

# SENATE, No. 2326

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

**Sponsored by:**

**Senator JAMES BEACH**

**District 6 (Burlington and Camden)**

### **SYNOPSIS**

“One Strike, You’re Ours;” adds use of Internet as aggravating factor in child sex crimes and requires lifetime electronic monitoring of offender.

### **CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning sex offenses against children and amending  
2 P.L.2007, c.128 and N.J.S.2C:44-1.

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

6  
7 1. Section 3 of P.L.2007, c.128 (C.30:4-123.91) is amended to  
8 read as follows:

9 3. a. As used in this act:

10 "Chairman" means the Chairman of the State Parole Board.

11 "Monitored subject" means:

12 (1) a person whose risk of reoffense has been determined to be  
13 high pursuant to section 3 of P.L.1994, c.128 (C.2C:7-8); **[and]**

14 (2) a person who has been convicted of or adjudicated  
15 delinquent for a sex offense enumerated in subsection b. of section  
16 2 of P.L.1994, c.133 (C.2C:7-2), where the victim of the offense  
17 was under 18 years of age, and the person used the Internet in the  
18 commission of the act, regardless of the date of conviction, and who  
19 shall be monitored for life under the provisions of this act; and

20 (3) a person who the chairman deems appropriate for continuous  
21 satellite-based monitoring pursuant to the provisions of this act and  
22 who:

23 (a) was subject to civil commitment as a "sexually violent  
24 predator" in accordance with the provisions of P.L.1998, c.71  
25 (C.30:4-27.24 et seq.) and has been conditionally discharged or  
26 discharged pursuant to section 13 of P.L.1998, c.71 (C.30:4-27.36);

27 (b) has been sentenced to a term of community or parole  
28 supervision for life pursuant to section 2 of P.L.1994, c.130  
29 (C.2C:43-6.4); or

30 (c) has been convicted of or adjudicated delinquent for a sex  
31 offense enumerated in subsection b. of section 2 of P.L.1994, c.133  
32 (C.2C:7-2) and the victim of the offense was under 18 years of age  
33 or 60 years of age or older, regardless of the date of conviction.

34 b. In addition to those offenders whose risk of reoffense has  
35 been determined to be high pursuant to section 3 of P.L.1994, c.128  
36 (C.2C:7-8), the chairman, in exercising his discretion in  
37 determining subjects to monitor through time correlated or  
38 continuous tracking of their geographic location under the program  
39 authorized by this act, shall consider the risk to the public posed by  
40 the subject, based on relevant risk factors such as the seriousness of  
41 the offense, the age of the victim or victims, the degree of force and  
42 contact, and any other factors the chairman deems appropriate.  
43 Time correlated or continuous tracking of the offender's geographic  
44 location shall not be provided during the time a monitored subject is  
45 in custody due to arrest, incarceration or civil commitment.

**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 c. Nothing in this act shall be construed to preclude a judge  
2 from ordering time correlated or continuous tracking of the person's  
3 geographic location or other electronic monitoring as a condition of  
4 discharge of a person committed pursuant to P.L.1998, c.71  
5 (C.30:4-27.24 et seq.), or as a condition or requirement of  
6 supervision for any other person sentenced pursuant to N.J.S.2C:45-  
7 1 or sentenced to a term of community or parole supervision for life  
8 pursuant to section 2 of P.L.1994, c.130 (C.2C:43-6.4).  
9 (cf: P.L.2007, c.128, s.3)

10  
11 2. N.J.S.2C:44-1 is amended to read as follows:

12 2C:44-1 Criteria for withholding or imposing sentence of  
13 imprisonment.

