

SENATE, No. 2180

STATE OF NEW JERSEY

218th LEGISLATURE

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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: 10/25/2019)

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
10 or who has assumed responsibility for the care of a child who
11 engages in sexual conduct which would impair or debauch the
12 morals of the child is guilty of a crime of the second degree. Any
13 other person who engages in conduct or who causes harm as
14 described in this paragraph to a child is guilty of a crime of the third
15 degree.

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

1 occurred at the same time or at different times, provided that each
2 individual act was committed within the applicable statute of
3 limitations.

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

5
6 2. This act shall take effect immediately.

7
8
9 STATEMENT

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

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

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

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

47 The bill specifies that it does not preclude a prosecution for any
48 other offense set forth in chapter 35 of Title 2C of the New Jersey

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