

ASSEMBLY, No. 3908

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 4, 2014

Sponsored by:

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

SYNOPSIS

Establishes crime of sexual assault by fraud.

CURRENT VERSION OF TEXT

As introduced.



A3908 SINGLETON, MOSQUERA

2

1 AN ACT concerning aggravated sexual assault and sexual assault
2 and amending 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. N.J.S.2C:14-2 is amended to read as follows:

8 2C:14-2. Sexual assault. a. An actor is guilty of aggravated
9 sexual assault if he commits an act of sexual penetration with
10 another person under any one of the following circumstances:

11 (1) The victim is less than 13 years old;

12 (2) The victim is at least 13 but less than 16 years old; and

13 (a) The actor is related to the victim by blood or affinity to the
14 third degree, or

15 (b) The actor has supervisory or disciplinary power over the
16 victim by virtue of the actor's legal, professional, or occupational
17 status, or

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

20 (3) The act is committed during the commission, or attempted
21 commission, whether alone or with one or more other persons, of
22 robbery, kidnapping, homicide, aggravated assault on another,
23 burglary, arson or criminal escape;

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

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

30 (6) The actor uses physical force or coercion and severe
31 personal injury is sustained by the victim;

32 (7) The victim is one whom the actor knew or should have
33 known was physically helpless or incapacitated, intellectually or
34 mentally incapacitated, or had a mental disease or defect which
35 rendered the victim temporarily or permanently incapable of
36 understanding the nature of his conduct, including, but not limited
37 to, being incapable of providing consent;

38 (8) The act is committed through fraud whereby the victim
39 submits to the act under the belief that the person committing the
40 act is someone known to the victim other than the accused, and this
41 belief is induced by any artifice, pretense, or concealment practiced
42 by the accused, with the intent to induce the belief.

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

44 Except as otherwise provided in subsection d. of this section, a
45 person convicted under paragraph (1) of this subsection shall be

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 sentenced to a specific term of years which shall be fixed by the
2 court and shall be between 25 years and life imprisonment of which
3 the person shall serve 25 years before being eligible for parole,
4 unless a longer term of parole ineligibility is otherwise provided
5 pursuant to this Title.

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

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

12 (1) The actor uses physical force or coercion, but the victim
13 does not sustain severe personal injury;

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

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

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

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

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

25 (4) The victim is at least 13 but less than 16 years old and the
26 actor is at least four years older than the victim;

27 (5) The act was committed by the actor through fraud other than
28 the fraud described in subsection a. of this section.

29 Nothing in P.L. , c. (C.) (pending before the Legislature
30 as this bill) shall preclude an assignment judge from dismissing a
31 prosecution under this paragraph if the assignment judge
32 determines, pursuant to N.J.S.2C:2-11, the conduct charged to be a
33 de minimus infraction.

34 Sexual assault is a crime of the second degree.

35 d. Notwithstanding the provisions of subsection a. of this
36 section, where a defendant is charged with a violation under
37 paragraph (1) of subsection a. of this section, the prosecutor, in
38 consideration of the interests of the victim, may offer a negotiated
39 plea agreement in which the defendant would be sentenced to a
40 specific term of imprisonment of not less than 15 years, during
41 which the defendant shall not be eligible for parole. In such event,
42 the court may accept the negotiated plea agreement and upon such
43 conviction shall impose the term of imprisonment and period of
44 parole ineligibility as provided for in the plea agreement, and may
45 not impose a lesser term of imprisonment or parole or a lesser
46 period of parole ineligibility than that expressly provided in the plea
47 agreement. The Attorney General shall develop guidelines to ensure
48 the uniform exercise of discretion in making determinations

1 regarding a negotiated reduction in the term of imprisonment and
2 period of parole ineligibility set forth in subsection a. of this
3 section.

4 (cf: P.L. 2014, c.7, s.1)

5

6 2. This act shall take effect immediately.

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STATEMENT

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11 This bill would expand the penalties for aggravated sexual
12 assault to include an act of sexual penetration that is committed by
13 fraud.

14 A number of states have enacted statutes which criminalize
15 sexual penetration when accomplished by an actor who fraudulently
16 obtains the consent of the victim. In these cases, the victim's
17 consent is obtained by the actor's misrepresentation as to the
18 purpose of the sexual act, or by the actor misrepresenting his
19 identity. However, in New Jersey, sexual penetration or sexual
20 contact accomplished through fraud is not currently a crime.

