

New Plea Form: Additional Questions for Certain Sexual Offenses Committed on or After December 1, 1998

Directive #2-99
(Modifies Directives #7-96,
#10-97 and #4-98)
Issued by:

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James J. Ciania
Acting Administrative Director

On August 12, 1998 Governor Christine Whitman signed into law a package of bills concerning sex offender commitment, sentencing and parole. The bills are officially known as the **A**New Jersey Sexually Violent Predator Act.[@] While a majority of the provisions of the law go into effect on August 12, 1999, two of the bills became effective on December 1, 1998. The bills are *P.L. 1998, c. 72* which revises the procedure for sentencing sex offenders to the Adult Diagnostic and Treatment Center, and *P.L. 1998, c. 73* which revises the procedures for parole from the Adult Diagnostic and Treatment Center. As a result of the enactment of these two laws the Criminal Practice Committee determined that the judgment of conviction needed to be amended and a new plea form developed.

The Supreme Court at its Administrative Conference on March 1, 1999, approved the recommendation of the Criminal Practice Committee for a new plea form entitled **A**Additional Questions for Certain Sexual Offenses Committed on or after December 1, 1998.[@] and for a revision of the judgment of conviction. A copy of the new plea form is attached. The amended judgment of conviction is listed in directive #3-99.

Listed below is a explanation of the changes in the law.

P.L. 1998, c. 72, Revises Sentencing of Sex Offenders to Adult Diagnostic and Treatment Center

The Act amended the law governing the sentencing and incarceration of sex offenders at the Adult Diagnostic and Treatment Center (ADTC), New Jersey's correctional and treatment facility for convicted sex offenders. It is part of a two-bill package enacted to improve the management and treatment of sex offenders.

The law acknowledges that some convicted sex offenders will not respond to, or successfully complete, a program of treatment. Thus, the law limits treatment at the ADTC to those sex offenders who are determined to be amenable to sex offender treatment and who are willing to participate in such treatment.

Under the prior law, the judge ordered persons convicted of aggravated sexual assault, sexual assault and aggravated criminal sexual contact to undergo a psychological examination conducted by the Department of Corrections (DOC). This law expands that list of sex offenses to include: (1) endangering the welfare of a child by engaging in sexual conduct, which would impair or debauch the morals of the child, pursuant to subsection a. of *N.J.S.A. 2C:24-4* and (2) endangering the welfare of a child, pursuant to paragraph (4) of subsection b. of *N.J.S.A. 2C:24-4*. The law provides that the sentencing judge need not order a psychological examination of an offender sentenced to a term of life imprisonment without eligibility for parole. These offenders will not be confined at the ADTC.

Under prior law, the psychological examination was conducted to determine whether the sex offender's conduct was characterized by a pattern of repetitive, compulsive behavior. Under the new law, if a determination is made that the sex offender is repetitive and compulsive, a further determination is to be made of the offender's amenability to sex offender treatment and willingness to participate in such treatment. An offender who is not placed on probation is to be, upon recommendation of the DOC, sentenced to the ADTC. If the sentence imposed is greater than seven years, however, the DOC is to first confine the offender to a facility other than the ADTC.

If the court finds that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior and that the offender is amenable to sex offender treatment, but is not willing to participate in such treatment, the court is to sentence the offender to a term of incarceration to be served in a facility designated by the commissioner.

The law amends the law pertaining to the application of credits in the computation of the expiration date of a sentence imposed on a sex offender. Under the new law, a repetitive, compulsive sex offender, who is determined to be amenable to sex offender treatment, but not willing to participate in such treatment, or a sex offender who is determined to be not amenable to sex offender treatment will not receive commutation time for good behavior or earn work credits for time served in a facility other than the ADTC. An offender who is found not to be amenable to sex offender treatment and who is sentenced, pursuant to chapters 43, 44 and 45 of Title 2C, will not receive commutation time or work credits. The amendments also clarify that when the sex offender is a female, confinement is to be in a facility designated by the Commissioner of Corrections. The amendments further clarify that female sex offenders are subject to the same statutes and rules and regulations as male sex offenders.

P.L. 1998, c. 73, Revises the Procedures for Parole from the Adult Diagnostic and Treatment Center

This law amends the law governing the parole of sex offenders from the Adult Diagnostic and Treatment Center (ADTC). It is the second of a two-bill package enacted to improve the management and treatment of sex offenders.

