

ASSEMBLY, No. 333

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

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SYNOPSIS

Makes all persons convicted of sexual assault subject to the No Early Release Act; specifies that any use of force elevates sexual assault to aggravated sexual assault.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning sexual assault and amending P.L.1997, c.117
2 and N.J.S.2C:14-2.

3

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

6

7 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
8 read as follows:

9 2. a. A court imposing a sentence of incarceration for a crime
10 of the first or second degree enumerated in subsection d. of this
11 section shall fix a minimum term of 85% of the sentence imposed,
12 during which the defendant shall not be eligible for parole.

13 b. The minimum term required by subsection a. of this section
14 shall be fixed as a part of every sentence of incarceration imposed
15 upon every conviction of a crime enumerated in subsection d. of
16 this section, whether the sentence of incarceration is determined
17 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any
18 other provision of law, and shall be calculated based upon the
19 sentence of incarceration actually imposed. The provisions of
20 subsection a. of this section shall not be construed or applied to
21 reduce the time that must be served before eligibility for parole by
22 an inmate sentenced to a mandatory minimum period of
23 incarceration. Solely for the purpose of calculating the minimum
24 term of parole ineligibility pursuant to subsection a. of this section,
25 a sentence of life imprisonment shall be deemed to be 75 years.

26 c. Notwithstanding any other provision of law to the contrary
27 and in addition to any other sentence imposed, a court imposing a
28 minimum period of parole ineligibility of 85 percent of the sentence
29 pursuant to this section shall also impose a five-year term of parole
30 supervision if the defendant is being sentenced for a crime of the
31 first degree, or a three-year term of parole supervision if the
32 defendant is being sentenced for a crime of the second degree. The
33 term of parole supervision shall commence upon the completion of
34 the sentence of incarceration imposed by the court pursuant to
35 subsection a. of this section unless the defendant is serving a
36 sentence of incarceration for another crime at the time he completes
37 the sentence of incarceration imposed pursuant to subsection a., in
38 which case the term of parole supervision shall commence
39 immediately upon the defendant's release from incarceration.
40 During the term of parole supervision the defendant shall remain in
41 release status in the community in the legal custody of the
42 Commissioner of the Department of Corrections and shall be
43 supervised by the State Parole Board as if on parole and shall be
44 subject to the provisions and conditions of section 3 of P.L.1997,
45 c.117 (C.30:4-123.51b).

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 d. The court shall impose sentence pursuant to subsection a. of
2 this section upon conviction of the following crimes or an attempt
3 or conspiracy to commit any of these crimes:

- 4 (1) N.J.S.2C:11-3, murder;
- 5 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 6 (3) N.J.S.2C:11-5, vehicular homicide;
- 7 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 8 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),
9 disarming a law enforcement officer;
- 10 (6) N.J.S.2C:13-1, kidnapping;
- 11 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 12 (8) subsection b. of N.J.S.2C:14-2 and **[**paragraph (1) of**]**
13 subsection c. of N.J.S.2C:14-2, sexual assault;
- 14 (9) N.J.S.2C:15-1, robbery;
- 15 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 16 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
17 arson;
- 18 (12) N.J.S.2C:18-2, burglary;
- 19 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 20 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
21 booby traps in manufacturing or distribution facilities;
- 22 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 23 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
- 24 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
25 possessing chemical weapons, biological agents or nuclear or
26 radiological devices; or
- 27 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
28 degree.

