

**ASSEMBLY, No. 717**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen and Passaic)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**Co-Sponsored by:**

**Assemblyman McGuckin, Assemblywomen Jimenez, Murphy, McKnight,  
Assemblymen Freiman, Wimberly and Tully**

**SYNOPSIS**

Provides for jurisdiction for prosecution for certain crimes against minors committed outside New Jersey.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning territorial jurisdiction and amending  
2 N.J.S.2C:14-2 and N.J.S.2C:24-4.

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,

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 Aggravated sexual assault is a crime of the first degree.

39 Except as otherwise provided in subsection d. of this section, a  
40 person convicted under paragraph (1) of this subsection shall be  
41 sentenced to a specific term of years which shall be fixed by the  
42 court and shall be between 25 years and life imprisonment of which  
43 the person shall serve 25 years before being eligible for parole,  
44 unless a longer term of parole ineligibility is otherwise provided  
45 pursuant to this Title.

**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       b. An actor is guilty of sexual assault if he commits an act of  
2 sexual contact with a victim who is less than 13 years old and the  
3 actor is at least four years older than the victim.
- 4       c. An actor is guilty of sexual assault if he commits an act of  
5 sexual penetration with another person under any one of the  
6 following circumstances:
- 7       (1) The actor uses physical force or coercion, but the victim  
8 does not sustain severe personal injury;
- 9       (2) The victim is on probation or parole, or is detained in a  
10 hospital, prison or other institution and the actor has supervisory or  
11 disciplinary power over the victim by virtue of the actor's legal,  
12 professional or occupational status;
- 13       (3) The victim is at least 16 but less than 18 years old and:
- 14       (a) The actor is related to the victim by blood or affinity to the  
15 third degree; or
- 16       (b) The actor has supervisory or disciplinary power of any  
17 nature or in any capacity over the victim; or
- 18       (c) The actor is a resource family parent, a guardian, or stands  
19 in loco parentis within the household;
- 20       (4) The victim is at least 13 but less than 16 years old and the  
21 actor is at least four years older than the victim.
- 22       Sexual assault is a crime of the second degree.
- 23       d. Notwithstanding the provisions of subsection a. of this  
24 section, where a defendant is charged with a violation under  
25 paragraph (1) of subsection a. of this section, the prosecutor, in  
26 consideration of the interests of the victim, may offer a negotiated  
27 plea agreement in which the defendant would be sentenced to a  
28 specific term of imprisonment of not less than 15 years, during  
29 which the defendant shall not be eligible for parole. In such event,  
30 the court may accept the negotiated plea agreement and upon such  
31 conviction shall impose the term of imprisonment and period of  
32 parole ineligibility as provided for in the plea agreement, and may  
33 not impose a lesser term of imprisonment or parole or a lesser  
34 period of parole ineligibility than that expressly provided in the plea  
35 agreement. The Attorney General shall develop guidelines to  
36 ensure the uniform exercise of discretion in making determinations  
37 regarding a negotiated reduction in the term of imprisonment and  
38 period of parole ineligibility set forth in subsection a. of this  
39 section.
- 40       e. For purposes of N.J.S.2C:1-3, when an actor's supervisory  
41 or disciplinary power over a victim pursuant to subparagraph (b) of  
42 paragraph (2) of subsection a. of this section or subparagraph (b) of  
43 paragraph (3) of subsection c. of this section commences in this  
44 State, an act of sexual penetration or sexual contact with the victim  
45 occurring outside the State constitutes an offense under this section  
46 as if the conduct occurred in this State.
- 47       (cf: P.L.2014, c.7, s.1)

