

ASSEMBLY, No. 3344

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

SYNOPSIS

Clarifies that permitting sexual abusers to reside with a child constitutes endangering welfare of a child.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning endangering the welfare of a child and
2 amending 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:24-4 is amended to read as follows:

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

9 a. (1) Any person having a legal duty for the care of a child or
10 who has assumed responsibility for the care of a child who engages
11 in sexual conduct which would impair or debauch the morals of the
12 child, or who knowingly allows a person who has committed a sex
13 offense as defined in section 2 of P.L.1994, c.133 (C.2C:7-2)
14 against a child to reside in a house or dwelling with a child, is guilty
15 of a crime of the second degree. Any other person who engages in
16 conduct or who causes harm as described in this paragraph to a
17 child is guilty of a crime of 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 (C.9:6-8.21) is guilty of a crime of the second degree. Any other
23 person who engages in conduct or who causes harm as described in
24 this paragraph to a child is guilty of a crime of the third degree.

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

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

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

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

42 "Internet" means the international computer network of both
43 federal and non-federal interoperable packet switched data
44 networks.

**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 "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,
48 reproduced, or reconstructed in any manner, including on the
49 Internet, or may be part of an exhibition or performance.

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

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

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

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

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

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

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

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

43 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
44 6, a person whose offense under this subparagraph involved 1,000
45 or more items depicting the sexual exploitation or abuse of a child
46 shall be sentenced to a mandatory minimum term of imprisonment,
47 which shall be fixed at, or between, one-third and one-half of the
48 sentence imposed by the court or 10 years, whichever is greater,
49 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), or (5) of this subsection, or under any similar
8 statute of the United States, this State, or any other state for an
9 offense that is substantially equivalent to paragraph (3), (4), 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, less than 1,000
26 items depicting the sexual exploitation or abuse of a child.

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

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

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

48 (6) For purposes of this subsection, a person who is depicted as
49 or presents the appearance of being under the age of 18 in any

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

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

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

37

38 2. This act shall take effect immediately.

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STATEMENT

42

43 This bill amends N.J.S.2C:24-4 to clarify that knowingly
44 allowing a person who has committed a sex offense against a child
45 to reside in a house or dwelling with a child is endangerment to the
46 welfare of a child.

47 Endangering the welfare of a child is a crime of the second
48 degree if committed by any person having legal duty for the care of
49 the child or who has assumed responsibility for the care of the

1 child. For all other persons, endangering the welfare of a child is a
2 crime of the third degree. A crime of the second degree is
3 punishable by a fine of up to \$150,000, five to 10 years
4 imprisonment, or both. A crime of the third degree is punishable by
5 a fine of up to \$15,000, three to five years imprisonment, or both.