14 2C:44-1. a. In determining the appropriate sentence to be  
15 imposed on a person who has been convicted of an offense, the  
16 court shall consider the following aggravating circumstances:

17 (1) The nature and circumstances of the offense, and the role of  
18 the actor therein, including whether or not it was committed in an  
19 especially heinous, cruel, or depraved manner;

20 (2) The gravity and seriousness of harm inflicted on the victim,  
21 including whether or not the defendant knew or reasonably should  
22 have known that the victim of the offense was particularly  
23 vulnerable or incapable of resistance due to advanced age, ill-  
24 health, or extreme youth, or was for any other reason substantially  
25 incapable of exercising normal physical or mental power of  
26 resistance;

27 (3) The risk that the defendant will commit another offense;

28 (4) A lesser sentence will depreciate the seriousness of the  
29 defendant's offense because it involved a breach of the public trust  
30 under chapters 27 and 30, or the defendant took advantage of a  
31 position of trust or confidence to commit the offense;

32 (5) There is a substantial likelihood that the defendant is  
33 involved in organized criminal activity;

34 (6) The extent of the defendant's prior criminal record and the  
35 seriousness of the offenses of which he has been convicted;

36 (7) The defendant committed the offense pursuant to an  
37 agreement that he either pay or be paid for the commission of the  
38 offense and the pecuniary incentive was beyond that inherent in the  
39 offense itself;

40 (8) The defendant committed the offense against a police or  
41 other law enforcement officer, correctional employee or fireman,  
42 acting in the performance of his duties while in uniform or  
43 exhibiting evidence of his authority; the defendant committed the  
44 offense because of the status of the victim as a public servant; or the  
45 defendant committed the offense against a sports official, athletic  
46 coach or manager, acting in or immediately following the  
47 performance of his duties or because of the person's status as a  
48 sports official, coach or manager;

- 1       (9) The need for deterring the defendant and others from  
2 violating the law;
- 3       (10) The offense involved fraudulent or deceptive practices  
4 committed against any department or division of State government;
- 5       (11) The imposition of a fine, penalty or order of restitution  
6 without also imposing a term of imprisonment would be perceived  
7 by the defendant or others merely as part of the cost of doing  
8 business, or as an acceptable contingent business or operating  
9 expense associated with the initial decision to resort to unlawful  
10 practices;
- 11       (12) The defendant committed the offense against a person who  
12 he knew or should have known was 60 years of age or older, or  
13 disabled;
- 14       (13) The defendant, while in the course of committing or  
15 attempting to commit the crime, including the immediate flight  
16 therefrom, used or was in possession of a stolen motor vehicle;
- 17       (14) The offense involved an act of domestic violence, as that  
18 term is defined in subsection a. of section 3 of P.L.1991, c.261  
19 (C.2C:25-19), committed in the presence of a child under 16 years  
20 of age; and
- 21       (15) The offense involved an act of domestic violence, as that  
22 term is defined in subsection a. of section 3 of P.L.1991, c.261  
23 (C.2C:25-19) and the defendant committed at least one act of  
24 domestic violence on more than one occasion.
- 25       (16) The defendant committed a sex offense as defined in  
26 section 2 of P.L.1994, c.133 (C.2C:7-2) against a person under 18  
27 years of age and used the Internet in the commission of the act.
- 28       b. In determining the appropriate sentence to be imposed on a  
29 person who has been convicted of an offense, the court may  
30 properly consider the following mitigating circumstances:
- 31       (1) The defendant's conduct neither caused nor threatened  
32 serious harm;
- 33       (2) The defendant did not contemplate that his conduct would  
34 cause or threaten serious harm;
- 35       (3) The defendant acted under a strong provocation;
- 36       (4) There were substantial grounds tending to excuse or justify  
37 the defendant's conduct, though failing to establish a defense;
- 38       (5) The victim of the defendant's conduct induced or facilitated  
39 its commission;
- 40       (6) The defendant has compensated or will compensate the  
41 victim of his conduct for the damage or injury that he sustained, or  
42 will participate in a program of community service;
- 43       (7) The defendant has no history of prior delinquency or  
44 criminal activity or has led a law-abiding life for a substantial  
45 period of time before the commission of the present offense;
- 46       (8) The defendant's conduct was the result of circumstances  
47 unlikely to recur;

1 (9) The character and attitude of the defendant indicate that he is  
2 unlikely to commit another offense;

3 (10) The defendant is particularly likely to respond affirmatively  
4 to probationary treatment;

5 (11) The imprisonment of the defendant would entail excessive  
6 hardship to himself or his dependents;

7 (12) The willingness of the defendant to cooperate with law  
8 enforcement authorities;

9 (13) The conduct of a youthful defendant was substantially  
10 influenced by another person more mature than the defendant.

