

P.L.2011, CHAPTER 128, *approved September 16, 2011*  
Assembly, No. 1561 (*Second Reprint*)

1 AN ACT <sup>2</sup>[creating a] concerning<sup>2</sup> diversionary <sup>2</sup>[program]  
2 programs<sup>2</sup> for certain juveniles<sup>1</sup>, amending P.L.1982, c.81<sup>1</sup> and  
3 supplementing Title 2A of the New Jersey Statutes.  
4

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

8 <sup>1</sup>1. Section 2 of P.L.1982, c.81 (C.2A:4A-71) is amended to  
9 read as follows:

10 2. Review and processing of complaints. a. The jurisdiction of  
11 the court in any complaint filed pursuant to section 11 of P.L.1982,  
12 c.77 (C. 2A:4A-30) shall extend to the juvenile who is the subject  
13 of the complaint and his parents or guardian.

14 b. Every complaint shall be reviewed by court intake services  
15 for recommendation as to whether the complaint should be  
16 dismissed, diverted, or referred for court action. Where the  
17 complaint alleges a crime which, if committed by an adult, would  
18 be a crime of the first, second, third or fourth degree, or alleges a  
19 repetitive disorderly persons offense or any disorderly persons  
20 offense defined in chapter 35 or chapter 36 of Title 2C, the  
21 complaint shall be referred for court action, unless the prosecutor  
22 otherwise consents to diversion. Court intake services shall  
23 consider the following factors in determining whether to  
24 recommend diversion:

25 (1) The seriousness of the alleged offense or conduct and the  
26 circumstances in which it occurred;

27 (2) The age and maturity of the juvenile;

28 (3) The risk that the juvenile presents as a substantial danger to  
29 others;

30 (4) The family circumstances, including any history of drugs,  
31 alcohol abuse or child abuse on the part of the juvenile, his parents  
32 or guardian;

33 (5) The nature and number of contacts with court intake services  
34 and the court that the juvenile or his family have had;

35 (6) The outcome of those contacts, including the services to  
36 which the juvenile or family have been referred and the results of  
37 those referrals;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AJU committee amendments adopted January 24, 2011.

<sup>2</sup>Senate SLP committee amendments adopted June 13, 2011.

1 (7) The availability of appropriate services outside referral to the  
2 court;

3 (8) Any recommendations expressed by the victim or  
4 complainant, or arresting officer, as to how the case should be  
5 resolved; **[and]**

6 (9) Any recommendation expressed by the county prosecutor;  
7 **and**

8 (10) The <sup>2</sup>amenability of the juvenile to participation in a  
9 remedial education or counseling program that satisfies the  
10 requirements of subsection b. of section 2 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill) if the<sup>2</sup> offense alleged is  
12 an eligible offense <sup>2</sup>[pursuant to section 3] as defined in subsection  
13 c. of section 2<sup>2</sup> of P.L. , c. (C. )(pending before the  
14 Legislature as this bill) <sup>2</sup>[and the juvenile is eligible to participate  
15 in the educational reform program set forth section 3 of P.L. ,c.  
16 (C. ) (pending before the Legislature as this bill)]<sup>2</sup>.<sup>1</sup>  
17 (cf: P.L.1988, c.44, s.17)

18  
19 <sup>1</sup>2. (New section) <sup>2</sup>a.<sup>2</sup> Where a complaint against a juvenile  
20 pursuant to section 11 of P.L.1982, c.77 (C.2A:4A-30) alleges that  
21 the juvenile has committed an eligible offense <sup>2</sup>[satisfying the  
22 criteria set forth in subsection c. of section 3 of P.L. , c. (C. )  
23 (pending before the Legislature as this bill)] as defined in  
24 subsection c. of this section<sup>2</sup> and the court has approved diversion  
25 of the complaint pursuant to section 4 of P.L.1982, c.81 (C.2A:4A-  
26 73) <sup>2</sup>,<sup>2</sup> the resolution of the complaint shall include <sup>2</sup>the juvenile's<sup>2</sup>  
27 participation in <sup>2</sup>[an educational] a remedial education or  
28 counseling<sup>2</sup> program <sup>2</sup>[set forth in section 3 of P.L. , c.  
29 (C. ) (pending before the Legislature as this bill).<sup>1</sup>] . The  
30 parents or guardian of the juvenile shall bear the cost of  
31 participation in the program, except that the court shall take into  
32 consideration the ability of the juvenile's parents or guardian to pay  
33 and the availability of such a program in the area in which the  
34 juvenile resides and, where appropriate, may permit the juvenile to  
35 participate in a self-guided awareness program in lieu of a remedial  
36 education or counseling program provided that it satisfies the  
37 requirements of subsection b. of this section.

38 b. A remedial education or counseling program satisfies the  
39 requirements of this act if the program is designed to increase the  
40 juvenile's awareness of:

41 (1) the legal consequences and penalties for sharing sexually  
42 suggestive or explicit materials, including applicable federal and  
43 State statutes;

44 (2) the non-legal consequences of sharing sexually suggestive or  
45 explicit materials including, but not limited to, the effect on  
46 relationships, loss of educational and employment opportunities,

1 and being barred or removed from school programs and  
 2 extracurricular activities;

3 (3) the potential, based upon the unique characteristics of  
 4 cyberspace and the Internet, of long-term and unforeseen  
 5 consequences for sharing sexually suggestive or explicit materials;  
 6 and

7 (4) the possible connection between bullying and cyber-bullying  
 8 and juveniles sharing sexually suggestive or explicit materials.

