

ASSEMBLY, No. 2736

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:
Assemblyman GREGORY P. MCGUCKIN
District 10 (Ocean)

SYNOPSIS

Provides that crimes committed outside the State under certain circumstances may be prosecuted in New Jersey.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning jurisdiction for certain crimes 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, 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 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 (5) The victim is a pupil at least 18 but less than 22 years old
23 and has not received a high school diploma and the actor is a
24 teaching staff member or substitute teacher, school bus driver, other
25 school employee, contracted service provider, or volunteer and the
26 actor has supervisory or disciplinary power of any nature or in any
27 capacity over the victim. As used in this paragraph, "teaching staff
28 member" has the meaning set forth in N.J.S.18A:1-1.

29 Sexual assault is a crime of the second degree.

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

47 e. For the purposes of determining territorial jurisdiction
48 pursuant to subparagraph (a) of paragraph (1) of subsection a. of

1 N.J.S.2C:1-3, the assumption of supervisory or disciplinary power
2 in this State over the victim pursuant to subparagraph (b) of
3 paragraph (3) of subsection c. of this section shall be considered
4 conduct which is a material element of the offense.

5 (cf: P.L.2019, c.108, s.1)

6
7 2. N.J.S.2C:24-4 is amended to read as follows:

8 2C:24-4. Endangering Welfare of Children.

9 a. (1)(a)(i) Any person having a legal duty for the care of a
10 child or who has assumed responsibility for the care of a child who
11 engages in sexual conduct which would impair or debauch the
12 morals of the child is guilty of a crime of the second degree.

13 (ii) For purposes of determining territorial jurisdiction pursuant
14 to subparagraph (a) of paragraph (1) of subsection a. of N.J.S.2C:1-
15 3, the assumption of responsibility in this State for the care of a
16 child shall be considered conduct which is a material element of the
17 offense.

18 (b) Any other person who engages in conduct or who causes
19 harm as described in this paragraph to a child is guilty of a crime of
20 the third degree.

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

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

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

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

35 "File-sharing program" means a computer program, application,
36 software or operating system that allows the user of a computer on
37 which such program, application, software or operating system is
38 installed to designate files as available for searching by and copying
39 to one or more other computers, to transmit such designated files
40 directly to one or more other computers, and to request the
41 transmission of such designated files directly from one or more
42 other computers. The term "file-sharing program" includes but is
43 not limited to a computer program, application or software that
44 enables a computer user to participate in a peer-to-peer network.

45 "Internet" means the international computer network of both
46 federal and non-federal interoperable packet switched data
47 networks.

1 "Item depicting the sexual exploitation or abuse of a child"
2 means a photograph, film, video, an electronic, electromagnetic or
3 digital recording, an image stored or maintained in a computer
4 program or file or in a portion of a file, or any other reproduction or
5 reconstruction which :

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

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

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

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

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

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

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

27 "Prohibited sexual act" means

28 (a) Sexual intercourse; or

29 (b) Anal intercourse; or

30 (c) Masturbation; or

31 (d) Bestiality; or

32 (e) Sadism; or

33 (f) Masochism; or

34 (g) Fellatio; or

35 (h) Cunnilingus; or

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

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

40 "Reproduction" means, but is not limited to, computer generated
41 images.

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

43 (3) A person commits a crime of the first degree if he causes or
44 permits a child to engage in a prohibited sexual act or in the
45 simulation of such an act or to be portrayed in a sexually suggestive
46 manner if the person knows, has reason to know or intends that the
47 prohibited act or portrayal may be photographed, filmed,

1 reproduced, or reconstructed in any manner, including on the
2 Internet, or may be part of an exhibition or performance.

3 (4) A person commits a crime of the second degree if he
4 photographs or films a child in a prohibited sexual act or in the
5 simulation of such an act or for portrayal in a sexually suggestive
6 manner or who uses any device, including a computer, to reproduce
7 or reconstruct the image of a child in a prohibited sexual act or in
8 the simulation of such an act or for portrayal in a sexually
9 suggestive manner.

10 (5) (a) A person commits a crime if, by any means, including but
11 not limited to the Internet, he:

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

14 (ii) knowingly possesses an item depicting the sexual
15 exploitation or abuse of a child with the intent to distribute that
16 item; or

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

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

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

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

45 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
46 6, a person whose offense under this subparagraph involved 1,000
47 or more items depicting the sexual exploitation or abuse of a child
48 shall be sentenced to a mandatory minimum term of imprisonment,

1 which shall be fixed at, or between, one-third and one-half of the
2 sentence imposed by the court or 10 years, whichever is greater,
3 during which the defendant shall be ineligible for parole.

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

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

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

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

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

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

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

1 In State v. Sumulikoski and Sopel, 221 N.J. 93 (decided March
2 18, 2015), the New Jersey Supreme Court ruled that the State did
3 not have territorial jurisdiction to prosecute two employees of a
4 New Jersey high school for unlawful sexual conduct with three New
5 Jersey students that took place in Germany. The employees, a
6 teacher and a school administrator, had been chaperoning the
7 students on a school-sponsored trip. The defendants were indicted
8 in Bergen County for sexual assault and endangering the welfare of
9 a child, but the court dismissed the charges on jurisdictional
10 grounds.

11 Under current law, set out in N.J.S.2C:1-3, a person may be
12 convicted of an offense under the law of this State if either the
13 conduct which is an element of the offense or the result which is
14 such an element occurs within this State. In Sumulikoski, the court
15 held that no such “conduct” had taken place in New Jersey because
16 the offense did not take place in New Jersey. The court ruled that,
17 although the defendants did take on their status as chaperones for
18 the students in New Jersey, such status was insufficient for
19 jurisdiction.

20 This bill would address the court’s decision by amending the
21 statutes governing sexual assault and endangering the welfare of a
22 child to provide that the status of a defendant would constitute
23 grounds for New Jersey jurisdiction under certain circumstances.

24 The bill amends N.J.S.2C:14-2, sexual assault, to provide that for
25 the purposes of determining territorial jurisdiction pursuant to
26 subparagraph (a) of paragraph (1) of subsection a. of N.J.S.2C:1-3,
27 the assumption of supervisory or disciplinary power in this State
28 over the victim pursuant to subparagraph (b) of paragraph (3) of
29 subsection c. of N.J.S.2C:14-2 would be considered conduct which
30 is a material element of the offense.

31 The bill also amends N.J.S.2C:24-4, endangering the welfare of a
32 child, to provide that for purposes of determining territorial
33 jurisdiction pursuant to subparagraph (a) of paragraph (1) of
34 subsection a. of N.J.S.2C:1-3, the assumption of responsibility in
35 this State for the care of a child would be considered conduct which
36 is a material element of the offense.