

SENATE, No. 622

STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:

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SYNOPSIS

Provides for jurisdiction for prosecution for certain crimes against minors committed outside New Jersey.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning territorial jurisdiction and amending
2 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) (a) Any person having a legal duty in this State for the
10 care of a child or who has assumed responsibility in this State for
11 the care of a child who engages in sexual conduct within or outside
12 this State which would impair or debauch the morals of the child is
13 guilty of a crime of the second degree. Any legal duty or
14 assumption of responsibility which commenced in this State
15 continues in any jurisdiction.

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

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

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

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

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

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

44 "Internet" means the international computer network of both

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 federal and non-federal interoperable packet switched data
2 networks.

3 "Item depicting the sexual exploitation or abuse of a child"
4 means a photograph, film, video, an electronic, electromagnetic or
5 digital recording, an image stored or maintained in a computer
6 program or file or in a portion of a file, or any other reproduction or
7 reconstruction which depicts a child engaging in a prohibited sexual
8 act or in the simulation of such an act.

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 "Prohibited sexual act" means

13 (a) Sexual intercourse; or

14 (b) Anal intercourse; or

15 (c) Masturbation; or

16 (d) Bestiality; or

17 (e) Sadism; or

18 (f) Masochism; or

19 (g) Fellatio; or

20 (h) Cunnilingus; or

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

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

25 "Reproduction" means, but is not limited to, computer generated
26 images.

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

28 (3) A person commits a crime of the first degree if he causes or
29 permits a child to engage in a prohibited sexual act or in the
30 simulation of such an act if the person knows, has reason to know
31 or intends that the prohibited act may be photographed, filmed,
32 reproduced, or reconstructed in any manner, including on the
33 Internet, or may be part of an exhibition or performance.

34 (4) A person commits a crime of the second degree if he
35 photographs or films a child in a prohibited sexual act or in the
36 simulation of such an act or who uses any device, including a
37 computer, to reproduce or reconstruct the image of a child in a
38 prohibited sexual act or in the simulation of such an act.

39 (5) (a) A person commits a crime of the second degree if, by
40 any means, including but not limited to the Internet, he:

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

43 (ii) knowingly possesses an item depicting the sexual
44 exploitation or abuse of a child with the intent to distribute that
45 item; or

46 (iii) knowingly stores or maintains an item depicting the sexual
47 exploitation or abuse of a child using a file-sharing program which

1 is designated as available for searching by or copying to one or
2 more other computers.

3 In a prosecution under sub-subparagraph (iii) of this
4 subparagraph, the State shall not be required to offer proof that an
5 item depicting the sexual exploitation or abuse of a child had
6 actually been searched, copied, transmitted or viewed by another
7 user of the file-sharing program, or by any other person, and it shall
8 be no defense that the defendant did not intend to distribute the item
9 to another user of the file-sharing program or to any other person.
10 Nor shall the State be required to prove that the defendant was
11 aware that the item depicting the sexual exploitation or abuse of a
12 child was available for searching or copying to one or more other
13 computers, and the defendant shall be strictly liable for failing to
14 designate the item as not available for searching or copying by one
15 or more other computers.

16 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
17 6, a person whose offense under this subparagraph involved 25 or
18 more items depicting the sexual exploitation or abuse of a child
19 shall be sentenced to a mandatory minimum term of imprisonment,
20 which shall be fixed at, or between, one-third and one-half of the
21 sentence imposed by the court or five years, whichever is greater,
22 during which the defendant shall be ineligible for parole.

23 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
24 6, a person convicted of a second or subsequent offense under this
25 subparagraph shall be sentenced to an extended term of
26 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this
27 subparagraph, an offense is considered a second or subsequent
28 offense if the actor has at any time been convicted pursuant to
29 paragraph (3), (4) or (5) of this subsection, or under any similar
30 statute of the United States, this State or any other state for an
31 offense that is substantially equivalent to paragraph (3), (4) or (5) of
32 this subsection.

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

36 (b) A person commits a crime of the third degree if he
37 knowingly possesses, knowingly views, or knowingly has under his
38 control, through any means, including the Internet, an item
39 depicting the sexual exploitation or abuse of a child.