29 e. (Deleted by amendment, P.L.2001, c.129).
30 (cf: P.L.2007, c.341, s.6)

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32 2. N.J.S.2C:14-2 is amended to read as follows:

33 2C:14-2. Sexual assault. a. An actor is guilty of aggravated
34 sexual assault if he commits an act of sexual penetration with
35 another person under any one of the following circumstances:

- 36 (1) The victim is less than 13 years old;
- 37 (2) The victim is at least 13 but less than 16 years old; and
38 (a) The actor is related to the victim by blood or affinity to the
39 third degree, or
40 (b) The actor has supervisory or disciplinary power over the
41 victim by virtue of the actor's legal, professional, or occupational
42 status, or
43 (c) The actor is a resource family parent, a guardian, or stands
44 in loco parentis within the household;
- 45 (3) The act is committed during the commission, or attempted
46 commission, whether alone or with one or more other persons, of

1 robbery, kidnapping, homicide, aggravated assault on another,
2 burglary, arson or criminal escape;

3 (4) The actor is armed with a weapon or any object fashioned in
4 such a manner as to lead the victim to reasonably believe it to be a
5 weapon and threatens by word or gesture to use the weapon or
6 object;

7 (5) The actor is aided or abetted by one or more other persons
8 and the actor uses physical force or coercion;

9 (6) The actor uses physical force or coercion **[and severe**
10 **personal injury is sustained by the victim]**;

11 (7) The victim is one whom the actor knew or should have
12 known was physically helpless, mentally incapacitated , or had a
13 mental disease or defect which rendered the victim temporarily or
14 permanently incapable of understanding the nature of his conduct,
15 including, but not limited to, being incapable of providing consent.

16 Aggravated sexual assault is a crime of the first degree.

17 b. An actor is guilty of sexual assault if he commits an act of
18 sexual contact with a victim who is less than 13 years old and the
19 actor is at least four years older than the victim.

20 c. An actor is guilty of sexual assault if he commits an act of
21 sexual penetration with another person under any one of the
22 following circumstances:

23 (1) **[The actor uses physical force or coercion, but the victim**
24 **does not sustain severe personal injury]** (Deleted by amendment,
25 P.L. , c.) (pending before the Legislature as this bill);

26 (2) The victim is on probation or parole, or is detained in a
27 hospital, prison or other institution and the actor has supervisory or
28 disciplinary power over the victim by virtue of the actor's legal,
29 professional or occupational status;

30 (3) The victim is at least 16 but less than 18 years old and:

31 (a) The actor is related to the victim by blood or affinity to the
32 third degree; or

33 (b) The actor has supervisory or disciplinary power of any
34 nature or in any capacity over the victim; or

35 (c) The actor is a resource family parent, a guardian, or stands
36 in loco parentis within the household;

37 (4) The victim is at least 13 but less than 16 years old and the
38 actor is at least four years older than the victim.

39 Sexual assault is a crime of the second degree.

40 (cf: P.L.2011, c.232, s.4)

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42 3. This act shall take effect immediately.

STATEMENT

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This bill would make all forms of sexual assault subject to sentencing under the No Early Release Act (NERA) and specify that the use of any physical force or coercion in a sexual assault, regardless of whether that force or coercion results in severe physical injury to the victim, elevates the crime to aggravated sexual assault, a crime of the first degree.

Under NERA (P.L.1997, c.117; C.2C:43-7.2), persons who commit certain violent crimes of the first and second degree are required to serve a minimum of 85% of the sentence imposed on them by the court.

One exception to this general rule involves sexual assault. Although sexual assault is a crime of the second degree, a person who commits sexual assault is subject to the provisions of NERA only if that assault (1) involves sexual contact with a victim who is less than 13 years of age and the actor is at least four years older than the victim or (2) the actor uses physical force or coercion, but that force or coercion does not cause severe personal injury to the victim, which would raise the offense to the crime of aggravated sexual assault. Aggravated sexual assault is a crime of the first degree and all those convicted of that crime are subject to NERA.

This bill would make all forms of sexual assault subject to NERA.

The bill also amends N.J.S.2C:14-2 to specify that the use of physical force or coercion in a sexual assault, regardless of whether that force or coercion results in severe physical injury to the victim, elevates any crime of sexual assault to aggravated sexual assault, a crime of the first degree. The penalties for a crime of the first degree are imprisonment for a term of 10 to 20 years, a fine of up to \$200,000, or both.