21 In the sponsor's view, consent to sexual penetration that is
22 fraudulently obtained is negated, resulting in non-consensual sexual
23 penetration. Under the bill, a person who commits an act of sexual
24 penetration by fraud whereby the victim submits to the act under the
25 belief that the person committing the act is someone known to the
26 victim other than the accused, and this belief is induced by any
27 artifice, pretense, or concealment practiced by the accused, with the
28 intent to induce the belief is guilty of the first degree crime of
29 aggravated sexual assault. A person who commits an act of sexual
30 penetration by fraud in a manner other than described in subsection
31 a. of the bill is guilty of the second degree crime of sexual assault.

32 It is the sponsor's intent to provide a remedy to victims who
33 suffer severe psychological harm. Prosecution of de minimus
34 actions in which there is no such resulting harm to the victim would
35 be contrary to the sponsor's intent. In order to prevent prosecutions
36 of de minimus actions, the bill explicitly provides that nothing in
37 the bill shall preclude an assignment judge from dismissing a
38 prosecution under paragraph (5) of subsection b. of the bill if the
39 assignment judge determines, pursuant to N.J.S.2C:2-11, the
40 conduct charged to be a de minimus infraction.

41 N.J.S.2C:2-11 provides:

42 The assignment judge may dismiss a prosecution if, having
43 regard to the nature of the conduct charged to constitute an offense
44 and the nature of the attendant circumstances, it finds that the
45 defendant's conduct:

46 a. Was within a customary license or tolerance, neither
47 expressly negated by the person whose interest was infringed nor
48 inconsistent with the purpose of the law defining the offense;

1 b. Did not actually cause or threaten the harm or evil sought to
2 be prevented by the law defining the offense or did so only to an
3 extent too trivial to warrant the condemnation of conviction; or

4 c. Presents such other extenuations that it cannot reasonably be
5 regarded as envisaged by the Legislature in forbidding the offense.
6 The assignment judge shall not dismiss a prosecution under this
7 section without giving the prosecutor notice and an opportunity to
8 be heard. The prosecutor shall have a right to appeal any such
9 dismissal.

10 Pursuant to N.J.S.2C:14-2, a person who commits an unlawful
11 act of sexual penetration or sexual contact is guilty of aggravated
12 sexual assault or sexual assault. Whether the crime will be the first
13 degree crime of aggravated sexual assault or the second degree
14 crime of sexual assault depends on the circumstances surrounding
15 the act. These circumstances include, but are not limited to, any use
16 of force by the defendant; the degree of injury suffered by the
17 victim; whether the defendant and the victim had a family
18 relationship or supervisory relationship; the victim's age, if the
19 victim was under age 18; and whether the act was committed during
20 the commission of another crime.

21 A person who commits aggravated sexual assault is guilty of a
22 crime of the first degree punishable by a term of imprisonment of
23 10 to 20 years and a fine of up to \$200,000 or both. If committed
24 against a victim who is less than 13 years old, the crime of
25 aggravated sexual assault is punishable by a sentence of not less
26 than 25 years and up to a term of life imprisonment, or a negotiated
27 plea agreement for not less than 15 years. The person must serve at
28 least the minimum number of specified years of the sentence before
29 being eligible for parole. Sexual assault is a second degree crime
30 punishable by a term of imprisonment of five to 10 years and a fine
31 of up to \$150,000.

32 In New Jersey, the use of force is not required for a conviction of
33 aggravated sexual assault. A person may be found guilty of
34 aggravated sexual assault in the absence of force if an act of sexual
35 penetration is committed against a victim whom the actor knew or
36 should have known was physically helpless or incapacitated,
37 intellectually or mentally incapacitated, or had a mental disease or
38 defect which rendered the victim temporarily or permanently
39 incapable of understanding the nature of his conduct, including, but
40 not limited to, being incapable of providing consent.

41 Pursuant to subsection i. of N.J.S.2C:14-1, "mentally
42 incapacitated" refers to the condition in which a person is rendered
43 temporarily incapable of understanding or controlling his conduct
44 due to the influence of a narcotic, anesthetic, intoxicant, or other
45 substance administered to that person without his prior knowledge
46 or consent, or due to any other act committed upon that person
47 which rendered that person incapable of appraising or controlling
48 his conduct.