11 c. (1) A plea of guilty by a defendant or failure to so plead  
12 shall not be considered in withholding or imposing a sentence of  
13 imprisonment.

14 (2) When imposing a sentence of imprisonment the court shall  
15 consider the defendant's eligibility for release under the law  
16 governing parole, including time credits awarded pursuant to Title  
17 30 of the Revised Statutes, in determining the appropriate term of  
18 imprisonment.

19 d. Presumption of imprisonment. The court shall deal with a  
20 person who has been convicted of a crime of the first or second  
21 degree, or a crime of the third degree where the court finds that the  
22 aggravating factor in paragraph (5), (14) or (15) of subsection a.  
23 applies, by imposing a sentence of imprisonment unless, having  
24 regard to the character and condition of the defendant, it is of the  
25 opinion that his imprisonment would be a serious injustice which  
26 overrides the need to deter such conduct by others.  
27 Notwithstanding the provisions of subsection e. of this section, the  
28 court shall deal with a person who has been convicted of theft of a  
29 motor vehicle or of the unlawful taking of a motor vehicle and who  
30 has previously been convicted of either offense by imposing a  
31 sentence of imprisonment unless, having regard to the character and  
32 condition of the defendant, it is of the opinion that his imprisonment  
33 would be a serious injustice which overrides the need to deter such  
34 conduct by others.

35 e. The court shall deal with a person convicted of an offense  
36 other than a crime of the first or second degree, who has not  
37 previously been convicted of an offense, without imposing a  
38 sentence of imprisonment unless, having regard to the nature and  
39 circumstances of the offense and the history, character and  
40 condition of the defendant, it is of the opinion that his imprisonment  
41 is necessary for the protection of the public under the criteria set  
42 forth in subsection a., except that this subsection shall not apply if  
43 the court finds that the aggravating factor in paragraph (5), (14) or  
44 (15) of subsection a. applies or if the person is convicted of any of  
45 the following crimes of the third degree: theft of a motor vehicle;  
46 unlawful taking of a motor vehicle; eluding; strict liability vehicular  
47 homicide pursuant to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if  
48 the person is convicted of a crime of the third degree constituting

1 use of a false government document in violation of subsection c. of  
2 section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is  
3 convicted of a crime of the third degree constituting distribution,  
4 manufacture or possession of an item containing personal  
5 identifying information in violation of subsection b. of section 6 of  
6 P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a  
7 crime of the third or fourth degree constituting bias intimidation in  
8 violation of N.J.S.2C:16-1; if the person is convicted of a crime of  
9 the third degree under paragraph (12) of subsection b. of  
10 N.J.S.2C:12-1 or section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if  
11 the person is convicted of a crime of the third or fourth degree  
12 under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-  
13 29 or C.2C:33-30).

14 f. Presumptive Sentences. (1) Except for the crime of murder,  
15 unless the preponderance of aggravating or mitigating factors, as set  
16 forth in subsections a. and b., weighs in favor of a higher or lower  
17 term within the limits provided in N.J.S.2C:43-6, when a court  
18 determines that a sentence of imprisonment is warranted, it shall  
19 impose sentence as follows:

20 (a) To a term of 20 years for aggravated manslaughter or  
21 kidnapping pursuant to paragraph (1) of subsection c. of  
22 N.J.S.2C:13-1 when the offense constitutes a crime of the first  
23 degree;

24 (b) Except as provided in subparagraph (a) of this paragraph to a  
25 term of 15 years for a crime of the first degree;

26 (c) To a term of seven years for a crime of the second degree;

27 (d) To a term of four years for a crime of the third degree; and

28 (e) To a term of nine months for a crime of the fourth degree.

