

ASSEMBLY, No. 2725

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1997

By Assemblyman DiGAETANO

1 AN ACT concerning certain dangerous substances and certain sexual
2 assaults and amending and supplementing various sections of the
3 statutory law.

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

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

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

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

13 (2) The victim is at least 13 but less than 16 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 over the
17 victim by virtue of the actor's legal, professional, or occupational
18 status, or

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

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

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

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

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

31 (b) The victim is one whom the actor knew or should have known
32 was physically helpless[,] or mentally defective [or mentally
33 incapacitated], or

34 (c) The victim is one whom the actor knew or should have known

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 was mentally incapacitated due to the influence of a narcotic,
2 anesthetic, intoxicant or other substance administered to the victim
3 without the victim's prior knowledge or consent;

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

6 Aggravated sexual assault is a crime of the first degree, however,
7 notwithstanding the provisions of N.J.S.2C:43-6 or any other law to
8 the contrary, a person convicted of aggravated sexual assault upon a
9 victim who was mentally incapacitated pursuant to subparagraph (c)
10 of paragraph (5) of this subsection shall be sentenced by the court to
11 a term of imprisonment of at least 20 years. The term shall include a
12 mandatory minimum term of 15 years, during which the person shall
13 not be eligible for parole.

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

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

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

22 (2) The victim is one whom the actor knew or should have known
23 was physically helpless[,] or mentally defective [or mentally
24 incapacitated];

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

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

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

32 (b) The actor has supervisory or disciplinary power over the
33 victim; or

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

36 (5) The victim is at least 13 but less than 16 years old and the
37 actor is at least four years older than the victim; or

38 (6) The victim is one whom the actor knew or should have known
39 was mentally incapacitated due to the influence of a narcotic,
40 anesthetic, intoxicant or other substance administered to the victim
41 without the victim's prior knowledge or consent.

42 Sexual assault is a crime of the second degree unless it is
43 committed upon a victim who was mentally incapacitated pursuant to
44 the provisions of paragraph (6) of this subsection, in which case it is
45 a crime of the first degree. Notwithstanding the provisions of
46 N.J.S.2C:43-6 or any other law to the contrary, a person convicted of

1 sexual assault upon a victim who was mentally incapacitated shall be
2 sentenced by the court to a term of imprisonment of at least 15 years.
3 The term shall include a mandatory minimum term of 10 years, during
4 which the person shall not be eligible for parole.

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

6

7 2. N.J.S.2C:14-3 is amended to read as follows:

8 2C:14-3. Criminal sexual contact.

9 a. An actor is guilty of aggravated criminal sexual contact if he
10 commits an act of sexual contact with the victim under any of the
11 circumstances set forth in 2C:14-2a. (2) through (6).

12 Aggravated criminal sexual contact is a crime of the third degree.

13 b. An actor is guilty of criminal sexual contact if he commits an act
14 of sexual contact with the victim under any of the circumstances set
15 forth in section 2C:14-2c. (1) through [(5)] (6).

16 Criminal sexual contact is a crime of the fourth degree.

17 (cf: P.L.1979, c.178, s.27)

18

19 3. Section 1 of P.L.1962, c.113 (C.2A:170-77.8) is amended to
20 read as follows:

21 1. Except as hereinafter provided, any person who uses or is
22 under the influence of, or who possesses or has under his control, in
23 any form, any prescription legend drug which is not a narcotic,
24 depressant or stimulant drug or controlled dangerous substance as
25 defined in N.J.S.2C:35-2 or section 2 of P.L.1970, c.226 (C.24:21-2)
26 [or], any stramonium preparation or ketamine hydrochloride, unless
27 obtained from, or on a valid prescription of, a duly licensed physician,
28 veterinarian or dentist, is a disorderly person.

29 In a prosecution under this act, it shall not be necessary for the
30 State to prove that the accused did use or was under the influence of
31 any specific drug or drugs except for stramonium preparations, but it
32 shall be sufficient for a conviction under this act for the State to prove
33 that the accused did use or was under the influence of some drug or
34 drugs as aforesaid by proving that the accused did manifest physical
35 and physiological symptoms or reactions caused by the use of any such
36 drug.

37 As used in this act, "stramonium preparation" means a preparation
38 prepared from the leaves, seeds, or any other part of the stramonium
39 plant in the form of a powder, pipe mixture, cigarette, or any other
40 form, with or without admixture of other ingredients. "Stramonium
41 plant" means the plant *Datura Stramonium* Linne, including *Datura*
42 *Tatula* Linne.

43 (cf: P.L.1992,c.71,s.1)

44

45 4. Section 2 of P.L.1962, c.113 (C.2A:170-77.9) is amended to
46 read as follows:

1 2. Except as hereinafter provided, any person who sells, dispenses
2 or gives away, in any form, any prescription legend drug which is not
3 a narcotic, depressant or stimulant drug or controlled dangerous
4 substance as defined in N.J.S.2C:35-2 or section 2 of P.L.1970, c.226
5 (C.24:21-2), [or] any stramonium preparation or ketamine
6 hydrochloride, is a disorderly person.
7 (cf: P.L.1992,c.71,s.2)

8
9 5. (New section) a. Except as authorized by P.L.1970, c.226
10 (C.24:21-1 et seq.), it shall be a crime of the second degree for any
11 person knowingly or purposely to manufacture, distribute or dispense,
12 or to possess or have under his control with intent to manufacture,
13 distribute or dispense ketamine hydrochloride or gamma
14 hydroxybutyrate.

