

P.L. 2021, CHAPTER 409, *approved January 18, 2022*
Senate, No. 3707 (*Second Reprint*)

1 AN ACT concerning purposely transmitting a disease ²by engaging
2 in an act of sexual penetration and amending], supplementing
3 chapter 24 of Title 2C of the New Jersey Statutes, and repealing²
4 N.J.S.2C:34-5.
5
6 BE IT ENACTED by the Senate and General Assembly of the State
7 of New Jersey:
8
9 ²[1. N.J.S.2C:34-5 is amended to read as follows:
10 2C:34-5. [Diseased person] Purposely transmitting a disease
11 by committing an act of sexual penetration.
12 a. (1) A person is guilty of a [crime of the fourth degree]
13 disorderly persons offense [who, knowing that he or she is infected
14 with a venereal disease such as chancroid, gonorrhea, syphilis,
15 herpes virus, or any of the varieties or stages of such diseases,
16 commits an act of sexual penetration without the informed consent
17 of the other person] if the person purposely transmits ¹[an
18 infectious or communicable disease] a sexually-transmitted
19 infection¹ and all of the following apply:
20 (a) the person knows that he or she is diagnosed with ¹[an
21 infectious or transmissible disease] sexually-transmitted infection¹ ;
22 (b) the person acts with the specific intent to transmit the
23 ¹[infectious or communicable disease] sexually-transmitted
24 infection¹ to another person;
25 (c) the person does not take or attempt to take means to prevent
26 the transmission of the ¹[infectious or communicable disease]
27 sexually-transmitted infection¹ ; and
28 (d) the person transmits the ¹[infectious or communicable
29 disease to another person] sexually-transmitted infection¹ .
30 (2) A failure to take or attempt to take means to prevent the
31 transmission of ¹[an infectious or communicable disease] sexually-
32 transmitted infection¹ is not by itself sufficient to prove that the
33 person acted with specific intent to transmit the ¹[infectious or
34 communicable disease pursuant to.] sexually-transmitted infection
35 for the purposes of¹ paragraph (1) of this subsection.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted May 6, 2021.

²Senate SBA committee amendments adopted January 6, 2022.

1 (3) This section shall not apply to a woman with ¹【an infectious
2 or communicable disease】 a sexually-transmitted infection¹ who
3 transmits the ¹【disease】 infection¹ to her child prenatally or during
4 childbirth.

5 b. 【A person is guilty of a crime of the third degree who,
6 knowing that he or she is infected with human immune deficiency
7 virus (HIV) or any other related virus identified as a probable
8 causative agent of acquired immune deficiency syndrome (AIDS),
9 commits an act of sexual penetration without the informed consent
10 of the other person.】 (Deleted by amendment, P.L. , c. (pending
11 before the Legislature as this bill)

12 c. ¹【As used in this section:

13 (1) “Conduct that poses a substantial risk of transmission”
14 means engaging in an act of sexual penetration in a manner that
15 poses a substantial risk of the transmission of an infectious or
16 communicable disease.

17 (2) “Sexual penetration” has the meaning ascribed to it in
18 **subsection c. of N.J.S.2C:14-1.**

19 (3) “Infectious or communicable disease” means a nonairborne
20 disease spread from person to person that is fatal or causes
21 disabling long-term consequences in the absence of treatment and
22 management.

23 (4) “Means to prevent transmission” means a method, device,
24 behavior, or activity demonstrated scientifically to measurably
25 reduce the risk of transmission of an infectious or communicable
26 disease, including but not limited to the use of a condom, barrier
27 protection, or prophylactic device, or compliance with a medical
28 treatment regiment for the infectious or communicable disease
29 prescribed by a health care professional or physician.

30 d. (1) All court decisions, orders, petitions, motions, and other
31 documents filed by the parties and the prosecutor shall be redacted
32 to protect the name and other personal identifying information of
33 the complaining witness from public disclosure, unless the
34 complaining witness requests otherwise.

35 (2) The court shall enter appropriate orders to bar the disclosure
36 of the name or other personal identifying information of the
37 complaining witness by the parties, attorneys, law enforcement, and
38 any other persons, unless the complaining witness requests
39 otherwise.

40 (3) As used in this subsection, “personal identifying
41 information” means any name, address, or other information that
42 may be used, alone or in conjunction with any other information, to
43 identify a specific individual, and any photographic image,
44 reproduction, or other depiction of a person.

45 e.¹ (1) The defendant’s medical records, including but not
46 limited to any medications or medical devices prescribed for or

1 used by the defendant, shall not be the sole basis for establishing
2 the specific intent required by subparagraph (b) of paragraph (1) of
3 subsection a. of this section.

4 (2) No surveillance reports or records maintained by State or
5 local health officials shall be subpoenaed or released for the sole
6 purpose of establishing the specific intent required by subparagraph
7 (b) of paragraph (1) of subsection a. of this section.

8 (3) The defendant may submit medical evidence to show the
9 absence of the specific intent required by subparagraph (b) of
10 paragraph (1) of subsection a. of this section.

11 ¹[f. Nothing in this section shall be deemed to preclude an
12 indictment and conviction for any other offense.]

13 d. All records shall be confidential and shall not be made
14 available to any individual or institution except as otherwise
15 provided by law.

16 e. As used in this section:

17 “Means to prevent transmission” means a method, device,
18 behavior, or activity demonstrated scientifically to measurably
19 reduce the risk of transmission of a sexually-transmitted infection
20 through an act of sexual penetration, including, but not limited to,
21 the use of a condom, barrier protection, or prophylactic device, or
22 compliance with a medical treatment regimen prescribed by a
23 licensed health care professional that prevents or measurably
24 reduces the risk of transmitting the sexually-transmitted infection to
25 another person through an act of sexual penetration.

26 “Sexual penetration” means the same as that term is defined in
27 subsection c. of N.J.S.2C:14-1.

28 “Sexually-transmitted infection” means any communicable or
29 infectious disease that may be readily transmitted by an act of
30 sexual penetration in the absence of the use of an appropriate means
31 to prevent transmission of the sexually-transmitted infection.¹

32 (cf: P.L.1997, c.201, s.1)]²

33
34 ²1. a. As used in this section:

35 “Infectious or communicable disease” means a non-airborne
36 disease spread from person to person that is fatal or causes
37 disabling long-term consequences in the absence of treatment and
38 management.

39 “Personal identifying information” means any name, address, or
40 other information that may be used, alone or in conjunction with
41 any other information, to identify a specific individual, and any
42 photographic image, reproduction, or other depiction of a person.

43 b. In a prosecution under section 1 of P.L.2015, c.186 (C.2C:24-
44 7.1) against a person who knowingly or recklessly engages in
45 conduct which creates a substantial risk of transmitting an
46 infectious or communicable disease to another person, all court
47 decisions, orders, petitions, motions, and other documents filed by

1 the parties and the prosecutor shall be redacted to protect the name
2 and other personal identifying information of the other person from
3 public disclosure, unless the other person requests otherwise.
4 Additionally, the court shall enter appropriate orders to bar the
5 disclosure of the name or other personal identifying information of
6 the other person by the parties, attorneys, law enforcement, and any
7 other persons, unless the other person requests otherwise.²

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9 2. ²N.J.S.2C:34-5 is repealed.²

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11 ²**[2.] 3.**² This act shall take effect on the 60th day following
12 enactment.

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15 _____
16
17 Repeals statute criminalizing sexual penetration while infected
18 with venereal disease or HIV under certain circumstances; requires
19 that in prosecutions for endangering another by creating substantial
20 risk of transmitting infectious disease, name of defendant and other
21 person be kept confidential.