

ASSEMBLY, No. 2398

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

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District 35 (Bergen and Passaic)

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District 34 (Essex and Passaic)

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Co-Sponsored by:

Assemblywomen Vainieri Huttle and Downey

SYNOPSIS

Creates crime of victimization of persons with disabilities and senior citizens.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/13/2020)

1 **AN ACT** concerning senior citizens and persons with a disability and
2 supplementing Title 2C of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. Notwithstanding any other provision of law to the
8 contrary, a person is guilty of the crime of victimization against a
9 senior citizen or a person with a disability if he commits, attempts to
10 commit, conspires with another to commit or threatens the immediate
11 commission of an offense specified in chapters 11 through 18 of Title
12 2C of the New Jersey Statutes against a senior citizen or a person
13 with a disability. If the victim of an underlying offense is a senior
14 citizen or a person with a disability, the actor shall be strictly liable
15 for the victimization offense and it shall not be a defense that the
16 actor did not know that the victim was a senior citizen or a person
17 with a disability, nor shall it be a defense that the actor believed that
18 the victim was not a senior citizen or a person with a disability, even
19 if the mistaken belief was reasonable.

20 b. Grading. Victimization is a crime of the fourth degree if the
21 underlying offense referred to in subsection a. of this section is a
22 disorderly persons offense or petty disorderly persons offense.
23 Otherwise, victimization is a crime one degree higher than the most
24 serious underlying crime referred to in subsection a. of this section,
25 except that when the underlying crime is a crime of the first degree,
26 victimization is a first degree crime and the defendant upon
27 conviction thereof may, notwithstanding the provisions of paragraph
28 (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary
29 term of imprisonment between 10 years and 30 years, with a
30 presumptive term of 20 years.

31 c. In any prosecution under subsection a. of this section when
32 the underlying crime was solely a third degree violation of
33 N.J.S.2C:18-2, it is an affirmative defense that the property entered
34 was an unoccupied motor vehicle or other unoccupied structure. In
35 any prosecution under subsection a. of this section when the
36 underlying crime was solely a violation of N.J.S.2C:17-3, it is an
37 affirmative defense that no person other than the actor was present at
38 the time the offense was committed.

39 d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
40 provision of law to the contrary, a conviction of victimization shall
41 not merge with a conviction of any of the underlying offenses
42 referred to in subsection a. of this section, nor shall any conviction
43 for the underlying offense merge with a conviction for victimization.
44 The court shall impose separate sentences upon a conviction for
45 victimization and a conviction of any underlying offense.

46 e. For the purposes of this section:

47 "Person with a disability" means a person who by reason of a pre-
48 existing medically determinable physical or mental impairment is

1 substantially incapable of exercising normal physical or mental
2 power of resistance, and includes, but is not limited to, a person
3 determined disabled pursuant to the federal Social Security Act or
4 any other governmental retirement or benefits program that uses
5 substantially the same criteria for determining eligibility; and

6 "Senior citizen" means a person 60 years of age or older.
7

8 2. This act shall take effect immediately.
9
10

11 STATEMENT 12

13 This bill creates the separate crime of victimization of a senior
14 citizen or a person with a disability, which would be graded one
15 degree higher than the offense that was committed.

16 A person would be guilty of victimization if the person commits,
17 attempts to commit, conspires with another to commit or threatens
18 the immediate commission of an offense specified in chapters 11
19 through 18 of Title 2C of the New Jersey Statutes (criminal homicide;
20 assault, reckless endangerment and terroristic threats; kidnapping
21 and related offenses, coercion; sexual offenses; robbery; bias
22 intimidation; arson, criminal mischief and other property destruction;
23 and burglary and other criminal intrusion) against a senior citizen or
24 a person with a disability. If the victim of an underlying offense is a
25 senior citizen or a person with a disability, the actor would be strictly
26 liable for the victimization offense and it would not be a defense that
27 the actor did not know that the victim was a senior citizen or a person
28 with a disability.

29 Under the provisions of the bill, victimization is a crime of the
30 fourth degree if the underlying offense is a disorderly persons
31 offense or petty disorderly persons offense. Otherwise, it is a crime
32 one degree higher than the most serious underlying crime, except that
33 when the underlying crime is a crime of the first degree, victimization
34 is a first degree crime and the defendant, upon conviction thereof,
35 may be sentenced to an ordinary term of imprisonment between 10
36 years and 30 years, with a presumptive term of 20 years.

37 The bill also provides that when the underlying crime was solely
38 a third degree violation of N.J.S.A.2C:18-2 (burglary), it is an
39 affirmative defense that the property entered was an unoccupied
40 motor vehicle or other unoccupied structure. In a prosecution when
41 the underlying crime was solely a violation of N.J.S.A.2C:17-3
42 (criminal mischief), it is an affirmative defense that no person other
43 than the actor was present at the time the offense was committed. In
44 addition, a conviction of victimization would not merge with a
45 conviction of any of the underlying offenses. The court would impose
46 separate sentences upon a conviction for victimization and a
47 conviction of any underlying offense.

1 A "person with a disability" is defined as a person who by reason
2 of a pre-existing medically determinable physical or mental
3 impairment is substantially incapable of exercising normal physical
4 or mental power of resistance, and includes, but is not limited to, a
5 person determined disabled pursuant to the federal Social Security
6 Act or any other governmental retirement or benefits program that
7 uses substantially the same criteria for determining eligibility. A
8 "senior citizen" is defined as a person 60 years of age or older.