1       2. N.J.S.2C:24-4 is amended to read as follows:  
2       2C:24-4. Endangering Welfare of Children.  
3       a. (1) (a) Any person having a legal duty for the care of a  
4 child or who has assumed responsibility for the care of a child who  
5 engages in sexual conduct within this State which would impair or  
6 debauch the morals of the child, or any person having a legal duty  
7 in this State for the care of a child or who has assumed  
8 responsibility in this State for the care of a child who engages in  
9 sexual conduct outside this State which would impair or debauch  
10 the morals of the child, is guilty of a crime of the second degree.  
11 For the purposes of determining territorial jurisdiction pursuant to  
12 N.J.S.2C:1-3, the assumption of responsibility in this State for the  
13 care of a child shall be considered conduct which is a material  
14 element of the offense.  
15       (b) Any other person who engages in conduct or who causes  
16 harm as described in this paragraph to a child is guilty of a crime of  
17 the third degree.  
18       (2) Any person having a legal duty for the care of a child or who  
19 has assumed responsibility for the care of a child who causes the  
20 child harm that would make the child an abused or neglected child  
21 as defined in R.S.9:6-1, R.S.9:6-3 and section 1 of P.L.1974, c.119  
22 **[, s.1]** (C.9:6-8.21) is guilty of a crime of the second degree. Any  
23 other person who engages in conduct or who causes harm as  
24 described in this paragraph to a child is guilty of a crime of the third  
25 degree.  
26       b. (1) As used in this subsection:  
27       "Child" means any person under 18 years of age.  
28       "Distribute" means to sell, or to manufacture, give, provide, lend,  
29 trade, mail, deliver, publish, circulate, disseminate, present, exhibit,  
30 display, share, advertise, offer, or make available via the Internet or  
31 by any other means, whether for pecuniary gain or not. The term  
32 also includes an agreement or attempt to distribute.  
33       "File-sharing program" means a computer program, application,  
34 software or operating system that allows the user of a computer on  
35 which such program, application, software or operating system is  
36 installed to designate files as available for searching by and copying  
37 to one or more other computers, to transmit such designated files  
38 directly to one or more other computers, and to request the  
39 transmission of such designated files directly from one or more  
40 other computers. The term "file-sharing program" includes but is  
41 not limited to a computer program, application or software that  
42 enables a computer user to participate in a peer-to-peer network.  
43       "Internet" means the international computer network of both  
44 federal and non-federal interoperable packet switched data  
45 networks.  
46       "Item depicting the sexual exploitation or abuse of a child"  
47 means a photograph, film, video, an electronic, electromagnetic or  
48 digital recording, an image stored or maintained in a computer

1 program or file or in a portion of a file, or any other reproduction or  
2 reconstruction which:

3 (a) depicts a child engaging in a prohibited sexual act or in the  
4 simulation of such an act; or

5 (b) portrays a child in a sexually suggestive manner.

6 "Peer-to-peer network" means a connection of computer systems  
7 through which files are shared directly between the systems on a  
8 network without the need of a central server.

9 "Portray a child in a sexually suggestive manner" means:

10 (a) to depict a child's less than completely and opaquely covered  
11 intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by  
12 means of the posing, composition, format, or animated sensual  
13 details, emits sensuality with sufficient impact to concentrate  
14 prurient interest on the child; or

15 (b) to depict any form of contact with a child's intimate parts, as  
16 defined in N.J.S.2C:14-1, in a manner that, by means of the posing,  
17 composition, format, or animated sensual details, emits sensuality  
18 with sufficient impact to concentrate prurient interest on the child;  
19 or

20 (c) to otherwise depict a child for the purpose of sexual  
21 stimulation or gratification of any person who may view the  
22 depiction where the depiction does not have serious literary, artistic,  
23 political, or scientific value.

24 "Prohibited sexual act" means

25 (a) Sexual intercourse; or

26 (b) Anal intercourse; or

27 (c) Masturbation; or

28 (d) Bestiality; or

29 (e) Sadism; or

30 (f) Masochism; or

31 (g) Fellatio; or

32 (h) Cunnilingus; or

33 (i) Nudity, if depicted for the purpose of sexual stimulation or  
34 gratification of any person who may view such depiction; or

35 (j) Any act of sexual penetration or sexual contact as defined in  
36 N.J.S.2C:14-1.

37 "Reproduction" means, but is not limited to, computer generated  
38 images.

39 (2) (Deleted by amendment, P.L.2001, c.291).

40 (3) A person commits a crime of the first degree if he causes or  
41 permits a child to engage in a prohibited sexual act or in the  
42 simulation of such an act or to be portrayed in a sexually suggestive  
43 manner if the person knows, has reason to know or intends that the  
44 prohibited act or portrayal may be photographed, filmed,  
45 reproduced, or reconstructed in any manner, including on the  
46 Internet, or may be part of an exhibition or performance.

47 (4) A person commits a crime of the second degree if he  
48 photographs or films a child in a prohibited sexual act or in the

1 simulation of such an act or for portrayal in a sexually suggestive  
2 manner or who uses any device, including a computer, to reproduce  
3 or reconstruct the image of a child in a prohibited sexual act or in  
4 the simulation of such an act or for portrayal in a sexually  
5 suggestive manner.

6 (5) (a) A person commits a crime **【of the second degree】** if, by  
7 any means, including but not limited to the Internet, he:

8 (i) knowingly distributes an item depicting the sexual  
9 exploitation or abuse of a child;

10 (ii) knowingly possesses an item depicting the sexual  
11 exploitation or abuse of a child with the intent to distribute that  
12 item; or

13 (iii) knowingly stores or maintains an item depicting the sexual  
14 exploitation or abuse of a child using a file-sharing program which  
15 is designated as available for searching by or copying to one or  
16 more other computers.

