15 required to make available a prepaid or collect call system, or a
16 combination of the two, for telephone services. The provider of the
17 inmate telephone service, as an additional means of payment, must
18 permit the recipient of inmate collect calls to establish an account
19 with that provider in order to deposit funds for advance payment of
20 those collect calls.

21 Currently, a private vendor provides telephone services to
22 inmates in this State's correctional facilities under the terms of a
23 five-year contract with the State. Under that contract, the State
24 collects a 40 percent commission, as well as a \$1.75 surcharge, on
25 each inmate call. This revenue is deposited into the State
26 Treasury's General Fund. According to the Campaign to Promote
27 Equitable Telephone Charges, New Jersey has the third highest
28 collect call telephone rates for inmates out of 47 states analyzed.
29 Studies show that inmates who maintain contact with their families
30 and communities while incarcerated are less likely to reoffend, but
31 inflated telephone rates such as those in this State discourage
32 frequent communication. Furthermore, surcharges on these
33 telephone calls amount to an unfair tax on the family members of
34 inmates who often must choose between talking to their loved ones
35 in prison and meeting basic needs, such as food, rent, and heat.

36 Further, the bill establishes the Commission to Examine
37 Strategies for Strengthening the Familial Bond Between Children
38 and Incarcerated Parents. This commission is to consist of 21
39 members as follows: two members of the Senate who are of
40 different political parties; two members of the General Assembly
41 who are of different political parties; the Commissioners of
42 Corrections, Education, Community Affairs, Human Services, and
43 Children and Families; the Chairman of the State Parole Board; the
44 Executive Director of the Juvenile Justice Commission; eight public
45 members appointed by the Governor, including representatives of
46 the Association for Children of New Jersey, Legal Services of New
47 Jersey, and the law enforcement community, as well as a child
48 protection services caseworker, a licensed social worker, a parent of

1 a child whose other parent is incarcerated, a person whose parent
2 has been incarcerated and a member of the clergy; and two
3 members of the general public with an interest in children's issues
4 appointed by the President of the Senate and the Speaker of the
5 General Assembly, respectively.

6 The commission is directed to examine the policies, procedures
7 and operations of the State and county correctional systems in order
8 to develop recommendations regarding the most effective methods
9 of: (1) developing strategies for strengthening the familial bond
10 between children and incarcerated parents; and (2) reducing
11 antisocial behavior and attachment disorders of children of
12 incarcerated parents and the intergenerational cycle of criminality
13 common among families of incarcerated parents. The Office of
14 Legislative Services is required to provide staff services and other
15 necessary support to the commission. The commission must
16 present a report of its findings and recommendations to the
17 Governor and the Legislature no later than 12 months after its initial
18 meeting; the commission is to expire 30 days after the report is
19 issued.

20 The bill requires the Commissioner of Corrections to designate
21 an assistant commissioner to be responsible for establishing and
22 monitoring policies affecting incarcerated mothers with children.
23 Also under the bill, the commissioner is prohibited from housing
24 female inmates in the same correctional facility as male inmates if it
25 results in conditions more oppressive or restrictive than those
26 applicable to male inmates. This provision was prompted by a
27 recent incident in which female inmates temporarily housed in New
28 Jersey State Prison to alleviate overcrowding at the State's prison
29 for women, Edna Mahan, were subjected to conditions which they
30 claim were unconstitutional.

31 Further, the bill requires the Commissioner of Corrections,
32 during initial classification, to make every effort to assign an inmate
33 to a State correctional facility close to where that inmate's family
34 resides.

35 The bill requires the commissioner to submit all inmate
36 complaints concerning women to the Division on Women on a
37 semiannual basis.

38 Under the bill, a defendant's presentence report would have to
39 include information on enforcement of child support orders.

40 Finally, the bill establishes that whenever there is a change in the
41 status of an inmate incarcerated in a State correctional facility
42 which affects the visitation privileges of that inmate, the
43 correctional facility shall immediately post that change of status on
44 its website. This information shall remain on the website until
45 those visitation rights have been restored. If the change in status in
46 visitation is due to the relocation of the inmate to another facility,
47 the change shall be noted on the website of the facility from which
48 the inmate has been transferred and shall remain on the website for

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1 two weeks. The posting shall include the name, address, telephone
2 number, and website address of the facility to which the inmate has
3 been transferred. The purpose of these provisions is to provide
4 visitors with advance notice of the suspension of an inmate's
5 visitation privileges so that the visitors do not make an unnecessary
6 trip to the correctional facility.