

[First Reprint]

ASSEMBLY, No. 717

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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District 36 (Bergen and Passaic)

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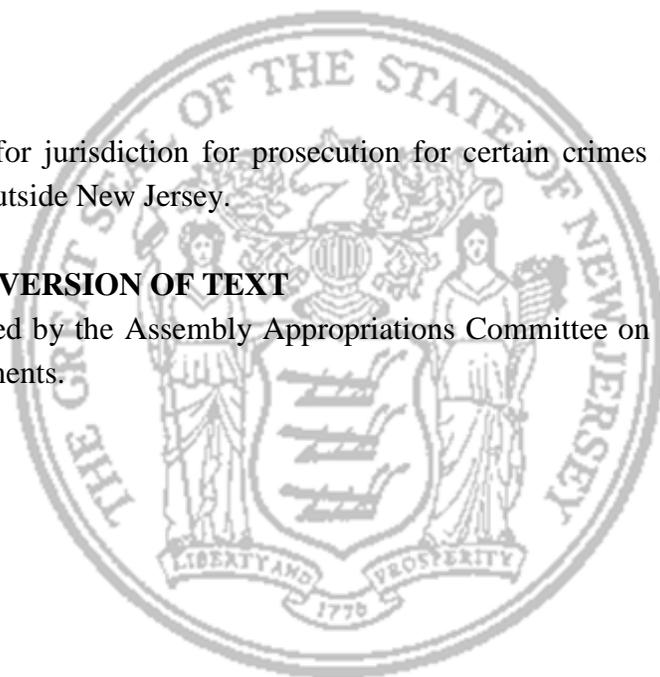
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Assemblymen Freiman, Wimberly, Tully, Assemblywoman DiMaso,
Assemblymen Scharfenberger, Karabinchak, Assemblywomen Swain,
Reynolds-Jackson and Assemblyman Calabrese**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on May 18, 2021, with amendments.



(Sponsorship Updated As Of: 5/20/2021)

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 the actor 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, carjacking, kidnapping, homicide, aggravated assault on
23 the victim or a person other than the victim, burglary, arson, or
24 criminal escape;

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

29 (5) The actor is aided or abetted by one or more other persons
30 and the actor commits the act using coercion or without the victim's
31 affirmative and freely-given permission;

32 (6) The actor commits the act using coercion or without the
33 victim's affirmative and freely-given permission and severe
34 personal injury is sustained by the victim;

35 (7) The victim, at the time of sexual penetration, is one whom
36 the actor knew or should have known was:

37 (a) physically helpless or incapacitated;

38 (b) intellectually or mentally incapacitated; or

39 (c) had a mental disease or defect which rendered the victim
40 temporarily or permanently incapable of understanding the
41 distinctively sexual nature of the conduct, including, but not limited
42 to, being incapable of providing consent, or incapable of
43 understanding or exercising the right to refuse to engage in the
44 conduct.

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted May 18, 2021.

1 Except as otherwise provided in subsection d. of this section, a
2 person convicted under paragraph (1) of this subsection shall be
3 sentenced to a specific term of years which shall be fixed by the
4 court and shall be between 25 years and life imprisonment of which
5 the person shall serve 25 years before being eligible for parole,
6 unless a longer term of parole ineligibility is otherwise provided
7 pursuant to this Title.

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

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

14 (1) The actor commits the act using coercion or without the
15 victim's affirmative and freely-given permission, but the victim
16 does not sustain severe personal injury;

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

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

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

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

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

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

30 (5) The victim is a pupil at least 18 but less than 22 years old
31 and has not received a high school diploma and the actor is a
32 teaching staff member or substitute teacher, school bus driver, other
33 school employee, contracted service provider, or volunteer and the
34 actor has supervisory or disciplinary power of any nature or in any
35 capacity over the victim. As used in this paragraph, "teaching staff
36 member" has the meaning set forth in N.J.S.18A:1-1.

37 Sexual assault is a crime of the second degree.

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

1 period of parole ineligibility than that expressly provided in the plea
2 agreement. The Attorney General shall develop guidelines to ensure
3 the uniform exercise of discretion in making determinations
4 regarding a negotiated reduction in the term of imprisonment and
5 period of parole ineligibility set forth in subsection a. of this
6 section.

7 e. For purposes of N.J.S.2C:1-3, when an actor's supervisory
8 or disciplinary power over a victim pursuant to subparagraph (b) of
9 paragraph (2) of subsection a. of this section or subparagraph (b) of
10 paragraph (3) of subsection c. of this section commences in this
11 State, an act of sexual penetration or sexual contact with the victim
12 occurring outside the State constitutes an offense under this section
13 as if the conduct occurred in this State.

14 (cf: P.L.2019, c.474, s.1)

15
16 2. N.J.S.2C:24-4 is amended to read as follows:

17 2C:24-4. Endangering Welfare of Children.

