

SENATE, No. 1594

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

Makes all persons convicted of sexual assault subject to the No Early Release Act; specifies that any use of force elevates sexual assault to aggravated sexual assault.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning sexual assault and amending P.L.1997, c.117
2 and N.J.S.2C:14-2.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
8 read as follows:

9 2. a. A court imposing a sentence of incarceration for a crime
10 of the first or second degree enumerated in subsection d. of this
11 section shall fix a minimum term of 85% of the sentence imposed,
12 during which the defendant shall not be eligible for parole.

13 b. The minimum term required by subsection a. of this section
14 shall be fixed as a part of every sentence of incarceration imposed
15 upon every conviction of a crime enumerated in subsection d. of
16 this section, whether the sentence of incarceration is determined
17 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any
18 other provision of law, and shall be calculated based upon the
19 sentence of incarceration actually imposed. The provisions of
20 subsection a. of this section shall not be construed or applied to
21 reduce the time that must be served before eligibility for parole by
22 an inmate sentenced to a mandatory minimum period of
23 incarceration. Solely for the purpose of calculating the minimum
24 term of parole ineligibility pursuant to subsection a. of this section,
25 a sentence of life imprisonment shall be deemed to be 75 years.

26 c. Notwithstanding any other provision of law to the contrary
27 and in addition to any other sentence imposed, a court imposing a
28 minimum period of parole ineligibility of 85 percent of the sentence
29 pursuant to this section shall also impose a five-year term of parole
30 supervision if the defendant is being sentenced for a crime of the
31 first degree, or a three-year term of parole supervision if the
32 defendant is being sentenced for a crime of the second degree. The
33 term of parole supervision shall commence upon the completion of
34 the sentence of incarceration imposed by the court pursuant to
35 subsection a. of this section unless the defendant is serving a
36 sentence of incarceration for another crime at the time he completes
37 the sentence of incarceration imposed pursuant to subsection a., in
38 which case the term of parole supervision shall commence
39 immediately upon the defendant's release from incarceration.
40 During the term of parole supervision the defendant shall remain in
41 release status in the community in the legal custody of the
42 Commissioner of the Department of Corrections and shall be
43 supervised by the State Parole Board as if on parole and shall be
44 subject to the provisions and conditions of section 3 of P.L.1997,
45 c.117 (C.30:4-123.51b).

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.

d. The court shall impose sentence pursuant to subsection a. of this section upon conviction of the following crimes or an attempt or conspiracy to commit any of these crimes:

- (1) N.J.S.2C:11-3, murder;
- (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- (3) N.J.S.2C:11-5, vehicular homicide;
- (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- (5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11), disarming a law enforcement officer;
- (6) N.J.S.2C:13-1, kidnapping;
- (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- (8) subsection b. of N.J.S.2C:14-2 and **paragraph (1) of** subsection c. of N.J.S.2C:14-2, sexual assault;
- (9) N.J.S.2C:15-1, robbery;
- (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated arson;
- (12) N.J.S.2C:18-2, burglary;
- (13) subsection a. of N.J.S.2C:20-5, extortion;
- (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), booby traps in manufacturing or distribution facilities;
- (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
- (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or possessing chemical weapons, biological agents or nuclear or radiological devices;
- (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first degree;
- (19) subsection i. of N.J.S.2C:39-9, firearms trafficking; or
- (20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or permitting a child to engage in a prohibited sexual act, knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance.

e. (Deleted by amendment, P.L.2001, c.129).
(cf: P.L.2013, c.136, s.4)

2. N.J.S.2C:14-2 is amended to read as follows:

2C:14-2. Sexual assault. a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

- (1) The victim is less than 13 years old;
- (2) The victim is at least 13 but less than 16 years old; and
- (a) The actor is related to the victim by blood or affinity to the third degree, or
- (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or

1 (c) The actor is a resource family parent, a guardian, or stands
2 in loco parentis within the household;

3 (3) The act is committed during the commission, or attempted
4 commission, whether alone or with one or more other persons, of
5 robbery, kidnapping, homicide, aggravated assault on another,
6 burglary, arson or criminal escape;

7 (4) The actor is armed with a weapon or any object fashioned in
8 such a manner as to lead the victim to reasonably believe it to be a
9 weapon and threatens by word or gesture to use the weapon or
10 object;

11 (5) The actor is aided or abetted by one or more other persons
12 and the actor uses physical force or coercion;

13 (6) The actor uses physical force or coercion **【and severe**
14 **personal injury is sustained by the victim】**;

15 (7) The victim is one whom the actor knew or should have
16 known was physically helpless or incapacitated, intellectually or
17 mentally incapacitated, or had a mental disease or defect which
18 rendered the victim temporarily or permanently incapable of
19 understanding the nature of his conduct, including, but not limited
20 to, being incapable of providing consent.