29 In imposing a minimum term pursuant to subsection b. of  
30 N.J.S.2C:43-6, the sentencing court shall specifically place on the  
31 record the aggravating factors set forth in this section which justify  
32 the imposition of a minimum term.

33 Unless the preponderance of mitigating factors set forth in  
34 subsection b. weighs in favor of a lower term within the limits  
35 authorized, sentences imposed pursuant to paragraph (1) of  
36 subsection a. of N.J.S.2C:43-7 shall have a presumptive term of life  
37 imprisonment. Unless the preponderance of aggravating and  
38 mitigating factors set forth in subsections a. and b. weighs in favor  
39 of a higher or lower term within the limits authorized, sentences  
40 imposed pursuant to paragraph (2) of subsection a. of N.J.S.2C:43-7  
41 shall have a presumptive term of 50 years' imprisonment; sentences  
42 imposed pursuant to paragraph (3) of subsection a. of N.J.S.2C:43-7  
43 shall have a presumptive term of 15 years' imprisonment; and  
44 sentences imposed pursuant to paragraph (4) of subsection a. of  
45 N.J.S.2C:43-7 shall have a presumptive term of seven years'  
46 imprisonment.

47 In imposing a minimum term pursuant to subsection b. of  
48 N.J.S.2C:43-7, the sentencing court shall specifically place on the

1 record the aggravating factors set forth in this section which justify  
2 the imposition of a minimum term.

3 (2) In cases of convictions for crimes of the first or second  
4 degree where the court is clearly convinced that the mitigating  
5 factors substantially outweigh the aggravating factors and where the  
6 interest of justice demands, the court may sentence the defendant to  
7 a term appropriate to a crime of one degree lower than that of the  
8 crime for which he was convicted. If the court does impose  
9 sentence pursuant to this paragraph, or if the court imposes a  
10 noncustodial or probationary sentence upon conviction for a crime  
11 of the first or second degree, such sentence shall not become final  
12 for 10 days in order to permit the appeal of such sentence by the  
13 prosecution.

14 g. Imposition of Noncustodial Sentences in Certain Cases. If  
15 the court, in considering the aggravating factors set forth in  
16 subsection a., finds the aggravating factor in paragraph (2), (5),  
17 (10), or (12) of subsection a. and does not impose a custodial  
18 sentence, the court shall specifically place on the record the  
19 mitigating factors which justify the imposition of a noncustodial  
20 sentence.

21 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-  
22 11), the presumption of imprisonment as provided in subsection d.  
23 of this section shall not preclude the admission of a person to the  
24 Intensive Supervision Program, established pursuant to the Rules  
25 Governing the Courts of the State of New Jersey.  
26 (cf: P.L.2017, c.165, s.6)

27  
28 3. This act shall take effect immediately.  
29  
30

### 31 STATEMENT

32  
33 This bill provides that persons who have been convicted of a sex  
34 offense under Megan's Law, where the victim of the offense was  
35 under 18 years of age and the person used the Internet in the  
36 commission of the sex offense, would be monitored for life under  
37 the "Sex Offender Monitoring Act." Under the act, sex offenders  
38 are subject to continuous 24-hour per day monitoring by global  
39 positioning system (GPS) devices.

40 The bill also adds as an aggravating factor for the court to  
41 consider in determining a sentence, whether the defendant used the  
42 Internet in committing a sex offense against a person under the age  
43 of 18. This provision would be used to enhance penalties against  
44 child predators.

45 Under this "One Strike, You're Ours" approach, predators who  
46 use the Internet in committing crimes against children would  
47 receive enhanced penalties and, once they leave prison, be  
48 monitored for life by GPS technology.