40 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-
41 1, in any instance where a person was convicted of an offense under
42 this subparagraph that involved 100 or more items depicting the
43 sexual exploitation or abuse of a child, the court shall impose a
44 sentence of imprisonment unless, having regard to the character and
45 condition of the defendant, it is of the opinion that imprisonment
46 would be a serious injustice which overrides the need to deter such
47 conduct by others.

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) of
10 this subsection.

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

14 (6) For purposes of this subsection, a person who is depicted as
15 or presents the appearance of being under the age of 18 in any
16 photograph, film, videotape, computer program or file, video game
17 or any other reproduction or reconstruction shall be rebuttably
18 presumed to be under the age of 18. If the child who is depicted as
19 engaging in, or who is caused to engage in, a prohibited sexual act
20 or simulation of a prohibited sexual act is under the age of 18, the
21 actor shall be strictly liable and it shall not be a defense that the
22 actor did not know that the child was under the age of 18, nor shall
23 it be a defense that the actor believed that the child was 18 years of
24 age or older, even if such a mistaken belief was reasonable.

25 (7) For aggregation purposes, each depiction of the sexual
26 exploitation or abuse of a child shall be considered a separate item,
27 and each individual act of distribution of an item depicting the
28 sexual exploitation or abuse of a child shall be considered a
29 separate item. For purposes of determining the number of items
30 depicting the sexual exploitation or abuse of a child for purposes of
31 sentencing pursuant to subparagraph (a) of paragraph (5) of this
32 subsection, the court shall aggregate all items involved, whether the
33 act or acts constituting the violation occurred at the same time or at
34 different times and, with respect to distribution, whether the act or
35 acts of distribution were to the same person or several persons or
36 occurred at different times, provided that each individual act was
37 committed within the applicable statute of limitations. For purposes
38 of determining the number of items depicting the sexual
39 exploitation or abuse of a child for purposes of sentencing pursuant
40 to subparagraph (b) of paragraph (5) of this subsection, the court
41 shall aggregate all items involved, whether the possession of such
42 items occurred at the same time or at different times, provided that
43 each individual act was committed within the applicable statute of
44 limitations.

45 (cf: P.L.2013, c.136, s.1)

46

47 2. This act shall take effect immediately.

STATEMENT

The bill would expand the jurisdiction of the statute concerning endangering the welfare of a child, N.J.S.2C:24-4. Under the bill, the statute would apply to situations where a person having a legal duty of care or having assumed responsibility for the care of a child in New Jersey engages in sexual conduct with that child in a jurisdiction other than New Jersey. Currently, N.J.S.2C:24-4 makes it a crime of the second degree if a person with the legal duty for the care of the child or who has assumed responsibility for the care of the child “engages in sexual conduct which would impair or debauch the morals of a child.” A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of \$150,000 or both.

This bill is in response to the recent case of State v. Sumulikowski and Sopel, 2015 N.J.LEXIS 276 (decided March 18, 2015) where the New Jersey Supreme Court held that New Jersey courts did not have jurisdiction to prosecute New Jersey school officials who were chaperones on a school trip to Germany and allegedly engaged in sexual conduct in Germany with students from the school.

By adding the proposed language to the statute, it is the sponsor’s intent to make it clear that N.J.S.2C:24-4, endangering the welfare of a child, applies to sexual conduct with a child that takes place within and outside of New Jersey under these circumstances. Thus, this bill would confer jurisdiction to New Jersey courts in cases similar to the State v. Sumulikowski and Sopel case.

In addition, the bill is intended to be consistent with the provisions of N.J.S.2C:1-3 concerning territorial jurisdiction in criminal cases. The statute provides that a person may be convicted in New Jersey if “the offense is based on a statute of this State which expressly prohibits conduct outside of the State, when the conduct bears a reasonable relation to an interest of this State.” (See: paragraph (6) of subsection a. of N.J.S.2C:1-3).

In the view of the sponsor, there can be no question that New Jersey has a significant interest in ensuring that children for whom an adult has assumed a duty or responsibility of care in New Jersey are subject to prosecution for unlawful sexual conduct, no matter where the sexual conduct occurs.