

# ASSEMBLY, No. 2121

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 7, 2022

**Sponsored by:**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Morris, Somerset and Union)**

**Assemblyman JAY WEBBER**

**District 26 (Essex, Morris and Passaic)**

**Assemblywoman BETH SAWYER**

**District 3 (Cumberland, Gloucester and Salem)**

**Co-Sponsored by:**

**Assemblywomen Dunn and Matsikoudis**

**SYNOPSIS**

Provides that unlawful use, manufacture, or distribution of controlled dangerous substance by parent or caregiver in presence of child constitutes crime of endangering welfare of that child.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/2/2022)**

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 is guilty of a crime of the second degree. Any other person  
13 who engages in conduct or who causes harm as described in this  
14 paragraph to a child is guilty of a crime of the third degree.

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

23 (b) (i) Any person having a legal duty for the care of a child or  
24 who has assumed responsibility for the care of a child who violates  
25 the provisions of N.J.S.2C:35-5 while in the presence of such child  
26 is guilty of a crime of the third degree.

27 (ii) Any person having a legal duty for the care of a child or who  
28 has assumed responsibility for the care of a child who violates the  
29 provisions of N.J.S.2C:35-10 while in the presence of such child is  
30 guilty of a crime of the fourth degree.

31 (c) Any other person who engages in conduct or who causes  
32 harm as described in subparagraph (a) of this paragraph to a child is  
33 guilty of a crime of the third degree.

34 Nothing in this subsection shall preclude a prosecution for any  
35 other offense set forth in chapter 35 of Title 2C of the New Jersey  
36 Statutes or any other offense defined by the laws of this State.

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

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

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

44 "File-sharing program" means a computer program, application,  
45 software or operating system that allows the user of a computer on

**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 which such program, application, software or operating system is  
2 installed to designate files as available for searching by and copying  
3 to one or more other computers, to transmit such designated files  
4 directly to one or more other computers, and to request the  
5 transmission of such designated files directly from one or more  
6 other computers. The term "file-sharing program" includes but is  
7 not limited to a computer program, application or software that  
8 enables a computer user to participate in a peer-to-peer network.

9 "Internet" means the international computer network of both  
10 federal and non-federal interoperable packet switched data  
11 networks.

12 "Item depicting the sexual exploitation or abuse of a child"  
13 means a photograph, film, video, an electronic, electromagnetic or  
14 digital recording, an image stored or maintained in a computer  
15 program or file or in a portion of a file, or any other reproduction or  
16 reconstruction which :

17 (a) depicts a child engaging in a prohibited sexual act or in the  
18 simulation of such an act; or

19 (b) portrays a child in a sexually suggestive manner.

20 "Peer-to-peer network" means a connection of computer systems  
21 through which files are shared directly between the systems on a  
22 network without the need of a central server.

23 "Portray a child in a sexually suggestive manner" means:

24 (a) to depict a child's less than completely and opaquely covered  
25 intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by  
26 means of the posing, composition, format, or animated sensual  
27 details, emits sensuality with sufficient impact to concentrate  
28 prurient interest on the child; or

29 (b) to depict any form of contact with a child's intimate parts, as  
30 defined in N.J.S.2C:14-1, in a manner that, by means of the posing,  
31 composition, format, or animated sensual details, emits sensuality  
32 with sufficient impact to concentrate prurient interest on the child;  
33 or

34 (c) to otherwise depict a child for the purpose of sexual  
35 stimulation or gratification of any person who may view the  
36 depiction where the depiction does not have serious literary, artistic,  
37 political, or scientific value.

38 "Prohibited sexual act" means

39 (a) Sexual intercourse; or

40 (b) Anal intercourse; or

41 (c) Masturbation; or

42 (d) Bestiality; or

43 (e) Sadism; or

44 (f) Masochism; or

45 (g) Fellatio; or

46 (h) Cunnilingus; or

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

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

3 "Reproduction" means, but is not limited to, computer generated  
4 images.