18 a. (1) (a) Any person having a legal duty for the care of a
19 child or who has assumed responsibility for the care of a child who
20 engages in sexual conduct within this State which would impair or
21 debauch the morals of the child ¹, or any person having a legal
22 duty in this State for the care of a child or who has assumed
23 responsibility in this State for the care of a child who engages in
24 sexual conduct outside this State which would impair or debauch
25 the morals of the child, ¹ is guilty of a crime of the second degree.
26 For the purposes of determining territorial jurisdiction pursuant to
27 N.J.S.2C:1-3, the assumption of responsibility in this State for the
28 care of a child shall be considered conduct which is a material
29 element of the offense.

30 (b) ¹Any person having a legal duty in this State for the care of
31 a child or who has assumed responsibility in this State for the care
32 of a child who engages in sexual conduct outside this State which
33 would impair or debauch the morals of the child is guilty of a crime
34 of the second degree. For the purposes of determining territorial
35 jurisdiction pursuant to N.J.S.2C:1-3, the assumption of
36 responsibility in this State for the care of a child shall be considered
37 conduct which is a material element of the offense.

38 (c) ¹ Any other person who engages in conduct or who causes
39 harm as described in this paragraph to a child is guilty of a crime of
40 the third degree.

41 (2) Any person having a legal duty for the care of a child or who
42 has assumed responsibility for the care of a child who causes the
43 child harm that would make the child an abused or neglected child
44 as defined in R.S.9:6-1, R.S.9:6-3 and section 1 of P.L.1974, c.119
45 (C.9:6-8.21) is guilty of a crime of the second degree. Any other
46 person who engages in conduct or who causes harm as described in
47 this paragraph to a child is guilty of a crime of the third degree.

1 b. (1) As used in this subsection:

2 "Child" means any person under 18 years of age.

3 "Distribute" means to sell, or to manufacture, give, provide, lend,
4 trade, mail, deliver, publish, circulate, disseminate, present, exhibit,
5 display, share, advertise, offer, or make available via the Internet or
6 by any other means, whether for pecuniary gain or not. The term
7 also includes an agreement or attempt to distribute.

8 "File-sharing program" means a computer program, application,
9 software or operating system that allows the user of a computer on
10 which such program, application, software or operating system is
11 installed to designate files as available for searching by and copying
12 to one or more other computers, to transmit such designated files
13 directly to one or more other computers, and to request the
14 transmission of such designated files directly from one or more
15 other computers. The term "file-sharing program" includes but is
16 not limited to a computer program, application or software that
17 enables a computer user to participate in a peer-to-peer network.

18 "Internet" means the international computer network of both
19 federal and non-federal interoperable packet switched data
20 networks.

21 "Item depicting the sexual exploitation or abuse of a child"
22 means a photograph, film, video, an electronic, electromagnetic or
23 digital recording, an image stored or maintained in a computer
24 program or file or in a portion of a file, or any other reproduction or
25 reconstruction which:

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

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

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

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

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

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

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

- 1 "Prohibited sexual act" means
- 2 (a) Sexual intercourse; or
- 3 (b) Anal intercourse; or
- 4 (c) Masturbation; or
- 5 (d) Bestiality; or
- 6 (e) Sadism; or
- 7 (f) Masochism; or
- 8 (g) Fellatio; or
- 9 (h) Cunnilingus; or
- 10 (i) Nudity, if depicted for the purpose of sexual stimulation or
- 11 gratification of any person who may view such depiction; or
- 12 (j) Any act of sexual penetration or sexual contact as defined in
- 13 N.J.S.2C:14-1.
- 14 "Reproduction" means, but is not limited to, computer generated
- 15 images.
- 16 (2) (Deleted by amendment, P.L.2001, c.291).
- 17 (3) A person commits a crime of the first degree if he causes or
- 18 permits a child to engage in a prohibited sexual act or in the
- 19 simulation of such an act or to be portrayed in a sexually suggestive
- 20 manner if the person knows, has reason to know or intends that the
- 21 prohibited act or portrayal may be photographed, filmed,
- 22 reproduced, or reconstructed in any manner, including on the
- 23 Internet, or may be part of an exhibition or performance.
- 24 (4) A person commits a crime of the second degree if he
- 25 photographs or films a child in a prohibited sexual act or in the
- 26 simulation of such an act or for portrayal in a sexually suggestive
- 27 manner or who uses any device, including a computer, to reproduce
- 28 or reconstruct the image of a child in a prohibited sexual act or in
- 29 the simulation of such an act or for portrayal in a sexually
- 30 suggestive manner.
- 31 (5) (a) A person commits a crime if, by any means, including
- 32 but not limited to the Internet, he:
- 33 (i) knowingly distributes an item depicting the sexual
- 34 exploitation or abuse of a child;
- 35 (ii) knowingly possesses an item depicting the sexual
- 36 exploitation or abuse of a child with the intent to distribute that
- 37 item; or
- 38 (iii) knowingly stores or maintains an item depicting the sexual
- 39 exploitation or abuse of a child using a file-sharing program which
- 40 is designated as available for searching by or copying to one or
- 41 more other computers.
- 42 In a prosecution under sub-subparagraph (iii) of this
- 43 subparagraph, the State shall not be required to offer proof that an
- 44 item depicting the sexual exploitation or abuse of a child had
- 45 actually been searched, copied, transmitted or viewed by another
- 46 user of the file-sharing program, or by any other person, and it shall
- 47 be no defense that the defendant did not intend to distribute the item
- 48 to another user of the file-sharing program or to any other person.

