

ASSEMBLY, No. 471

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywomen VANDERVALK and CRECCO

1 AN ACT concerning certain evidence in civil matters alleging sexual
2 abuse of a minor, sexual assault, and sexual harassment, amending
3 P.L.1992, c.109 and supplementing Title 2A of the New Jersey
4 Statutes.

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6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. (New section) a. In a civil action alleging conduct which would
10 constitute sexual assault or sexual harassment, a party seeking
11 discovery of information concerning the plaintiff's sexual conduct with
12 persons other than the person who committed the alleged act of sexual
13 assault or sexual harassment, shall establish specific facts showing
14 good cause for that discovery, and that the information sought is
15 relevant to the subject matter of the action and reasonably calculated
16 to lead to the discovery of admissible evidence.

17 b. In an action against a person accused of sexual assault or sexual
18 harassment, by an alleged victim of the alleged conduct, evidence
19 concerning the past sexual conduct of the alleged victim is not
20 admissible.

21 c. For purposes of this section, "sexual conduct" means any
22 conduct or behavior relating to sexual activities, including but not
23 limited to previous or subsequent experience of sexual penetration or
24 sexual contact, use of contraceptives, sexual activity reflected in or
25 inferrable from gynecological records, living arrangement, or life style.

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27 2. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to read
28 as follows:

29 1. a. As used in this act: (1) "Sexual abuse" means an act of
30 sexual contact or sexual penetration between a child under the age of
31 18 years and an adult. A parent, foster parent, guardian or other
32 person standing in loco parentis within the household who knowingly

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 permits or acquiesces in sexual abuse by any other person also
2 commits sexual abuse, except that it is an affirmative defense if the
3 parent, foster parent, guardian or other person standing in loco
4 parentis was subjected to, or placed in, reasonable fear of physical or
5 sexual abuse by the other person so as to undermine the person's
6 ability to protect the child.

7 (2) "Sexual contact" means an intentional touching by the victim
8 or actor, either directly or through clothing, of the victim's or actor's
9 intimate parts for the purpose of sexually arousing or sexually
10 gratifying the actor. Sexual contact of the adult with himself must be
11 in view of the victim whom the adult knows to be present;

12 (3) "Sexual penetration" means vaginal intercourse, cunnilingus,
13 fellatio or anal intercourse between persons or insertion of the hand,
14 finger or object into the anus or vagina either by the adult or upon the
15 adult's instruction.

16 (4) "Intimate parts" means the following body parts: sexual
17 organs, genital area, anal area, inner thigh, groin, buttock or breast of
18 a person.

19 (5) "Injury or illness" includes psychological injury or illness,
20 whether or not accompanied by physical injury or illness.

21 b. In any civil action for injury or illness based on sexual abuse, the
22 cause of action shall accrue at the time of reasonable discovery of the
23 injury and its causal relationship to the act of sexual abuse. Any such
24 action shall be brought within two years after reasonable discovery.

25 c. Nothing in this act is intended to preclude the court from finding
26 that the statute of limitations was tolled in a case because of the
27 plaintiff's mental state, duress by the defendant, or any other equitable
28 grounds. Such a finding shall be made after a plenary hearing,
29 conducted in the presence of the jury. At the plenary hearing the court
30 shall hear all credible evidence and the Rules of Evidence shall not
31 apply, except for Rule 4 or a valid claim of privilege. The court may
32 order an independent psychiatric evaluation of the plaintiff in order to
33 assist in the determination as to whether the statute of limitations was
34 tolled.

35 d. (1) [Evidence of the victim's previous sexual conduct shall not
36 be admitted nor reference made to it in the presence of a jury except
37 as provided in this subsection. When the defendant seeks to admit
38 such evidence for any purpose, the defendant must apply for an order
39 of the court before the trial or preliminary hearing, except that the
40 court may allow the motion to be made during trial if the court
41 determines that the evidence is newly discovered and could not have
42 been obtained earlier through the exercise of due diligence. After the
43 application is made, the court shall conduct a hearing in camera to
44 determine the admissibility of the evidence. If the court finds that
45 evidence offered by the defendant regarding the sexual conduct of the
46 victim is relevant and that the probative value of the evidence offered

1 is not outweighed by its collateral nature or by the probability that its
2 admission will create undue prejudice, confusion of the issues, or
3 unwarranted invasion of the privacy of the victim, the court shall enter
4 an order setting forth with specificity what evidence may be introduced
5 and the nature of the questions which shall be permitted, and the
6 reasons why the court finds that such evidence satisfies the standards
7 contained in this section. The defendant may then offer evidence
8 under the order of the court.

9 (2) In the absence of clear and convincing proof to the contrary,
10 evidence of the victim's sexual conduct occurring more than one year
11 before the date of the offense charged is presumed to be inadmissible
12 under this section.】

13 A party seeking discovery of information concerning the plaintiff's
14 sexual conduct with persons other than the person who committed the
15 alleged act, shall establish specific facts showing good cause for that
16 discovery, and that the information sought is relevant to the subject
17 matter of the action and reasonably calculated to lead to the discovery
18 of admissible evidence.