17 In a prosecution under sub-subparagraph (iii) of this  
18 subparagraph, the State shall not be required to offer proof that an  
19 item depicting the sexual exploitation or abuse of a child had  
20 actually been searched, copied, transmitted or viewed by another  
21 user of the file-sharing program, or by any other person, and it shall  
22 be no defense that the defendant did not intend to distribute the item  
23 to another user of the file-sharing program or to any other person.  
24 Nor shall the State be required to prove that the defendant was  
25 aware that the item depicting the sexual exploitation or abuse of a  
26 child was available for searching or copying to one or more other  
27 computers, and the defendant shall be strictly liable for failing to  
28 designate the item as not available for searching or copying by one  
29 or more other computers.

30 A violation of this subparagraph that involves 1,000 or more  
31 items depicting the sexual exploitation or abuse of a child is a crime  
32 of the first degree; otherwise it is a crime of the second degree.

33 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
34 6, a person whose offense under this subparagraph involved at least  
35 **25 【or more】** but less than 1,000 items depicting the sexual  
36 exploitation or abuse of a child shall be sentenced to a mandatory  
37 minimum term of imprisonment, which shall be fixed at, or  
38 between, one-third and one-half of the sentence imposed by the  
39 court or five years, whichever is greater, during which the  
40 defendant shall be ineligible for parole.

41 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
42 6, a person whose offense under this subparagraph involved 1,000  
43 or more items depicting the sexual exploitation or abuse of a child  
44 shall be sentenced to a mandatory minimum term of imprisonment,  
45 which shall be fixed at, or between, one-third and one-half of the  
46 sentence imposed by the court or 10 years, whichever is greater,  
47 during which the defendant shall be ineligible for parole.

1 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
2 6, a person convicted of a second or subsequent offense under this  
3 subparagraph shall be sentenced to an extended term of  
4 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
5 subparagraph, an offense is considered a second or subsequent  
6 offense if the actor has at any time been convicted pursuant to  
7 paragraph (3), (4),<sub>2</sub> or (5) of this subsection, or under any similar  
8 statute of the United States, this State,<sub>2</sub> or any other state for an  
9 offense that is substantially equivalent to paragraph (3), (4),<sub>2</sub> or (5)  
10 of this subsection.

11 For purposes of this subparagraph, the term "possess" includes  
12 receiving, viewing, or having under one's control, through any  
13 means, including the Internet.

14 (b) (i) A person commits a crime of the first degree if he  
15 knowingly possesses, knowingly views, or knowingly has under his  
16 control, through any means, including the Internet, 100,000 or more  
17 items depicting the sexual exploitation or abuse of a child.

18 (ii) A person commits a crime of the second degree if he  
19 knowingly possesses, knowingly views, or knowingly has under his  
20 control, through any means, including the Internet, at least 1,000  
21 but less than 100,000 items depicting the sexual exploitation or  
22 abuse of a child.

23 (iii) A person commits a crime of the third degree if he  
24 knowingly possesses, knowingly views, or knowingly has under his  
25 control, through any means, including the Internet, **[an item]** less  
26 than 1,000 items depicting the sexual exploitation or abuse of a  
27 child.

28 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-  
29 1, in any instance where a person was convicted of an offense under  
30 this subparagraph that involved 100 or more items depicting the  
31 sexual exploitation or abuse of a child, the court shall impose a  
32 sentence of imprisonment unless, having regard to the character and  
33 condition of the defendant, it is of the opinion that imprisonment  
34 would be a serious injustice which overrides the need to deter such  
35 conduct by others.

36 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
37 6, a person convicted of a second or subsequent offense under this  
38 subparagraph shall be sentenced to an extended term of  
39 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
40 subparagraph, an offense is considered a second or subsequent  
41 offense if the actor has at any time been convicted pursuant to  
42 paragraph (3), (4),<sub>2</sub> or (5) of this subsection, or under any similar  
43 statute of the United States, this State,<sub>2</sub> or any other state for an  
44 offense that is substantially equivalent to paragraph (3), (4),<sub>2</sub> or (5)  
45 of this subsection.

46 Nothing in this subparagraph shall be construed to preclude or  
47 limit any prosecution or conviction for the offense set forth in  
48 subparagraph (a) of this paragraph.

1 (6) For purposes of this subsection, a person who is depicted as  
2 or presents the appearance of being under the age of 18 in any  
3 photograph, film, videotape, computer program or file, video game  
4 or any other reproduction or reconstruction shall be rebuttably  
5 presumed to be under the age of 18. If the child who is depicted as  
6 engaging in, or who is caused to engage in, a prohibited sexual act  
7 or simulation of a prohibited sexual act or portrayed in a sexually  
8 suggestive manner is under the age of 18, the actor shall be strictly  
9 liable and it shall not be a defense that the actor did not know that  
10 the child was under the age of 18, nor shall it be a defense that the  
11 actor believed that the child was 18 years of age or older, even if  
12 such a mistaken belief was reasonable.

