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MEMORANDUM

TO: Director, Division of Criminal Justice
County Prosecutors

FROM: Stuart Rabner *SR*
Attorney General

DATE: May 31, 2007

SUBJECT: *Guidelines Concerning Prosecutions of Public Officials*

1. INTRODUCTION AND OVERVIEW

On March 15, 2007, Governor Jon Corzine signed P.L. 2007, c. 49, which significantly enhances the punishment of government officials who are convicted of abusing their office and violating the public trust. The new law, which applies to offenses that occur on or after April 14, provides that when a public officer or employee is convicted of one of the listed crimes and the offense involves or touches upon his or her office, the defendant must be sentenced by the court to a minimum term of imprisonment and parole ineligibility, subject to two limited exceptions. N.J.S.A. 2C:43-6.5(a). Defendants who are sentenced to a minimum term of imprisonment are not eligible for early release through the Intensive Supervision Program (ISP). N.J.S.A. 2C:43-6.5(d)(2). The new law also creates a presumption that a public official charged with a listed offense is ineligible for diversion through the Pretrial Intervention Program (PTI), and a prosecutor may not recommend the defendant's admission into PTI without the prior approval of the Attorney General. N.J.S.A. 2C:43-6.5(d)(1).



N.J.S.A. 2C:43-6.5(e) requires the Attorney General to develop guidelines to ensure the uniform exercise of discretion in making determinations regarding the waiver or reduction of a mandatory minimum term of imprisonment and regarding a defendant's participation in a pretrial intervention program. The following Guidelines are issued pursuant to that statutory requirement, and also pursuant to the Criminal Justice Act of 1970, N.J.S.A. 2C:52-17B-97 et seq., which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State. N.J.S.A. 2C:52-17B-98.

2. SCOPE AND APPLICATION

These Guidelines apply to the investigation and prosecution of all persons who serve or who have served as a public officer or employee under the government of this State or any political subdivision of this State [hereinafter referred to as "public officials"] who are convicted of the following listed crimes where the crime involves or touches upon the person's office or employment. An offense is deemed to involve or touch upon the person's office if the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person.

The predicate offenses are as follows:

Criminal coercion under paragraph 4, subsection a. of N.J.S.A. 2C:13-5;

Theft by deception, N.J.S.A. 2C:20-4, if the amount involved exceeds \$10,000;

Theft by extortion under subsection d. of N.J.S.A. 2C:20-5;

Theft by failure to make required disposition of property received, N.J.S.A. 2C:20-9, if the amount involved exceeds \$10,000;

Commercial bribery, N.J.S.A. 2C:21-10;

Money laundering, N.J.S.A. 2C:21-25;

False contract payment claims, N.J.S.A. 2C:21-34;

Bribery in official matters, N.J.S.A. 2C:27-2;

