

ASSEMBLY, No. 892

STATE OF NEW JERSEY

216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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SYNOPSIS

Enacts the "Jessica Lunsford Act;" imposes mandatory term of imprisonment; provides for negotiated reduction of mandatory term under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

(Sponsorship Updated As Of: 2/21/2014)

1 AN ACT concerning certain sexual assaults, designated the “Jessica
2 Lunsford Act,” and amending N.J.S.2C:14-2.

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

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

8 2C:14-2. Sexual assault. a. An actor is guilty of aggravated
9 sexual assault if he commits an act of sexual penetration with
10 another person under any one of the following circumstances:

11 (1) The victim is less than 13 years old;

12 (2) The victim is at least 13 but less than 16 years old; and

13 (a) The actor is related to the victim by blood or affinity to the
14 third degree, or

15 (b) The actor has supervisory or disciplinary power over the
16 victim by virtue of the actor's legal, professional, or occupational
17 status, or

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

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

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

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

30 (6) The actor uses physical force or coercion and severe
31 personal injury is sustained by the victim;

32 (7) The victim is one whom the actor knew or should have
33 known was physically helpless, mentally incapacitated, or had a
34 mental disease or defect which rendered the victim temporarily or
35 permanently incapable of understanding the nature of his conduct,
36 including, but not limited to, being incapable of providing consent.

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

38 Except as otherwise provided in subsection d. of this section, a
39 person convicted under paragraph (1) of this subsection shall be
40 sentenced to a specific term of years which shall be fixed by the
41 court and shall be between 25 years and life imprisonment of which
42 the person shall serve 25 years before being eligible for parole,
43 unless a longer term of parole ineligibility is otherwise provided
44 pursuant to this Title.

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

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

7 (1) The actor uses physical force or coercion, but the victim
8 does not sustain severe personal injury;

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

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

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

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

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

20 (4) The victim is at least 13 but less than 16 years old and the
21 actor is at least four years older than the victim.

22 Sexual assault is a crime of the second degree.

23 d. Notwithstanding the provisions of subsection a. of this
24 section, where a defendant is charged with a violation under
25 paragraph (1) of subsection a. of this section the prosecutor, in
26 consideration of the interests of the victim, may offer a negotiated
27 plea agreement in which the defendant would be sentenced to a
28 specific term of imprisonment of not less than 15 years, during
29 which the defendant shall not be eligible for parole. In such event,
30 the court may accept the negotiated plea agreement and upon such
31 conviction shall impose the term of imprisonment and period of
32 parole ineligibility as provided for in the plea agreement, and may
33 not impose a lesser term of imprisonment or parole or a lesser
34 period of parole ineligibility than that expressly provided in the plea
35 agreement. The Attorney General shall develop guidelines to ensure
36 the uniform exercise of discretion in making determinations
37 regarding a negotiated reduction in the term of imprisonment and
38 period of parole ineligibility set forth in subsection a. of this
39 section.

40 (cf: P.L.2011, c.232, s.4)

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42 2. This act shall take effect immediately.

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STATEMENT

This bill, designated the “Jessica Lunsford Act,” would impose mandatory terms of imprisonment on persons convicted of aggravated sexual assault against a child under the age of 13.

Under paragraph (1) of subsection a. of N.J.S.2C:14-2, a person is guilty of aggravated sexual assault, a crime of the first degree, if he commits an act of sexual penetration with a victim under the age of 13. A crime of the first degree is ordinarily punishable by a term of imprisonment of 10 to 20 years or a fine of up to \$200,000 or both. Under the bill, the person would be sentenced to a specific term of years fixed by the court. The term would be between 25 years and life imprisonment of which the person must serve 25 years before being eligible for parole. The bill provides that the person must serve the 25-year parole ineligibility term unless a longer term of parole ineligibility is otherwise provided pursuant to law.

The bill would allow for a negotiated reduction of the mandatory term under certain circumstances. This would allow the prosecutor, in consideration of the interests of the victim, to offer a negotiated plea agreement in which the defendant would be sentenced to a specific term of imprisonment of not less than 15 years, during which the defendant shall not be eligible for parole. The court may accept the negotiated plea agreement and impose the term of imprisonment and period of parole ineligibility as provided for in the plea agreement. The court may not impose a lesser term of imprisonment or parole or a lesser period of parole ineligibility than that expressly provided in the plea agreement.

The bill also requires the Attorney General to develop guidelines to ensure the uniform exercise of discretion in making determinations regarding a negotiated reduction in the term of imprisonment and period of parole ineligibility.

The bill makes a technical amendment to reflect the enactment of P.L.2011, c.232 which amended N.J.S.2C:14-2 to eliminate the term “mentally defective.”

This bill is modeled on provisions of Florida’s “Jessica Lunsford Act,” Chapter No. 2005-28. Jessica, a nine-year-old Florida resident, was kidnapped, raped, and murdered by a registered sex offender. The Florida enactment imposed a mandatory term of imprisonment of 25 years for sex crimes against children and required satellite monitoring to track the location of sex offenders after release.

In 2007, New Jersey enacted a statute similar to the provision of the Florida enactment that provided for satellite monitoring to track the location of sex offenders after release, P.L.2007, c.128 (C.30:4-123.89 et seq.).