15 b. Notwithstanding the provisions of N.J.S.2C:43-3 or any other
16 law, a fine of up to \$150,000.00 may be imposed upon a person who
17 violates this section.

18
19 6. (New section) a. It is a crime of the third degree for any
20 person, knowingly or purposely, to obtain, or to possess, actually or
21 constructively, either of the following substances, unless the substance
22 was obtained directly, or pursuant to a valid prescription or order form
23 from a practitioner, while acting in the course of his professional
24 practice, or except as otherwise authorized by P.L. 1970, c. 226 (C.
25 24:21-1 et seq.):

26 (1) ketamine hydrochloride; or

27 (2) gamma hydroxybutyrate.

28 b. Notwithstanding the provisions of N.J.S.2C:43-3 or any other
29 law, a fine of up to \$100,000.00 may be imposed upon a person who
30 violates this section.

31
32 7. (New section) a. Except as authorized by P.L.1970, c.226
33 (C.24:21-1 et seq.), it is a crime of the second degree for any person
34 knowingly or purposely to manufacture, distribute or dispense, or to
35 possess or have under his control with intent to manufacture,
36 distribute or dispense flunitrazepam.

37 b. A person who violates subsection a. of this section with respect
38 to flunitrazepam in a quantity of one gram or more is guilty of a crime
39 of the first degree and, notwithstanding the provisions of N.J.S.2C:43-
40 3 or any other law, a fine of up to \$250,000.00 may be imposed upon
41 the person.

42 c. A person who violates subsection a. of this section with respect
43 to flunitrazepam in a quantity of less than one gram is guilty of a crime
44 of the second degree and, notwithstanding the provisions of
45 N.J.S.2C:43-3 or any other law, a fine of up to \$150,000.00 may be
46 imposed upon the person.

1 8. (New section) a. It is a crime of the third degree for any
2 person, knowingly or purposely, to obtain, or to possess, actually or
3 constructively, flunitrazepam, unless the substance was obtained
4 directly, or pursuant to a valid prescription or order form from a
5 practitioner, while acting in the course of his professional practice, or
6 except as otherwise authorized by P.L.1970, c.226 (C.24:21-1 et seq.).

7 b. Notwithstanding the provisions of N.J.S.2C:43-3 or any other
8 law, a fine of up to \$100,000.00 may be imposed upon a person who
9 violates this section.

10
11 9. (New section) a. The Department of Law and Public Safety
12 shall establish and maintain a suitable training program for law
13 enforcement officers regarding the use of narcotics, anesthetics,
14 intoxicants, and other substances which could be used to facilitate
15 sexual assault.

16 b. The Department shall adopt, pursuant to the "Administrative
17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and
18 regulations necessary to implement this act.

19
20 10. This act shall take effect immediately.

21 22 23 24 STATEMENT

25
26 This bill imposes mandatory prison terms on persons convicted of
27 sexual assault on victims rendered helpless by the unknowing ingestion
28 of a narcotic, anesthetic, intoxicant or other substance. The bill also
29 criminalizes the possession of certain "rape drugs," making such
30 possession a crime of the third degree.

31 According to recent reports, the use of certain drugs to facilitate
32 sexual assault is a growing problem. The drugs are often tasteless and
33 odorless, and are slipped into victims' drinks so that the victims
34 unknowingly ingest them.

35 The bill provides that a person who commits aggravated sexual
36 assault against a victim who is incapacitated due to a narcotic,
37 anesthetic, intoxicant or other substance administered without the
38 victim's consent would be sentenced to a mandatory term of
39 imprisonment of at least 20 years, which would include parole
40 ineligibility for at least 15 years. The crime of sexual assault (normally
41 a crime of the second degree), if committed under these circumstances,
42 would be re-classified as aggravated sexual assault (a crime of the first
43 degree), with a mandatory term of imprisonment of at least 15 years,
44 including a 10-year term of parole ineligibility.

45 The bill also criminalizes the unlawful manufacture, distribution and
46 possession of three particular substances: Rohypnol (flunitrazepam),

1 ketamine hydrochloride (a veterinary anesthetic nicknamed "Special
2 K") and gamma hydroxybutyrate (GHB). The bill also allows
3 increased fines for violators.

4 Under the bill, it would be a crime of the second degree to
5 unlawfully manufacture, distribute or dispense any of these substances.
6 Fines of up to \$250,000 could be imposed for persons who violate the
7 statute. Persons who unlawfully possess any of the substances would
8 be guilty of a crime of the third degree, and subject to fines of up to
9 \$100,000.

10 Finally, the bill requires the Department of Law and Public Safety
11 to establish and maintain a suitable training program for law
12 enforcement officers regarding the use of narcotics, anesthetics,
13 intoxicants, and other substances which could be used to facilitate
14 sexual assault.

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19 _____
20 Increases penalties and imposes mandatory terms for sexual assault
21 committed with the use of certain substances; criminalizes possession
of "rape drugs."