

SENATE, No. 3707

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 26, 2021

Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Makes it disorderly persons offense to purposely transmit infectious or communicable disease by engaging in act of sexual penetration under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning purposely transmitting a disease by engaging in
2 an act of sexual penetration and amending N.J.S.2C:34-5.

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:34-5 is amended to read as follows:

8 2C:34-5. **【Diseased person】** Purposely transmitting a disease
9 by committing an act of sexual penetration.

10 a. (1) A person is guilty of a **【crime of the fourth degree】**
11 disorderly persons offense **【who, knowing that he or she is infected**
12 with a venereal disease such as chancroid, gonorrhea, syphilis,
13 herpes virus, or any of the varieties or stages of such diseases,
14 commits an act of sexual penetration without the informed consent
15 of the other person**】** if the person purposely transmits an infectious
16 or communicable disease and all of the following apply:

17 (a) the person knows that he or she is diagnosed with an
18 infectious or transmissible disease;

19 (b) the person acts with the specific intent to transmit the
20 infectious or communicable disease to another person;

21 (c) the person does not take or attempt to take means to prevent
22 the transmission of the infectious or communicable disease; and

23 (d) the person transmits the infectious or communicable disease
24 to another person.

25 (2) A failure to take or attempt to take means to prevent the
26 transmission of an infectious or communicable disease is not by
27 itself sufficient to prove that the person acted with specific intent to
28 transmit the infectious or communicable disease pursuant to
29 paragraph (1) of this subsection.

30 (3) This section shall not apply to a woman with an infectious or
31 communicable disease who transmits the disease to her child
32 prenatally or during childbirth.

33 b. **【A person is guilty of a crime of the third degree who,**
34 **knowing that he or she is infected with human immune deficiency**
35 **virus (HIV) or any other related virus identified as a probable**
36 **causative agent of acquired immune deficiency syndrome (AIDS),**
37 **commits an act of sexual penetration without the informed consent**
38 **of the other person.**】** (Deleted by amendment, P.L. , c. (pending
39 before the Legislature as this bill)**

40 c. As used in this section:

41 (1) “Conduct that poses a substantial risk of transmission”
42 means engaging in an act of sexual penetration in a manner that
43 poses a substantial risk of the transmission of an infectious or
44 communicable disease.

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 (2) “Sexual penetration” has the meaning ascribed to it in
2 subsection c. of N.J.S.2C:14-1.

3 (3) “Infectious or communicable disease” means a nonairborne
4 disease spread from person to person that is fatal or causes
5 disabling long-term consequences in the absence of treatment and
6 management.

7 (4) “Means to prevent transmission” means a method, device,
8 behavior, or activity demonstrated scientifically to measurably
9 reduce the risk of transmission of an infectious or communicable
10 disease, including but not limited to the use of a condom, barrier
11 protection, or prophylactic device, or compliance with a medical
12 treatment regiment for the infectious or communicable disease
13 prescribed by a health care professional or physician.

14 d. (1) All court decisions, orders, petitions, motions, and other
15 documents filed by the parties and the prosecutor shall be redacted
16 to protect the name and other personal identifying information of
17 the complaining witness from public disclosure, unless the
18 complaining witness requests otherwise.

19 (2) The court shall enter appropriate orders to bar the disclosure
20 of the name or other personal identifying information of the
21 complaining witness by the parties, attorneys, law enforcement, and
22 any other persons, unless the complaining witness requests
23 otherwise.

24 (3) As used in this subsection, “personal identifying
25 information” means any name, address, or other information that
26 may be used, alone or in conjunction with any other information, to
27 identify a specific individual, and any photographic image,
28 reproduction, or other depiction of a person.

29 e. (1) The defendant’s medical records, including but not
30 limited to any medications or medical devices prescribed for or
31 used by the defendant, shall not be the sole basis for establishing
32 the specific intent required by subparagraph (b) of paragraph (1) of
33 subsection a. of this section.

34 (2) No surveillance reports or records maintained by State or
35 local health officials shall be subpoenaed or released for the sole
36 purpose of establishing the specific intent required by subparagraph
37 (b) of paragraph (1) of subsection a. of this section.