9 c. As used in this act, “eligible offense” means an offense in  
 10 which:

11 (1) the facts of the case involve the creation, exhibition or  
 12 distribution of a photograph depicting nudity as defined in  
 13 N.J.S.2C:24-4 through the use of an electronic communication  
 14 device, an interactive wireless communications device, or a  
 15 computer; and

16 (2) the creator and subject of the photograph are juveniles or  
 17 were juveniles at the time of its making.<sup>2</sup>

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 19 <sup>1</sup>‘[1.] <sup>2</sup>‘[3. (New section).<sup>1</sup> a. As used in P.L. , c. (C. )  
 20 (pending before the Legislature as this bill), “eligible offense”  
 21 means an offense <sup>1</sup>‘[under N.J.S.2C:24-4]’ in which:

22 (1) the facts of the case involve the creation, exhibition or  
 23 distribution <sup>1</sup>‘[without malicious intent]’ of a photograph depicting  
 24 nudity as defined in <sup>1</sup>‘[that section] N.J.S.2C:24-4’ through the use  
 25 of <sup>1</sup>‘an electronic communication device,’ an interactive wireless  
 26 communications device or a computer; and

27 (2) the creator and subject of the photograph are juveniles or  
 28 were juveniles at the time of its making.

29 b. The Attorney General, in consultation with the  
 30 Administrative Director of the Administrative Office of the Courts,  
 31 shall develop an educational program for juveniles who have  
 32 committed an eligible offense as defined under the provisions of  
 33 subsection a. of this section. <sup>1</sup>‘[The county prosecutor shall  
 34 determine whether a juvenile shall be admitted to the program.]’ A  
 35 juvenile who successfully completes the program shall have the  
 36 opportunity to avoid prosecution for the eligible offense.

37 c. Admission to the program shall be limited to <sup>1</sup>‘[juveniles  
 38 who] cases where’:

39 (1) <sup>1</sup>‘[have] the juvenile has’ not previously been adjudicated  
 40 delinquent for or convicted of a <sup>1</sup>‘[criminal offense under Title 2C  
 41 of the New Jersey Statutes or the laws of the United States] crime  
 42 or offense which, if committed by an adult, would constitute  
 43 aggravated sexual assault; sexual assault; aggravated assault;  
 44 aggravated criminal sexual contact; endangering the welfare of a  
 45 child pursuant to N.J.S.2C:24-4; luring or enticing a child pursuant  
 46 to section 1 of P.L.1993, c.291 (C.2C:13-6); luring or enticing an

1 adult pursuant to section 1 of P.L.2005, c.1 (C.2C:13-7) or an  
2 attempt to commit any of the enumerated offenses <sup>1</sup>;

3 (2) <sup>1</sup>~~['were]~~ the juvenile was<sup>1</sup> not aware that <sup>1</sup>~~['their]~~ his<sup>1</sup>  
4 actions could constitute and did not have the intent to commit a  
5 criminal offense;

6 (3) <sup>1</sup>~~['may be harmed by the imposition of criminal sanctions]~~  
7 there is a likelihood that the juvenile's offense is related to a  
8 condition or situation that would be conducive to change through  
9 his participation in the educational program<sup>1</sup>; and

10 (4) <sup>1</sup>~~['would likely be deterred from engaging in similar conduct~~  
11 ~~in the future by completing the program]~~ the benefits to society in  
12 admitting the juvenile into this educational program outweigh the  
13 harm done to society by abandoning criminal prosecution<sup>1</sup>.

14 d. The educational program shall provide information  
15 concerning:

16 (1) the legal consequences of and penalties for sharing sexually  
17 suggestive or explicit materials, including applicable federal and  
18 State statutes;

19 (2) the non-legal consequences of sharing sexually suggestive or  
20 explicit materials including, but not limited to, the effect on  
21 relationships, loss of educational and employment opportunities,  
22 and being barred or removed from school programs and  
23 extracurricular activities;

24 (3) how the unique characteristics of cyberspace and the  
25 Internet, including searchability, replicability, and an infinite  
26 audience, can produce long-term and unforeseen consequences for  
27 sharing sexually suggestive or explicit materials; and

28 (4) the <sup>1</sup>'possible' connection between bullying and cyber-  
29 bullying and juveniles sharing sexually suggestive or explicit  
30 materials.

31 e. The Attorney General may promulgate guidelines to  
32 effectuate the provisions of this act. <sup>2</sup>

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34 <sup>1</sup>~~['2.]~~ <sup>2</sup>~~['4.1]~~ 3.<sup>2</sup> This act shall take effect on the first day of the  
35 seventh month after enactment.

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40 Permits diversionary program for juveniles who are criminally  
41 charged for "sexting" or posting sexual images.