19 (2) In an action against a person pursuant to this act, by an
20 alleged victim of the alleged sexual abuse, evidence concerning the
21 past sexual conduct of the alleged victim is not admissible.

22 (3) 【Evidence of the victim's previous sexual conduct shall not be
23 considered relevant unless it is material to proving that the source of
24 semen, pregnancy or disease is a person other than the defendant.】 For
25 the purposes of this subsection, "sexual conduct" shall mean any
26 conduct or behavior relating to sexual activities
27 of the victim, including but not limited to previous or subsequent
28 experience of sexual penetration or sexual contact, use of
29 contraceptives, sexual activity reflected in or inferable from
30 gynecological records, living arrangement and life style.

31 e. (1) The court may, on motion and after conducting a hearing in
32 camera, order the taking of the testimony of a victim on closed circuit
33 television at the trial, out of the view of the jury, defendant, or
34 spectators upon making findings as provided in paragraph (2) of this
35 subsection.

36 (2) An order under this section may be made only if the court finds
37 that the victim is 16 years of age or younger and that there is a
38 substantial likelihood that the victim would suffer severe emotional or
39 mental distress if required to testify in open court. The order shall be
40 specific as to whether the victim will testify outside the presence of
41 spectators, the defendant, the jury, or all of them and shall be based on
42 specific findings relating to the impact of the presence of each.

43 (3) A motion seeking closed circuit testimony under paragraph (1)
44 of this subsection may be filed by:

- 45 (a) The victim or the victim's attorney, parent or legal guardian;
46 (b) The defendant or the defendant's counsel; or

1 (c) The trial judge on the judge's own motion.

2 (4) The defendant's counsel shall be present at the taking of
3 testimony in camera. If the defendant is not present, he and his
4 attorney shall be able to confer privately with each other during the
5 testimony by a separate audio system.

6 (5) If testimony is taken on closed circuit television pursuant to the
7 provisions of this act, a stenographic recording of that testimony shall
8 also be required. A typewritten transcript of that testimony shall be
9 included in the record on appeal. The closed circuit testimony itself
10 shall not constitute part of the record on appeal except on motion for
11 good cause shown.

12 f. (1) The name, address, and identity of a victim or a defendant
13 shall not appear on the complaint or any other public record as defined
14 in P.L.1963, c.73 (C.47:1A-1 et seq.). In their place initials or a
15 fictitious name shall appear.

16 (2) Any report, statement, photograph, court document, complaint
17 or any other public record which states the name, address and identity
18 of a victim shall be confidential and unavailable to the public.

19 (3) The information described in this subsection shall remain
20 confidential and unavailable to the public unless the victim consents to
21 the disclosure or if the court, after a hearing, determines that good
22 cause exists for the disclosure. The hearing shall be held after notice
23 has been made to the victim and to the defendant and the defendant's
24 counsel.

25 (4) Nothing contained herein shall prohibit the court from imposing
26 further restrictions with regard to the disclosure of the name, address,
27 and identity of the victim when it deems it necessary to prevent trauma
28 or stigma to the victim.

29 g. In accordance with R.5:3-2 of the Rules Governing the Courts
30 of the State of New Jersey, the court may, on its own or a party's
31 motion, direct that any proceeding or portion of a proceeding
32 involving a victim sixteen years of age or younger be conducted in
33 camera.

34 h. A plaintiff who prevails in a civil action pursuant to this act shall
35 be awarded damages in the amount of \$10,000, plus reasonable
36 attorney's fees, or actual damages, whichever is greater. Actual
37 damages shall consist of compensatory and punitive damages and costs
38 of suit, including reasonable attorney's fees. Compensatory damages
39 may include, but are not limited to, damages for pain and suffering,
40 medical expenses, emotional trauma, diminished childhood, diminished
41 enjoyment of life, costs of counseling, and lost wages.

42 (cf: P.L.1992,c.109, s.1)

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44 3. This act shall take effect immediately.

STATEMENT

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One of the barriers to filing a civil suit for sexual abuse, sexual assault or sexual harassment may be the fear that the privacy of the plaintiff will be violated by the making public of the plaintiff's past sexual history. In New Jersey a criminal rape shield law was passed in 1976, N.J.S.A.2A:84A-32.1 et seq. See also the provisions of N.J.S.A.2C:14-7 which was amended recently in 1994. However, the rape shield rule of evidence and other provisions found in N.J.S.A.2C:14-7 pertain to criminal cases and do not apply in civil suits. California has extended rape shield protection to civil complainants for sexual assault and for the sexual torts of sexual harassment and battery. This bill is patterned after the California law, Cal. Disc. Act of 1986, sec. 2017 (West 1993).

The bill amends P.L.1992, c.109 (C.2A:61B-1) concerning sexual abuse of a minor to amend subsection d. of that section concerning the introduction of evidence. The bill also addresses civil actions for sexual assault and sexual harassment. In each of these instances the bill provides that a party seeking discovery of information concerning the plaintiff's sexual conduct with persons other than the person who committed the alleged act of sexual abuse or sexual assault or sexual harassment, shall establish specific facts showing good cause for that discovery, and that the information sought is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence. In any of these actions, evidence concerning the past sexual conduct of the alleged victim would not be admissible.

Creates a civil rape shield law.