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

6 (3) A person commits a crime of the first degree if he causes or  
7 permits a child to engage in a prohibited sexual act or in the  
8 simulation of such an act or to be portrayed in a sexually suggestive  
9 manner if the person knows, has reason to know or intends that the  
10 prohibited act or portrayal may be photographed, filmed,  
11 reproduced, or reconstructed in any manner, including on the  
12 Internet, or may be part of an exhibition or performance.

13 (4) A person commits a crime of the second degree if he  
14 photographs or films a child in a prohibited sexual act or in the  
15 simulation of such an act or for portrayal in a sexually suggestive  
16 manner or who uses any device, including a computer, to reproduce  
17 or reconstruct the image of a child in a prohibited sexual act or in  
18 the simulation of such an act or for portrayal in a sexually  
19 suggestive manner.

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

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

24 (ii) knowingly possesses an item depicting the sexual  
25 exploitation or abuse of a child with the intent to distribute that  
26 item; or

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

31 In a prosecution under sub-subparagraph (iii) of this  
32 subparagraph, the State shall not be required to offer proof that an  
33 item depicting the sexual exploitation or abuse of a child had  
34 actually been searched, copied, transmitted or viewed by another  
35 user of the file-sharing program, or by any other person, and it shall  
36 be no defense that the defendant did not intend to distribute the item  
37 to another user of the file-sharing program or to any other person.  
38 Nor shall the State be required to prove that the defendant was  
39 aware that the item depicting the sexual exploitation or abuse of a  
40 child was available for searching or copying to one or more other  
41 computers, and the defendant shall be strictly liable for failing to  
42 designate the item as not available for searching or copying by one  
43 or more other computers.

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

47 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
48 6, a person whose offense under this subparagraph involved at least

1 25 but less than 1,000 items depicting the sexual exploitation or  
2 abuse of a child shall be sentenced to a mandatory minimum term of  
3 imprisonment, which shall be fixed at, or between, one-third and  
4 one-half of the sentence imposed by the court or five years,  
5 whichever is greater, during which the defendant shall be ineligible  
6 for parole.

7 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
8 6, a person whose offense under this subparagraph involved 1,000  
9 or more items depicting the sexual exploitation or abuse of a child  
10 shall be sentenced to a mandatory minimum term of imprisonment,  
11 which shall be fixed at, or between, one-third and one-half of the  
12 sentence imposed by the court or 10 years, whichever is greater,  
13 during which the defendant shall be ineligible for parole.

14 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
15 6, a person convicted of a second or subsequent offense under this  
16 subparagraph shall be sentenced to an extended term of  
17 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
18 subparagraph, an offense is considered a second or subsequent  
19 offense if the actor has at any time been convicted pursuant to  
20 paragraph (3), (4), or (5) of this subsection, or under any similar  
21 statute of the United States, this State, or any other state for an  
22 offense that is substantially equivalent to paragraph (3), (4), or (5)  
23 of this subsection.

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

27 (b) (i) A person commits a crime of the first degree if he  
28 knowingly possesses, knowingly views, or knowingly has under his  
29 control, through any means, including the Internet, 100,000 or more  
30 items depicting the sexual exploitation or abuse of a child.

31 (ii) A person commits a crime of the second degree if he  
32 knowingly possesses, knowingly views, or knowingly has under his  
33 control, through any means, including the Internet, at least 1,000  
34 but less than 100,000 items depicting the sexual exploitation or  
35 abuse of a child.

36 (iii) 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, less than 1,000  
39 items 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)  
10 of 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 or portrayed in a sexually  
21 suggestive manner is under the age of 18, the actor shall be strictly  
22 liable and it shall not be a defense that the actor did not know that  
23 the child was under the age of 18, nor shall it be a defense that the  
24 actor believed that the child was 18 years of age or older, even if  
25 such a mistaken belief was reasonable.