1 Nor shall the State be required to prove that the defendant was
2 aware that the item depicting the sexual exploitation or abuse of a
3 child was available for searching or copying to one or more other
4 computers, and the defendant shall be strictly liable for failing to
5 designate the item as not available for searching or copying by one
6 or more other computers.

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

10 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
11 6, a person whose offense under this subparagraph involved at least
12 25 but less than 1,000 items depicting the sexual exploitation or
13 abuse of a child shall be sentenced to a mandatory minimum term of
14 imprisonment, which shall be fixed at, or between, one-third and
15 one-half of the sentence imposed by the court or five years,
16 whichever is greater, during which the defendant shall be ineligible
17 for parole.

18 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
19 6, a person whose offense under this subparagraph involved 1,000
20 or more items depicting the sexual exploitation or abuse of a child
21 shall be sentenced to a mandatory minimum term of imprisonment,
22 which shall be fixed at, or between, one-third and one-half of the
23 sentence imposed by the court or 10 years, whichever is greater,
24 during which the defendant shall be ineligible for parole.

25 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
26 6, a person convicted of a second or subsequent offense under this
27 subparagraph shall be sentenced to an extended term of
28 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this
29 subparagraph, an offense is considered a second or subsequent
30 offense if the actor has at any time been convicted pursuant to
31 paragraph (3), (4)₂ or (5) of this subsection, or under any similar
32 statute of the United States, this State₂ or any other state for an
33 offense that is substantially equivalent to paragraph (3), (4)₂ or (5)
34 of this subsection.

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

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

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

1 (iii) A person commits a crime of the third degree if he
2 knowingly possesses, knowingly views, or knowingly has under his
3 control, through any means, including the Internet, less than 1,000
4 items depicting the sexual exploitation or abuse of a child.

5 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-
6 1, in any instance where a person was convicted of an offense under
7 this subparagraph that involved 100 or more items depicting the
8 sexual exploitation or abuse of a child, the court shall impose a
9 sentence of imprisonment unless, having regard to the character and
10 condition of the defendant, it is of the opinion that imprisonment
11 would be a serious injustice which overrides the need to deter such
12 conduct by others.

13 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
14 6, a person convicted of a second or subsequent offense under this
15 subparagraph shall be sentenced to an extended term of
16 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this
17 subparagraph, an offense is considered a second or subsequent
18 offense if the actor has at any time been convicted pursuant to
19 paragraph (3), (4),₂ or (5) of this subsection, or under any similar
20 statute of the United States, this State,₂ or any other state for an
21 offense that is substantially equivalent to paragraph (3), (4),₂ or (5)
22 of this subsection.

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

26 (6) For purposes of this subsection, a person who is depicted as
27 or presents the appearance of being under the age of 18 in any
28 photograph, film, videotape, computer program or file, video game
29 or any other reproduction or reconstruction shall be rebuttably
30 presumed to be under the age of 18. If the child who is depicted as
31 engaging in, or who is caused to engage in, a prohibited sexual act
32 or simulation of a prohibited sexual act or portrayed in a sexually
33 suggestive manner is under the age of 18, the actor shall be strictly
34 liable and it shall not be a defense that the actor did not know that
35 the child was under the age of 18, nor shall it be a defense that the
36 actor believed that the child was 18 years of age or older, even if
37 such a mistaken belief was reasonable.

38 (7) For aggregation purposes, each depiction of the sexual
39 exploitation or abuse of a child shall be considered a separate item,
40 provided that each depiction that is in the form of a photograph,
41 picture, image, or visual depiction of a similar nature shall be
42 considered to be one item and each depiction that is in the form of a
43 film, video, video-clip, movie, or visual depiction of a similar
44 nature shall be considered to be 10 separate items, and each
45 individual act of distribution of an item depicting the sexual
46 exploitation or abuse of a child shall be considered a separate item.

1 For purposes of determining the number of items depicting the
2 sexual exploitation or abuse of a child for purposes of sentencing
3 pursuant to subparagraph (a) of paragraph (5) of this subsection, the
4 court shall aggregate all items involved, whether the act or acts
5 constituting the violation occurred at the same time or at different
6 times and, with respect to distribution, whether the act or acts of
7 distribution were to the same person or several persons or occurred
8 at different times, provided that each individual act was committed
9 within the applicable statute of limitations. For purposes of
10 determining the number of items depicting the sexual exploitation
11 or abuse of a child for purposes of sentencing pursuant to
12 subparagraph (b) of paragraph (5) of this subsection, the court shall
13 aggregate all items involved, whether the possession of such items
14 occurred at the same time or at different times, provided that each
15 individual act was committed within the applicable statute of
16 limitations.

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

18

19 3. This act shall take effect immediately.