

ASSEMBLY, No. 761

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman BUONO

1 AN ACT concerning penalties for sexual assault amending
2 N.J.S.2C:14-2 and N.J.S.2C:14-6.

3

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 sexual
9 assault if he commits an act of sexual penetration with another person
10 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 victim
16 by virtue of the actor's legal, professional, or occupational status, or

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

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

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

26 (5) The actor is aided or abetted by one or more other persons and
27 either of the following circumstances exists:

28 (a) The actor uses physical force or coercion, or

29 (b) The victim is one whom the actor knew or should have known
30 was physically helpless, mentally defective or mentally incapacitated;

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

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 Aggravated sexual assault is a crime of the first degree. A person
2 convicted under this subsection shall be sentenced to a term of
3 imprisonment. Notwithstanding the provisions of paragraph (1) of
4 subsection a. of N.J.S.2C:43-6 and subsection f. of N.J.S.2C:44-1, the
5 term of imprisonment shall be a maximum of 40 years with a
6 presumptive term of 25 years and shall include the imposition of a
7 minimum term which shall be fixed at either one-third and one-half of
8 the sentence imposed, during which time the defendant shall not be
9 eligible for parole.

10 In determining the mandatory minimum term of imprisonment the
11 court shall consider the aggravating and mitigating circumstances as
12 set forth in subsection a. and b. of N.J.S.2C:44-1. If the court finds
13 that the aggravating factors substantially outweigh the mitigating
14 factors, the minimum term of imprisonment shall be one-half of the
15 term imposed, during which the defendant shall not be eligible for
16 parole. If court finds that the aggravating factors do not substantially
17 outweigh the mitigating factors, the term of imprisonment shall be
18 one-third of the term imposed, during which the defendant shall not be
19 eligible for parole.

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

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

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

28 (2) The victim is one whom the actor knew or should have known
29 was physically helpless, mentally defective or mentally incapacitated;

30 (3) The victim is on probation or parole, or is detained in a
31 hospital, prison or other institution and the actor has supervisory or
32 disciplinary power over the victim by virtue of the actor's legal,
33 professional or occupational status;

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

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

37 (b) The actor has supervisory or disciplinary power over the
38 victim; or

39 (c) The actor is a foster parent, a guardian, or stands in loco
40 parentis within the household;

41 (5) The victim is at least 13 but less than 16 years old and the actor
42 is at least four years older than the victim.

43 Sexual assault is a crime of the second degree. A person convicted
44 under this subsection shall be sentenced to a term of imprisonment.
45 Notwithstanding the provisions of paragraph (2) of subsection a. of
46 N.J.S.2C:43-6 or subsection f. of N.J.S.2C:44-1, the term of

1 imprisonment shall be a maximum of 30 years with a presumptive
2 terms of 20 years and shall include the imposition of a minimum term
3 which shall be fixed at either one-third and one-half of the sentence
4 imposed, during which time the defendant shall not be eligible for
5 parole.

6 In determining the mandatory minimum term of imprisonment the
7 court shall consider the aggravating and mitigating circumstances as
8 set forth in subsection a. and b. of N.J.S.2C:44-1. If the court finds
9 that the aggravating factors substantially outweigh the mitigating
10 factors, the minimum term of imprisonment shall be one-half of the
11 term imposed, during which the defendant shall not be eligible for
12 parole. If court finds that the aggravating factors do not substantially
13 outweigh the mitigating factors, the term of imprisonment shall be
14 one-third of the term imposed, during which the defendant shall not
15 be eligible for parole.

16 (cf: P.L.1989, c.228, s.3)

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18 2. N.J.S.2C:14-6 is amended to read as follows:

19 2C:14-6. Sentencing. a. If a person is convicted of a second or
20 subsequent offense under [sections 2C:14-2 or 2C:14-3a.]subsection
21 a. of N.J.S.2C:14-3, the sentence imposed under [those sections] that
22 section for the second or subsequent offense shall, unless the person
23 is sentenced pursuant to the provisions of N.J.S.2C:43-7, include a
24 [fixed] mandatory minimum [sentence] term of imprisonment of [not
25 less than] 5 years, during which the defendant shall not be eligible for
26 parole.