13 (7) For aggregation purposes, each depiction of the sexual  
14 exploitation or abuse of a child shall be considered a separate item,  
15 provided that each depiction that is in the form of a photograph,  
16 picture, image, or visual depiction of a similar nature shall be  
17 considered to be one item and each depiction that is in the form of a  
18 film, video, video-clip, movie, or visual depiction of a similar  
19 nature shall be considered to be 10 separate items, and each  
20 individual act of distribution of an item depicting the sexual  
21 exploitation or abuse of a child shall be considered a separate item.  
22 For purposes of determining the number of items depicting the  
23 sexual exploitation or abuse of a child for purposes of sentencing  
24 pursuant to subparagraph (a) of paragraph (5) of this subsection, the  
25 court shall aggregate all items involved, whether the act or acts  
26 constituting the violation occurred at the same time or at different  
27 times and, with respect to distribution, whether the act or acts of  
28 distribution were to the same person or several persons or occurred  
29 at different times, provided that each individual act was committed  
30 within the applicable statute of limitations. For purposes of  
31 determining the number of items depicting the sexual exploitation  
32 or abuse of a child for purposes of sentencing pursuant to  
33 subparagraph (b) of paragraph (5) of this subsection, the court shall  
34 aggregate all items involved, whether the possession of such items  
35 occurred at the same time or at different times, provided that each  
36 individual act was committed within the applicable statute of  
37 limitations.

38 (cf: P.L.2017, c.141, s.1)

39

40 3. This act shall take effect immediately.

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#### STATEMENT

44

45 This bill would allow prosecutions for certain criminal conduct  
46 against minors that takes place outside of New Jersey.

47 The bill is in response to a 2015 case, State v. Sumulikowski, 221  
48 N.J. 93 (2015), where the New Jersey Supreme Court ruled that the



1 State did not have territorial jurisdiction to prosecute two  
2 employees of a New Jersey high school for unlawful sexual conduct  
3 with three New Jersey students that took place in Germany. The  
4 employees, a teacher and a school administrator, had been  
5 chaperoning the students on a school-sponsored trip. The  
6 defendants were indicted in Bergen County for sexual assault and  
7 endangering the welfare of a child, but the court dismissed the  
8 charges on jurisdictional grounds. Under current law, set out in  
9 N.J.S.2C:1-3, a person may be convicted of an offense under the  
10 law of this State if either the conduct which is an element of the  
11 offense or the result which is such an element occurs within this  
12 State. In Sumulikowski, the court held that no such “conduct” had  
13 taken place in New Jersey because the offense did not take place in  
14 New Jersey. The court ruled that, although the defendants did take  
15 on their status as chaperones for the students in New Jersey, such  
16 status was insufficient for jurisdiction.

17 The bill would expand the jurisdiction of the statutes concerning  
18 the following crimes:

- 19 • aggravated sexual assault pursuant to subparagraph (b) of  
20 paragraph (2) of subsection a. of N.J.S.2C:14-2 (an act of  
21 sexual penetration committed by an actor who has  
22 supervisory or disciplinary power over a victim who is at  
23 least 13 but less than 16 years old; crime of the first degree);
- 24 • sexual assault pursuant to subparagraph (b) of paragraph (3)  
25 of subsection c. of N.J.S.2C:14-2 (an act of sexual  
26 penetration committed by an actor who has supervisory or  
27 disciplinary power over a victim who is at least 16 but less  
28 than 18 years old; crime of the second degree); and
- 29 • endangering the welfare of a child pursuant to subparagraph  
30 (a) of paragraph (1) of subsection a. of N.J.S.2C:24-4 (a  
31 person having a legal duty for the care of the child engaging  
32 in sexual conduct which would impair or debauch the morals  
33 of the child).

34 Under the bill, for the purposes of determining territorial  
35 jurisdiction pursuant to N.J.S.2C:1-3, when an actor’s supervisory  
36 or disciplinary power over a victim commences in this State, an act  
37 of sexual penetration or sexual contact with the victim occurring  
38 outside the State constitutes an offense under N.J.S.2C:14-2 as if  
39 the conduct occurred in this State.

40 With regard to N.J.S.2C:24-4, the bill provides that for the  
41 purposes of determining territorial jurisdiction pursuant to  
42 N.J.S.2C:1-3, the assumption of responsibility in this State for the  
43 care of a child would be considered conduct which is a material  
44 element of the offense. Under the bill, any person having a legal  
45 duty for the care of a child or who has assumed responsibility for  
46 the care of a child who engages in sexual conduct within this State  
47 which would impair or debauch the morals of the child, or any  
48 person having a legal duty in this State for the care of a child or

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- 1 who has assumed responsibility in this State for the care of a child
- 2 who engages in sexual conduct outside this State which would
- 3 impair or debauch the morals of the child, would be guilty of a
- 4 crime of the second degree.