

CHAPTER 328

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

C.44:10-48 Eligibility of citizens, eligible aliens.

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

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

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

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

(3) illegal aliens;

(4) other aliens who are not eligible aliens;

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

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

(7) a person convicted on or after August 22, 1996 under federal or state law of any offense which is classified as a felony or crime, as appropriate, under the laws of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the federal "Controlled Substances Act" (21 U.S.C. s.802 (6)), who would otherwise be eligible for general public assistance pursuant to P.L.1947, c.156 (C.44:8-107 et seq.); except that such a person who is convicted of any such offense which has as an element the possession or use only of such a controlled substance may be eligible for Work First New Jersey general public assistance benefits if the person enrolls in or has completed a licensed residential drug treatment program. Eligibility for benefits shall commence upon the person's enrollment in the drug treatment program, and shall continue during the person's active participation in, and upon completion of, the drug treatment program, except that during the person's active participation in a drug treatment program and the first 60 days after completion of a drug treatment program, the commissioner shall provide for testing of the person to determine if the person is free of any controlled substance. If the person is determined to not be free of any controlled substance during the 60-day period, the person's eligibility for benefits pursuant to this paragraph shall

be terminated; except that this provision shall not apply to the use of methadone by a person who is actively participating in a drug treatment program, as prescribed by the drug treatment program. The commissioner, in consultation with the Commissioner of Health and Senior Services, shall adopt regulations to carry out the provisions of this paragraph, which shall include the criteria for determining active participation in and completion of a drug treatment program.

Cash benefits, less a personal needs allowance, for a person receiving general public assistance benefits under the Work First New Jersey program who is enrolled in and actively participating in a licensed residential drug treatment program shall be issued directly to the drug treatment provider to offset the cost of treatment. Upon completion of the drug treatment program, the cash benefits shall be then issued to the person. In the case of a delay in issuing cash benefits to a person receiving Work First New Jersey general public assistance benefits who has completed the drug treatment program, the drug treatment provider shall transmit to the person those funds received on behalf of that person after completion of the drug treatment program;

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

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

c. A person who makes a false statement with the intent to qualify for benefits and by reason thereof receives benefits for which the person is not eligible is guilty of a crime of the fourth degree.

d. Pursuant to the authorization provided to the states under 21 U.S.C. s.862a(d)(1), this State elects to exempt from the application of 21 U.S.C. s.862a(a):

(1) needy persons and their dependent children domiciled in New Jersey for the purposes of receiving benefits under the Work First New Jersey program and food assistance under the federal "Food and Nutrition Act of 2008," Pub.L.110-234 (7 U.S.C. s.2011 et seq.); and

(2) single persons and married couples without dependent children domiciled in New Jersey for the purposes of receiving food assistance under Pub.L.110-234.

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

Procedure on sentence; presentence investigation and report.

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

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

b. The presentence investigation shall include an analysis of the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, family situation, financial resources, including whether or not the defendant is an enrollee or covered person under a health insurance contract, policy or plan, debts, including any amount owed for a fine, assessment or restitution ordered in accordance with the provisions of Title 2C, any obligation of child support including any child support delinquencies, employment history, personal habits, the disposition of any charge made against any codefendants, the

defendant's history of civil commitment, any disposition which arose out of charges suspended pursuant to N.J.S.2C:4-6 including the records of the disposition of those charges and any acquittal by reason of insanity pursuant to N.J.S.2C:4-1, and any other matters that the probation officer deems relevant or the court directs to be included. The defendant shall disclose any information concerning any history of civil commitment. The report shall also include a medical history of the defendant and a complete psychological evaluation of the defendant in any case in which the defendant is being sentenced for a first or second degree crime involving violence and:

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

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

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

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

The presentence report shall also include a report on any compensation paid by the Victims of Crime Compensation Agency as a result of the commission of the offense and, in any case where the victim chooses to provide one, a statement by the victim of the offense for which the defendant is being sentenced. The statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss to include loss of earnings or ability to work suffered by the victim and the effect of the crime upon the victim's family. The probation department shall notify the victim or nearest relative of a homicide victim of his right to make a statement for inclusion in the presentence report if the victim or relative so desires. Any such statement shall be made within 20 days of notification by the probation department.

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

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

d. Disclosure of any presentence investigation report or psychiatric examination report shall be in accordance with law and the Rules of Court, except that information concerning the defendant's financial resources shall be made available upon request to the Victims of Crime Compensation Agency or to any officer authorized under the provisions of section 3

of P.L.1979, c.396 (C.2C:46-4) to collect payment on an assessment, restitution or fine and that information concerning the defendant's coverage under any health insurance contract, policy or plan shall be made available, as appropriate to the Commissioner of Corrections and to the chief administrative officer of a county jail in accordance with the provisions of P.L.1995, c.254 (C.30:7E-1 et al.).