27 b. If a person is convicted of a second or subsequent offense under
28 subsection a. of N.J.S.2C:14-2, the sentence imposed under that
29 section for the second or subsequent offense shall, unless the person
30 is sentenced pursuant to the provisions of N.J.S.2C:43-7, include a
31 term of imprisonment between 25 years and life imprisonment and
32 shall include a mandatory minimum term of 25 years, during which the
33 defendant shall not be eligible for parole.

34 c. If a person is convicted of a second or subsequent offense under
35 subsections b. or c. of N.J.S.2C:14-2, the sentence imposed under that
36 section for the second or subsequent offense shall, unless the person
37 is sentenced pursuant to the provisions of N.J.S.2C:43-7, include a
38 term of imprisonment between 20 years and life imprisonment and
39 shall include a mandatory minimum term of 20 years, during which the
40 defendant shall not be eligible for parole.

41 The court may not suspend or make any other non-custodial
42 disposition of any person sentenced as a second or subsequent
43 offender pursuant to this section. For the purpose of this section an
44 offense is considered a second or subsequent offense, if the actor has
45 at any time been convicted under sections 2C:14-2 or
46 [2C:14-3a.]subsection a. of N.J.S.2C:14-3 or under any similar statute

1 of the United States, this state, or any other state for an offense that
2 is substantially equivalent to sections 2C:14-2 or
3 [2C:14-3a.]subsection a. of N.J.S.2C:14-3.
4 (cf: P.L.1978, c.95, s.2C:14-6)

5
6 3. This act shall take effect immediately.

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9 STATEMENT

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11 This bill would provide for increased penalties for persons
12 convicted of aggravated sexual assault and sexual assault.

13 Under the current provisions of the law aggravated sexual assault
14 is a crime of the first degree which is punishable by a term of
15 imprisonment of 10 to 20 years, a maximum fine of \$100,000.00 or
16 both. This bill would increase this penalty and provide that a person
17 convicted of aggravated sexual assault would be sentenced to a
18 maximum term of imprisonment of 40 years with a presumptive terms
19 of 25 years which would include a minimum term of either one-half or
20 one-third of the sentence imposed, during which time the defendant
21 shall not be eligible for parole.

22 This bill would also increase the penalty for sexual assault.
23 Currently, sexual assault is classified as a crime of the second degree
24 which is punishable by a term of imprisonment between five to 10
25 years, a maximum fine of \$100,000.00 or both. This bill would
26 sentence a person convicted of sexual assault to a maximum term of
27 imprisonment of 30 years with a presumptive term of 20 years and
28 with a mandatory minimum term of imprisonment of either one-half or
29 one-third of the sentence imposed.

30 In addition, the bill would require the court to weigh the
31 aggravating and mitigating circumstances set forth in N.J.S.2C:44-1
32 to determine the sentence for either an aggravated sexual assault
33 conviction or a sexual assault conviction.

34 The bill would also amend N.J.S.2C:14-6 to increase the term of
35 imprisonment for a person who has been convicted of a second or
36 subsequent offense of aggravated sexual assault and sexual assault.
37 The term of imprisonment for a second or subsequent offense of
38 aggravated sexual would include a term of 25 years to life, with a
39 mandatory minimum term of 25 years, during which time the person
40 shall not be eligible for parole.

41 The term of imprisonment for a second or subsequent conviction of
42 sexual assault would include a term of 20 years to life, with a
43 mandatory minimum term of 20 years.

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3 Increases terms of imprisonment for aggravated sexual assault and
4 sexual assault; imposes mandatory minimum terms of imprisonment.