38 (3) The defendant may submit medical evidence to show the
39 absence of the specific intent required by subparagraph (b) of
40 paragraph (1) of subsection a. of this section.

41 f. Nothing in this section shall be deemed to preclude an
42 indictment and conviction for any other offense.

43 (cf: P.L.1997, c.201)

44

45 2. This act shall take effect on the 60th day following
46 enactment.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

This bill would make it a disorderly persons offense to purposely transmit an infectious or communicable disease by engaging in an act of sexual penetration under certain circumstances.

Under current law, it is a crime of the fourth degree if a person, knowing that he or she is infected with a venereal disease such as chancroid, gonorrhea, syphilis, herpes virus, or any of the varieties or stages of such diseases, commits an act of sexual penetration without the informed consent of the other person. It is a crime of the third degree if the person knows that he or she is infected with AIDS or HIV and commits an act of sexual penetration without the informed consent of the other person. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both; a crime of the third degree, by a term of three to five years or a fine up to \$15,000, or both.

This bill would revise the statute to apply only to a person who purposely transmits an infectious or communicable disease by engaging in an act of sexual penetration in a manner that poses a substantial risk of the transmission under certain circumstances. The bill would also lower the penalty to a disorderly persons offense. A disorderly persons offense is punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

Under the bill, a person would be guilty of the disorderly persons offense only if all of the following apply:

- (1) the person knows that he or she is diagnosed with an infectious or transmissible disease;
- (2) the person acts with the specific intent to transmit the infectious or communicable disease to another person;
- (3) the person does not take or attempt to take means to prevent the transmission of the infectious or communicable disease; and
- (4) the person transmits the infectious or communicable disease to another person.

The bill provides that, in determining whether a person acted with the specific intent to transmit an infectious or communicable disease, a failure to take or attempt to take means to prevent the transmission of the infectious or communicable disease is not by itself sufficient to prove such intent.

The bill provides the following definitions:

- (1) "Conduct that poses a substantial risk of transmission" is defined as engaging in an act of sexual penetration in a manner that poses a substantial risk of the transmission of an infectious or communicable disease.
- (2) "Sexual penetration" is defined as having the meaning ascribed to it in subsection c. of N.J.S.2C:14-1: "vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or

1 vagina either by the actor or upon the actor's instruction. The depth
2 of insertion shall not be relevant as to the question of commission
3 of the crime.”

4 (3) “Infectious or communicable disease” is defined as a
5 nonairborne disease spread from person to person that is fatal or
6 causes disabling long-term consequences in the absence of
7 treatment and management.

8 (4) “Means to prevent transmission” is defined as a method,
9 device, behavior, or activity demonstrated scientifically to
10 measurably reduce the risk of transmission of an infectious or
11 communicable disease, including but not limited to the use of a
12 condom, barrier protection, or prophylactic device, or compliance
13 with a medical treatment regiment for the infectious or
14 communicable disease prescribed by a health care professional or
15 physician.

16 Under the bill, all court decisions, orders, petitions, motions, and
17 other documents filed by the parties and the prosecutor would be
18 redacted to protect the name and other personal identifying
19 information of the complaining witness from public disclosure,
20 unless the complaining witness requests otherwise.

21 The bill requires the court to enter appropriate orders to bar the
22 disclosure of the name or other personal identifying information of
23 the complaining witness by the parties, attorneys, law enforcement,
24 and any other persons, unless the complaining witness requests
25 otherwise.

26 As defined in the bill, “personal identifying information” means
27 any name, address, or other information that may be used, alone or
28 in conjunction with any other information, to identify a specific
29 individual, and any photographic image, reproduction, or other
30 depiction of a person.

31 The bill further provides that the defendant’s medical records,
32 including but not limited to any medications or medical devices
33 prescribed for or used by the defendant, shall not be the sole basis
34 for establishing the specific intent required by the bill.

35 In addition, the bill provides that no surveillance reports or
36 records maintained by State or local health officials shall be
37 subpoenaed or released for the sole purpose of establishing the
38 specific intent.

39 The bill specifies that the defendant may submit medical
40 evidence to show the absence of the specific stated intent.