

ASSEMBLY, No. 773

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Provides for mandatory terms of imprisonment for certain sexual assaults upon a minor; amends murder statute.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning penalties for murder and sexual assault and
2 amending N.J.S.2C:11-3 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. N.J.S.2C:11-3 is amended to read as follows:

8 2C:11-3. Murder.

9 a. Except as provided in N.J.S.2C:11-4, criminal homicide
10 constitutes murder when:

11 (1) The actor purposely causes death or serious bodily injury
12 resulting in death; or

13 (2) The actor knowingly causes death or serious bodily injury
14 resulting in death; or

15 (3) It is committed when the actor, acting either alone or with
16 one or more other persons, is engaged in the commission of, or an
17 attempt to commit, or flight after committing or attempting to
18 commit robbery, sexual assault, arson, burglary, kidnapping,
19 carjacking, criminal escape or terrorism pursuant to section 2 of
20 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of
21 immediate flight therefrom, any person causes the death of a person
22 other than one of the participants; except that in any prosecution
23 under this subsection, in which the defendant was not the only
24 participant in the underlying crime, it is an affirmative defense that
25 the defendant:

26 (a) Did not commit the homicidal act or in any way solicit,
27 request, command, importune, cause or aid the commission thereof;
28 and

29 (b) Was not armed with a deadly weapon, or any instrument,
30 article or substance readily capable of causing death or serious
31 physical injury and of a sort not ordinarily carried in public places
32 by law-abiding persons; and

33 (c) Had no reasonable ground to believe that any other
34 participant was armed with such a weapon, instrument, article or
35 substance; and

36 (d) Had no reasonable ground to believe that any other
37 participant intended to engage in conduct likely to result in death or
38 serious physical injury.

39 b. (1) Murder is a crime of the first degree but a person
40 convicted of murder shall be sentenced, except as provided in
41 paragraphs (2), (3) and (4) of this subsection, by the court to a term
42 of **【30】 35** years, during which the person shall not be eligible for
43 parole, or be sentenced to a specific term of years which shall be
44 between **【30】 35** years and life imprisonment of which the person
45 shall serve **【30】 35** years before being eligible for parole.

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 (2) If the victim was a law enforcement officer and was
2 murdered while performing his official duties or was murdered
3 because of his status as a law enforcement officer, the person
4 convicted of that murder shall be sentenced by the court to a term of
5 life imprisonment, during which the person shall not be eligible for
6 parole.

7 (3) A person convicted of murder shall be sentenced to a term of
8 life imprisonment without eligibility for parole if the murder was
9 committed under all of the following circumstances:

10 (a) The victim is less than **14** 16 years old; and

11 (b) The act is committed in the course of the commission,
12 whether alone or with one or more persons, of a violation of
13 N.J.S.2C:14-2 or N.J.S.2C:14-3.

14 (4) Any person convicted under subsection a.(1) or (2) who
15 committed the homicidal act by his own conduct; or who as an
16 accomplice procured the commission of the offense by payment or
17 promise of payment of anything of pecuniary value; or who, as a
18 leader of a narcotics trafficking network as defined in N.J.S.2C:35-
19 3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,
20 commanded or by threat or promise solicited the commission of the
21 offense, or, if the murder occurred during the commission of the
22 crime of terrorism, any person who committed the crime of
23 terrorism, shall be sentenced by the court to life imprisonment
24 without eligibility for parole, which sentence shall be served in a
25 maximum security prison, if a jury finds beyond a reasonable doubt
26 that any of the following aggravating factors exist:

27 (a) The defendant has been convicted, at any time, of another
28 murder. For purposes of this section, a conviction shall be deemed
29 final when sentence is imposed and may be used as an aggravating
30 factor regardless of whether it is on appeal;

31 (b) In the commission of the murder, the defendant purposely or
32 knowingly created a grave risk of death to another person in
33 addition to the victim;

34 (c) The murder was outrageously or wantonly vile, horrible or
35 inhuman in that it involved torture, depravity of mind, or an
36 aggravated assault to the victim;