21 Aggravated sexual assault is a crime of the first degree.

22 Except as otherwise provided in subsection d. of this section, a
23 person convicted under paragraph (1) of this subsection shall be
24 sentenced to a specific term of years which shall be fixed by the
25 court and shall be between 25 years and life imprisonment of which
26 the person shall serve 25 years before being eligible for parole,
27 unless a longer term of parole ineligibility is otherwise provided
28 pursuant to this Title.

29 b. An actor is guilty of sexual assault if he commits an act of
30 sexual contact with a victim who is less than 13 years old and the
31 actor is at least four years older than the victim.

32 c. An actor is guilty of sexual assault if he commits an act of
33 sexual penetration with another person under any one of the
34 following circumstances:

35 (1) **【The actor uses physical force or coercion, but the victim**
36 **does not sustain severe personal injury】** (Deleted by amendment,
37 P.L. , c.) (pending before the Legislature as this bill);

38 (2) The victim is on probation or parole, or is detained in a
39 hospital, prison or other institution and the actor has supervisory or
40 disciplinary power over the victim by virtue of the actor's legal,
41 professional or occupational status;

42 (3) The victim is at least 16 but less than 18 years old and:

43 (a) The actor is related to the victim by blood or affinity to the
44 third degree; or

45 (b) The actor has supervisory or disciplinary power of any
46 nature or in any capacity over the victim; or

47 (c) The actor is a resource family parent, a guardian, or stands
48 in loco parentis within the household;

1 (4) The victim is at least 13 but less than 16 years old and the
2 actor is at least four years older than the victim;

3 (5) The victim is a pupil at least 18 but less than 22 years old
4 and has not received a high school diploma and the actor is a
5 teaching staff member or substitute teacher, school bus driver, other
6 school employee, contracted service provider, or volunteer and the
7 actor has supervisory or disciplinary power of any nature or in any
8 capacity over the victim. As used in this paragraph, "teaching staff
9 member" has the meaning set forth in N.J.S.18A:1-1.

10 Sexual assault is a crime of the second degree.

11 d. Notwithstanding the provisions of subsection a. of this
12 section, where a defendant is charged with a violation under
13 paragraph (1) of subsection a. of this section, the prosecutor, in
14 consideration of the interests of the victim, may offer a negotiated
15 plea agreement in which the defendant would be sentenced to a
16 specific term of imprisonment of not less than 15 years, during
17 which the defendant shall not be eligible for parole. In such event,
18 the court may accept the negotiated plea agreement and upon such
19 conviction shall impose the term of imprisonment and period of
20 parole ineligibility as provided for in the plea agreement, and may
21 not impose a lesser term of imprisonment or parole or a lesser
22 period of parole ineligibility than that expressly provided in the plea
23 agreement. The Attorney General shall develop guidelines to ensure
24 the uniform exercise of discretion in making determinations
25 regarding a negotiated reduction in the term of imprisonment and
26 period of parole ineligibility set forth in subsection a. of this
27 section.

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

29
30 3. This act shall take effect immediately.

31 32 33 STATEMENT

34
35 This bill makes all forms of sexual assault subject to sentencing
36 under the No Early Release Act (NERA) and specifies that the use
37 of any physical force or coercion in a sexual assault, regardless of
38 whether that force or coercion results in severe physical injury to
39 the victim, elevates the crime to aggravated sexual assault, a crime
40 of the first degree.

41 Under NERA (P.L.1997, c.117; C.2C:43-7.2), persons who
42 commit certain violent crimes of the first and second degree are
43 required to serve a minimum of 85% of the sentence imposed on
44 them by the court.

45 One exception to this general rule involves sexual assault.
46 Although sexual assault is a crime of the second degree, a person
47 who commits sexual assault is subject to the provisions of NERA
48 only if that assault (1) involves sexual contact with a victim who is

1 less than 13 years of age and the actor is at least four years older
2 than the victim or (2) the actor uses physical force or coercion, but
3 that force or coercion does not cause severe personal injury to the
4 victim, which would raise the offense to the crime of aggravated
5 sexual assault. Aggravated sexual assault is a crime of the first
6 degree and all those convicted of that crime are subject to NERA.

7 This bill makes all forms of sexual assault subject to NERA.

8 The bill also amends N.J.S.2C:14-2 to specify that the use of
9 physical force or coercion in a sexual assault, regardless of whether
10 that force or coercion results in severe physical injury to the victim,
11 elevates any crime of sexual assault to aggravated sexual assault, a
12 crime of the first degree. The penalties for a crime of the first
13 degree are imprisonment for a term of 10 to 20 years, a fine of up to
14 \$200,000, or both.