26 (7) For aggregation purposes, each depiction of the sexual  
27 exploitation or abuse of a child shall be considered a separate item,  
28 provided that each depiction that is in the form of a photograph,  
29 picture, image, or visual depiction of a similar nature shall be  
30 considered to be one item and each depiction that is in the form of a  
31 film, video, video-clip, movie, or visual depiction of a similar  
32 nature shall be considered to be 10 separate items, and each  
33 individual act of distribution of an item depicting the sexual  
34 exploitation or abuse of a child shall be considered a separate item.  
35 For purposes of determining the number of items depicting the  
36 sexual exploitation or abuse of a child for purposes of sentencing  
37 pursuant to subparagraph (a) of paragraph (5) of this subsection, the  
38 court shall aggregate all items involved, whether the act or acts  
39 constituting the violation occurred at the same time or at different  
40 times and, with respect to distribution, whether the act or acts of  
41 distribution were to the same person or several persons or occurred  
42 at different times, provided that each individual act was committed  
43 within the applicable statute of limitations. For purposes of  
44 determining the number of items depicting the sexual exploitation  
45 or abuse of a child for purposes of sentencing pursuant to  
46 subparagraph (b) of paragraph (5) of this subsection, the court shall  
47 aggregate all items involved, whether the possession of such items  
48 occurred at the same time or at different times, provided that each

1 individual act was committed within the applicable statute of  
2 limitations.

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

4

5 2. This act shall take effect immediately.

6

7

8

#### STATEMENT

9

10 This bill provides that a parent or caregiver who unlawfully uses,  
11 manufactures, or distributes a controlled dangerous substance while  
12 in the presence of a child is guilty of the crime of endangering the  
13 welfare of that child.

14 The bill provides that any person with a legal duty for the care of  
15 a child or who has assumed responsibility for the care of a child  
16 who violates the provisions of N.J.S.2C:35-5 while in the presence  
17 of such child would be guilty of a crime of the third degree pursuant  
18 to N.J.S.2C:24-4, endangering the welfare of a child. The  
19 underlying statute, N.J.S.2C:35-5, concerns unlawfully  
20 manufacturing, distributing, or dispensing, or having under one's  
21 control with intent to manufacture, distribute, or dispense, a  
22 controlled dangerous substance. Penalties for violations of  
23 N.J.S.2C:35-5 range from a crime of the fourth degree to a crime of  
24 the first degree, depending on the particular substance involved and  
25 its quantity.

26 Under the bill, a violation of the provisions of N.J.S.2C:35-10  
27 while in the presence of a child by a person with a legal duty for the  
28 care of the child or who has assumed responsibility for the care of  
29 the child would constitute a crime of the fourth degree pursuant to  
30 N.J.S.2C:24-4, endangering the welfare of a child. The underlying  
31 statute, N.J.S.2C:35-10, concerns obtaining, possessing, or using a  
32 controlled dangerous substance. Penalties for violations of  
33 N.J.S.2C:35-10 range from a disorderly persons offense to a crime  
34 of the third degree, depending on the particular substance involved  
35 and its quantity.

36 A crime of the first degree is punishable by a term of  
37 imprisonment of ten to 20 years or a fine of up to \$200,000, or both;  
38 a crime of the second degree, by a term of five to ten years or a fine  
39 up to \$150,000, or both; a crime of the third degree, by a term of  
40 three to five years or a fine up to \$15,000, or both, and a crime of  
41 the fourth degree, by a term up to 18 months or a fine up to  
42 \$10,000, or both. A disorderly persons offense is punishable by a  
43 term of imprisonment of up to six months or a fine of up to \$1,000  
44 or both. A petty disorderly persons offense is punishable by a term  
45 of imprisonment of up to 30 days or a fine of up to \$500 or both.

46 The bill specifies that it does not preclude a prosecution for any  
47 other offense set forth in chapter 35 of Title 2C of the New Jersey  
48 Statutes or any other offense defined by the laws of this State. The

1 intent of this provision is to clarify that a prosecution for  
2 endangering the welfare of a child under the bill is separate and  
3 distinct from any prosecution for the underlying drug offense or any  
4 other criminal prosecution.