37 (d) The defendant committed the murder as consideration for the
38 receipt, or in expectation of the receipt of anything of pecuniary
39 value;

40 (e) The defendant procured the commission of the murder by
41 payment or promise of payment of anything of pecuniary value;

42 (f) The murder was committed for the purpose of escaping
43 detection, apprehension, trial, punishment or confinement for
44 another offense committed by the defendant or another;

45 (g) The murder was committed while the defendant was engaged
46 in the commission of, or an attempt to commit, or flight after
47 committing or attempting to commit murder, robbery, sexual
48 assault, arson, burglary, kidnapping, carjacking or the crime of

- 1 contempt in violation of subsection b. of N.J.S.2C:29-9;
- 2 (h) The defendant murdered a public servant, as defined in
- 3 N.J.S.2C:27-1, while the victim was engaged in the performance of
- 4 his official duties, or because of the victim's status as a public
- 5 servant;
- 6 (i) The defendant: (i) as a leader of a narcotics trafficking
- 7 network as defined in N.J.S.2C:35-3 and in furtherance of a
- 8 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
- 9 or by threat or promise solicited the commission of the murder or
- 10 (ii) committed the murder at the direction of a leader of a narcotics
- 11 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
- 12 conspiracy enumerated in N.J.S.2C:35-3;
- 13 (j) The homicidal act that the defendant committed or procured
- 14 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;
- 15 (k) The victim was less than **14** 16 years old; or
- 16 (l) The murder was committed during the commission of, or an
- 17 attempt to commit, or flight after committing or attempting to
- 18 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
- 19 2).
- 20 (5) A juvenile who has been tried as an adult and convicted of
- 21 murder shall be sentenced pursuant to paragraph (1), (2) or (3) of
- 22 this subsection.
- 23 c. (Deleted by amendment, P.L.2007, c.204).
- 24 d. (Deleted by amendment, P.L.2007, c.204).
- 25 e. (Deleted by amendment, P.L.2007, c.204).
- 26 f. (Deleted by amendment, P.L.2007, c.204).
- 27 g. (Deleted by amendment, P.L.2007, c.204).
- 28 h. (Deleted by amendment, P.L.2007, c.204).
- 29 i. For purposes of this section the term "homicidal act" shall
- 30 mean conduct that causes death or serious bodily injury resulting in
- 31 death.
- 32 j. In a sentencing proceeding conducted pursuant to this
- 33 section, the display of a photograph of the victim taken before the
- 34 homicide shall be permitted.
- 35 (cf: P.L.2007, c.204, s.1)
- 36
- 37 2. N.J.S.2C:14-2 is amended to read as follows:
- 38 2C:14-2. Sexual assault. a. An actor is guilty of aggravated
- 39 sexual assault if he commits an act of sexual penetration with
- 40 another person under any one of the following circumstances:
- 41 (1) The victim is less than 13 years old;
- 42 (2) The victim is at least 13 but less than 16 years old; and
- 43 (a) The actor is related to the victim by blood or affinity to the
- 44 third degree, or
- 45 (b) The actor has supervisory or disciplinary power over the
- 46 victim by virtue of the actor's legal, professional, or occupational
- 47 status, or
- 48 (c) The actor is a resource family parent, a guardian, or stands

1 in loco parentis within the household;

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

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

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

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

14 (7) The victim is one whom the actor knew or should have
15 known was physically helpless, mentally defective or mentally
16 incapacitated.

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

18 Notwithstanding the provisions of any other law, a person
19 convicted under paragraph (1) or (2) of this subsection shall be
20 sentenced to a specific term of years which shall be fixed by the
21 court and shall be between 30 years and life imprisonment. A
22 person convicted under paragraph (3), (4), (5) or (6) where the
23 victim was less than 16 years old shall be sentenced to a specific
24 term of years which shall be between 25 years and life
25 imprisonment. A person convicted under paragraph (7) where the
26 victim was less than 16 years old shall be sentenced to a specific
27 term of years which shall be between 25 years and life
28 imprisonment.

