

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5673

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2021

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 5673.

As amended by the committee, this bill would repeal N.J.S.2C:34-5, the statute that makes it a crime for a person to commit an act of sexual penetration under certain circumstances while knowing that he or she is infected with a venereal disease, HIV, or AIDS. Under N.J.S.2C:34-5, it is a crime of the fourth degree for a person, knowing that he or she is infected with a venereal disease, to commit an act of sexual penetration without the informed consent of the other person. It is a crime of the third degree if the person commits the act while knowing that he or she is infected with HIV or AIDS.

As introduced, the bill would have made both of these offenses disorderly persons offenses instead of crimes. The bill as introduced would also have revised N.J.S.2C:34-5 to apply only to a person who purposely transmits an infectious or communicable disease by engaging in an act of sexual penetration in a manner that poses a substantial risk of transmission. These provisions are deleted by the committee amendments, which repeal the underlying statute.

The committee amendments also address certain prosecutions under another statute, section 1 of P.L.2015, c.186 (C.2C:24-7.1), which makes it a crime to endanger another person.

In repealing N.J.S.2C:34-5, it is the intent of the committee to eliminate a crime that is solely applicable to individuals living with HIV or sexually transmitted infections, and to reduce the stigma suffered by these individuals. In addition, it is the committee's understanding that, because the amendments do not affect the provisions of the statute that criminalizes endangering another person, this maintains an avenue for prosecution in appropriate cases involving the transmission of infectious or communicable diseases. That statute, section 1 of P.L.2015, c.186 (C.2C:24-7.1), is broadly applicable to persons who engage in any type of conduct which creates a substantial risk of bodily injury to another person.

Section 1 of P.L.2015, c.186 (C.2C:24-7.1) sets out penalties ranging from a disorderly persons offense to a crime of the second degree for endangering another person by reckless conduct,

depending on the person's culpability and whether the victim has a developmental disability. Under this statute, a person is guilty of:

(1) a disorderly persons offense if he recklessly engages in conduct which creates a substantial risk of bodily injury to another person;

(2) a crime of the fourth degree if he knowingly engages in conduct which creates a substantial risk of serious bodily injury to another person; and

(3) a crime of the third degree if he knowingly engages in conduct which creates a substantial risk of death to another person.

In addition, if the victim is a person with a developmental disability, the penalties are increased. The statute provides that a person is guilty of:

(1) a crime of the fourth degree if he recklessly engages in conduct which creates a substantial risk of bodily injury to a person with a developmental disability;

(2) a crime of the third degree if he knowingly engages in conduct which creates a substantial risk of serious bodily injury to a person with a developmental disability; and

(3) a crime of the second degree if he knowingly engages in conduct which creates a substantial risk of death to a person with a developmental disability.

Thus, the committee amendments would not affect the prosecution under this statute of a person who knowingly or recklessly engages in conduct which creates a substantial risk of transmitting an infectious or communicable disease to another person. The committee amendments define the term "infectious or communicable disease" as "a non-airborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of treatment and management." This would exclude airborne diseases, such as COVID-19.

The committee amendments provide that in such prosecutions under section 1 of P.L.2015, c.186 (C.2C:24-7.1), all court decisions, orders, petitions, motions, and other documents filed by the parties and the prosecutor would be redacted to protect the name and other personal identifying information of the other person from public disclosure, unless the other person requests otherwise. The court would enter appropriate orders to bar such disclosure.

COMMITTEE AMENDMENTS

(1) Repeal N.J.S.2C:34-5, which criminalizes an act of sexual penetration under certain circumstances by a person infected with a venereal disease, HIV, or AIDS.

(2) Provide that in a prosecution under section 1 of P.L.2015, c.186 (C.2C:24-7.1) against a person who knowingly or recklessly engages in conduct which creates a substantial risk of transmitting an infectious or communicable disease to another person, all court

decisions, orders, petitions, motions, and other documents filed by the parties and the prosecutor would be redacted to protect the name and other personal identifying information of the other person from public disclosure, unless the other person requests otherwise. The court would enter appropriate orders to bar the disclosure of the name or other personal identifying information of the other person by the parties, attorneys, law enforcement, and any other persons, unless the other person requests otherwise.