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

f. (Deleted by amendment, P.L.1986, c.85).

3. a. There is established a Commission to Examine Strategies for Strengthening the Familial Bond Between Children and Incarcerated Parents.

The commission shall consist of 21 members as follows:

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

(2) two members of the General Assembly to be appointed by the Speaker of the General Assembly who shall each be of different political parties;

(3) the Commissioners of Corrections, Education, Community Affairs, Human Services, and Children and Families, the Chairman of the State Parole Board, and the Executive Director of the Juvenile Justice Commission, or their designees, who shall serve ex-officio;

(4) eight public members appointed by the Governor who shall include a representative of the Association for Children of New Jersey, a representative of Legal Services of New Jersey, a representative of the law enforcement community, a child protection services caseworker with experience in working with children of incarcerated parents, a licensed social worker with experience or expertise in working with incarcerated parents and their families, a parent of a child whose other parent is incarcerated, a person whose parent has been incarcerated, and a member of the clergy; and

(5) two public members with an interest in children's issues, one of whom shall be appointed by the President of the Senate and one of whom shall be appointed by the Speaker of the General Assembly.

b. Vacancies in the membership of the commission shall be filled in the same manner provided for in the original appointments. The public members of the commission shall serve without compensation but may be reimbursed for travel and other miscellaneous expenses necessary to perform their duties, within the limits of funds made available to the commission for its purposes.

c. The commission shall organize as soon as practicable but no later than 60 days following the appointment of its members and shall select a chairperson and vice-chairperson from among the members. The chairperson shall appoint a secretary who need not be a member of the commission.

d. The commission may meet at the call of its chair and hold hearings at the times and in the places it may deem appropriate and necessary to fulfill its charge. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

e. The commission may seek the advice of experts, such as persons specializing in the fields of psychology, education, criminal or family law or other related fields as deemed appropriate by the membership of the commission.

f. The Office of Legislative Services shall provide staff services and other necessary support to the commission.

g. The commission shall examine the policies, procedures and operations of the State and county correctional systems in order to develop recommendations regarding the most effective methods of:

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

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

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

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

C.30:1B-5 Deputy and assistants; administrative divisions, personnel.

5. a. The commissioner may appoint one deputy and such assistant commissioners as he shall deem necessary to serve at the pleasure of the commissioner. Each deputy or assistant commissioner shall exercise such powers and perform such duties as the commissioner shall prescribe. The commissioner shall designate one department official to exercise the powers and perform the duties of the commissioner during his disability or absence. Notwithstanding the provisions of this subsection, the commissioner shall designate an assistant commissioner who shall be responsible for establishing and monitoring policies affecting incarcerated mothers with children. The assistant commissioner may be chosen by the commissioner from among the current employees of the department and may continue the duties and responsibilities of his regular employment in addition to the duties and responsibilities of the assistant commissioner position as provided in this subsection.

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

C.30:4-8.6 Assignment of inmates in proximity to family.

5. During initial classification, the commissioner shall make every effort to assign an inmate to a State correctional facility in close proximity to the residence of the inmate's family.

C.30:4-8.7 Incarceration of female inmates.

6. The commissioner shall not confine a female inmate in the same correctional facility as a male inmate if that confinement subjects the female inmate to conditions more oppressive or restrictive than conditions to which male inmates are subjected.

C.30:4-8.8 Submission of complaints concerning female inmates.

7. The commissioner shall semiannually submit all inmate complaints submitted to the department concerning female inmates to the Director of the Division on Women in the Department of Community Affairs established pursuant to the "Division on Women Act of

1974," P.L.1974, c.87 (C.52:27D-43.8 et seq.). This shall be in addition to the requirement that the commissioner semiannually compile and submit all records of all inmate complaints to the Public Advocate pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as section 2 of Assembly Bill No. 4199 or Senate Bill No. 531).

C.30:4-8.9 Defendant advised of child support orders, judgments.

8. The Department of Corrections, through the Office of Transitional Services, shall, in addition to any other information provided during the intake process to a defendant sentenced to a period of incarceration, advise the defendant about any child support orders and judgments entered against him by the New Jersey Superior Court, and provide information on how he may petition the court for a temporary modification of these financial obligations. The Administrative Office of the Courts shall provide sample forms and instructions for the self-represented modification of child support orders to the Department of Corrections.

C.30:4-8.10 Posting of change in visitation privileges on website.

9. a. Whenever there is a change in the status of an inmate incarcerated in a State correctional facility which affects the visitation privileges of that inmate, the correctional facility shall immediately post that change of status on its website. This information shall remain on the website until those visitation rights have been restored.

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

Repealer.

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

11. This act shall take effect on the first day of the fourth month after enactment, except that section 3 shall expire on the 30th day after the commission presents its report to the Governor and the Legislature.

Approved January 18, 2010.