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

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

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

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

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

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

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

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

48 (4) The victim is at least 13 but less than 16 years old and the

1 actor is at least four years older than the victim.

2 Sexual assault is a crime of the second degree. If the victim of
3 an offense committed pursuant to paragraph (1) of this subsection is
4 less than 16 years old, sexual assault is a crime of the first degree
5 and, notwithstanding the provisions of any other law, the person
6 convicted of such an offense shall be sentenced to a specific term of
7 years which shall be an offense shall be sentenced to a specific term
8 of years which shall be fixed by the court and shall be between 25
9 years and life imprisonment. If the victim of an offense committed
10 pursuant to paragraph (2) of this subsection is less than 16 years
11 old, sexual assault is a crime of the first degree and,
12 notwithstanding the provisions of any other law, the person
13 convicted of such an offense shall be sentenced to a specific term of
14 years which shall be fixed by the court and shall be between 30
15 years and life imprisonment.

16 (cf: P.L.2004, c.130, s.13)

17

18 3. This act shall take effect immediately.

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20

21

STATEMENT

22

23 This bill imposes severe penalties on sex offenders who prey on
24 children.

25 The bill imposes a penalty of 30 years to life imprisonment for
26 the following crimes of aggravated sexual assault:

- 27 • an act of sexual penetration under N.J.S.2C:14-2a.(1) if the
28 victim is less than 13 years old;
- 29 • an act of sexual penetration under N.J.S.2C:14-2a.(2) if the
30 victim is at least 13 but less than 16, and defendant is either
31 related to the victim by blood or affinity to the third degree, has
32 supervisory or disciplinary power over the victim, or is a foster
33 parent or guardian or stands in loco parentis in the household;
- 34 • an act of sexual penetration under N.J.S.2C:14-2a.(7),
35 committed when the victim is one whom the defendant knew or
36 should have known was physically helpless or mentally
37 incapacitated, if the victim is less than 16.

38 The bill imposes a penalty of 25 years to life imprisonment for
39 the following crimes of aggravated sexual assault:

- 40 • an act of sexual penetration under N.J.S.2C:14-2a.(3),
41 committed during the commission of certain other crimes, if the
42 victim is less than 16;
- 43 • an act of sexual penetration under N.J.S.2C:14-2a.(4),
44 committed when defendant is armed with weapon and threatens
45 to use it, if the victim is less than 16;
- 46 • an act of sexual penetration under N.J.S.2C:14-2a.(5),
47 committed when defendant is aided or abetted by another person
48 and uses physical force or coercion, if the victim is less than 16;

1 • an act of sexual penetration under N.J.S.2C:14-2a.(6),
2 committed when the defendant uses physical force or coercion
3 and the victim sustains severe personal injury, if the victim is
4 less than 16.

5 In addition, the bill imposes a penalty of 25 years to life
6 imprisonment for an act of sexual penetration under N.J.S.2C:14-
7 2b.(1) committed with physical force or coercion, but where the
8 victim does not sustain severe personal injury, if the victim is less
9 than 16 years old.

10 The bill imposes a penalty of 30 years to life imprisonment for
11 an act of sexual penetration under N.J.S.2C:14-2b.(2) if the victim
12 is on probation or parole or detained in a hospital, prison or other
13 institution, and the defendant has supervisory or disciplinary power
14 over the victim, if the victim is less than 16 years old.

15 The bill also revises the murder statute to require life
16 imprisonment of persons who murder children under the age of 16
17 in the course of commission of a sex offense, if those defendants
18 are not otherwise sentenced to death, and to make the murder of a
19 child under the age of 16 an aggravating factor in sentencing.
20 Current law specifies age 14 for both of these provisions.

21 Finally, the bill increases from 30 years to 35 years the minimum
22 term which a person convicted of murder who is not sentenced to
23 death is required to serve in prison before eligibility for parole.