Under the prior law, a sex offender sentenced to the ADTC became eligible for parole when it appeared to the satisfaction of the State Parole Board, upon the recommendation of the Special Classification Review Board, that the offender was "capable of making an acceptable social adjustment in the community." Under the provisions of the new law, the sex offender becomes eligible for parole consideration upon referral of his case to the State Parole Board by the Special Classification Review Board, based on a determination that the offender has achieved a satisfactory level of progress in sex offender treatment. The offender will thereafter be released on parole unless the State Parole Board determines that the information contained in the preparole report indicates by a preponderance of the evidence that the offender has failed to cooperate in rehabilitation or there is a reasonable expectation that the offender will violate conditions of parole. A repetitive, compulsive sex offender, who is determined to be amenable to sex offender treatment, but is not willing to participate in such treatment and who is confined in a correctional facility other than the ADTC, will also be subject to these same parole eligibility provisions.

A sex offender who was determined not to be repetitive and compulsive, or who was determined to be repetitive and compulsive, but not amenable to sex offender treatment, will be subject to the provisions of Title 30 of the Revised Statutes governing parole. The parole eligibility terms of such sex offenders will not be reduced by commutation time for good behavior or by work credits. No sex offender would become primarily eligible for parole prior to the expiration of any judicial or statutory mandatory minimum term.

**ADDITIONAL QUESTIONS FOR CERTAIN SEXUAL OFFENSES
COMMITTED ON OR AFTER DECEMBER 1, 1998**

These additional questions need to be answered if you are pleading guilty to the offense of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping under 2C:13-1c(2), endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child under 2C:24-4a, endangering the welfare of a child pursuant to 2C:24-4b(4), or any attempt to commit any such offense.

1. Do you understand you will be required to submit to a psychological examination by the Department of Corrections the purpose of which is to determine if your conduct in committing the offense was characterized by a pattern of repetitive and compulsive behavior and if it was, whether you are amenable to (will benefit from) sex offender treatment and you are willing to participate in such treatment?[YES] [NO]
2. Do you understand if the examination reveals that your conduct is characterized by a pattern of repetitive and compulsive behavior, and you are amenable to (will benefit from) sex offender treatment and willing to participate in such treatment, the judge shall, upon recommendation of the Department of Corrections, sentence you to confinement at the Adult Diagnostic and Treatment Center for sex offender treatment; however, if the sentence imposed is greater than 7 years, you will first be confined at a facility other than the Adult Diagnostic and Treatment Center?[YES] [NO]
3. Do you understand if the court finds your conduct is characterized by a pattern of repetitive and compulsive behavior and you are not amenable to sex offender treatment or if you are amenable (will benefit from) but you are not willing to participate in such treatment, the court will sentence you to a term of incarceration to be served in another facility which will not provide for sex offender treatment and in such event, you will not receive commutation time for good behavior or each work credits for time served in such other facility?[YES] [NO]
4. Do you understand you will be able to challenge the findings of the Department of Corrections in a hearing and at that hearing you will have the right to confront the witnesses against you and to cross examine them and then present evidence on your own behalf?[YES] [NO]
5. Do you understand if you are sentenced to the Adult Diagnostic and Treatment Center
 - a. that any future parole will not be guided by the normal parole guidelines?

- b. that you will be eligible for release when the State Parole Board, after receiving a recommendation from a special classification review board, finds you have achieved a satisfactory level of progress in sex offender treatment and that you will then be released on parole unless the State Parole Board determines by a preponderance of the evidence that you have failed to cooperate in your rehabilitation or there is reasonable expectation that you will violate conditions of parole? [YES] [NO]
- c. that you could spend more time in treatment than you would spend if sentenced to state prison?
6. Do you understand that if you are determined to be a repetitive, compulsive sex offender who is amenable to (will benefit from) sex offender treatment but you are not willing to participate in such treatment and are confined to a facility other than Adult Diagnostic and Treatment Center, you will also be subject to the same parole eligibility terms as contained in section 5 above? [YES] [NO]
7. Do you understand that if your conduct is not characterized by a pattern of repetitive, compulsive behavior or you are not amenable to sex offender treatment you will not become primarily eligible for parole until you have served any mandatory minimum term imposed by the court or one third of the sentence imposed where no mandatory minimum term is fixed and neither term will be reduced by commutation time for good behavior or work credits? [YES] [NO]
8. Do you understand that if you are confined at the Adult Diagnostic and Treatment Center or any other facility for commission of a sexually violent offense, you may upon completion of your term of confinement be involuntarily committed to another facility if the court finds, after a hearing, that you are a sexually violent predator in need of involuntary civil commitment? [YES] [NO]

Date_____

Defendant _____

Defense Attorney_____

Prosecutor_____

NOTE: If the defendant is a female and qualifies for sex offender treatment, she will not be confined at the Adult Diagnostic and Treatment Center but a facility designated by the Commissioner of Corrections where she will receive similar sex offender treatment.