

SENATE, No. 115

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator CIESLA

1 AN ACT concerning penalties for AIDS-related prostitution offenses,
2 amending P.L.1993, c.364 and N.J.S.2C:34-1.

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

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7 1. Section 4 of P.L.1993, c.364 (C.2C:43-2.2) is amended to read
8 as follows:

9 4. a. In addition to any other disposition made pursuant to law, a
10 court shall order a person convicted of, indicted for or formally
11 charged with, or a juvenile charged with delinquency or adjudicated
12 delinquent for an act which if committed by an adult would constitute,
13 aggravated sexual assault or sexual assault as defined in subsection a.
14 or c. of N.J.S.2C:14-2 or engaging in prostitution under paragraph (1)
15 of subsection b. of N.J.S.2C:34-1 to submit to an approved serological
16 test for acquired immune deficiency syndrome (AIDS) or infection
17 with the human immunodeficiency virus (HIV) or any other related
18 virus identified as a probable causative agent of AIDS.

19 [The] Except in cases involving a violation under paragraph (1) of
20 subsection b. of N.J.S.2C:34-1, the court shall issue such an order only
21 upon the request of the victim and upon application of the prosecutor
22 made at the time of indictment, charge, conviction or adjudication of
23 delinquency. The person or juvenile shall be ordered by the court to
24 submit to such repeat or confirmatory tests as may be medically
25 necessary.

26 As used in this section, "formal charge" includes a proceeding by
27 accusation in the event that the defendant has waived the right to an
28 indictment.

29 b. A court order issued pursuant to subsection a. of this section
30 shall require testing to be performed as soon as practicable by the
31 Commissioner of the Department of Corrections pursuant to authority
32 granted to the commissioner by sections 6 and 10 of P.L.1976, c.98

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 (C.30:1B-6 and 30:1B-10), by a provider of health care or at a health
2 facility licensed pursuant to section 12 of P.L.1971, c.136
3 (C.26:2H-12). The order shall also require that the results of the test
4 be reported to the offender and to the appropriate Office of
5 Victim-Witness Advocacy.

6 c. The Office of Victim-Witness Advocacy, established pursuant to
7 section 5 of P.L.1985, c.404 (C.52:4B-43), shall reimburse the
8 Department of Corrections or Department of Health for the direct
9 costs incurred by these departments for any tests ordered by a court
10 pursuant to subsection a. of this section. Reimbursement shall be
11 made following a request from the department.

12 d. In addition to any other disposition authorized, a court may
13 order an offender at the time of sentencing to reimburse the State for
14 the costs of the tests ordered by subsection a. of this section.

15 e. Upon receipt of the result of a test ordered pursuant to
16 subsection a. of this section, the Office of Victim-Witness Advocacy
17 shall provide the victim with appropriate counseling, referral for
18 counseling and if appropriate, referral for health care. The office shall
19 notify the victim or make appropriate arrangements for the victim to
20 be notified of the test result.

21 f. The result of a test ordered pursuant to subsection a. of this
22 section shall be confidential and a health care provider and employees
23 of the Department of Corrections, the Office of Victim-Witness
24 Advocacy, a health care provider, health care facility or counseling
25 service shall not disclose the result of a test performed pursuant to this
26 section except as authorized herein or as otherwise authorized by law
27 or court order. The provisions of this section shall not be deemed to
28 prohibit disclosure of a test result to the person tested.

29 g. Persons who perform tests ordered pursuant to subsection a. of
30 this section in accordance with accepted medical standards for the
31 performance of such tests shall be immune from civil and criminal
32 liability arising from their conduct.

33 h. This section shall not be construed to preclude or limit any other
34 testing for acquired immune deficiency syndrome (AIDS) or infection
35 with the human immunodeficiency virus (HIV) or any other related
36 virus identified as a probable causative agent of AIDS which is
37 otherwise permitted by statute, court rule or common law.

38 (cf: P.L.1993, c.364, s.4)

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40 2. N.J.S.2C:34-1 is amended to read as follows:

41 2C:34-1. Prostitution and Related Offenses.

42 a. As used in this section:

43 (1) "Prostitution" is sexual activity with another person in
44 exchange for something of economic value, or the offer or acceptance
45 of an offer made in or within view of a public place to engage in sexual
46 activity in exchange for something of economic value.

1 (2) "Sexual activity" includes, but is not limited to, sexual
2 intercourse, including genital-genital, oral-genital, anal-genital, and
3 oral-anal contact, whether between persons of the same or opposite
4 sex; masturbation; touching of the genitals, buttocks, or female
5 breasts; sadistic or masochistic abuse and other deviate sexual
6 relations.

7 (3) "House of prostitution" is any place where prostitution or
8 promotion of prostitution is regularly carried on by one person under
9 the control, management or supervision of another.

10 (4) "Promoting prostitution" is:

11 (a) Owning, controlling, managing, supervising or otherwise
12 keeping, alone or in association with another, a house of prostitution
13 or a prostitution business;

14 (b) Procuring an inmate for a house of prostitution or place in a
15 house of prostitution for one who would be an inmate;

16 (c) Encouraging, inducing, or otherwise purposely causing another
17 to become or remain a prostitute;

18 (d) Soliciting a person to patronize a prostitute;

19 (e) Procuring a prostitute for a patron;

20 (f) Transporting a person into or within this State with purpose to
21 promote that person's engaging in prostitution, or procuring or paying
22 for transportation with that purpose; or

23 (g) Leasing or otherwise permitting a place controlled by the actor,
24 alone or in association with others, to be regularly used for
25 prostitution or promotion of prostitution, or failure to make a
26 reasonable effort to abate such use by ejecting the tenant, notifying
27 law enforcement authorities, or other legally available means.

28 (5) "Public place" means any place to which the public or any
29 substantial group thereof has access.

30 b. A person commits an offense if:

31 (1) The actor engages in prostitution;

32 (2) The actor promotes prostitution;

33 (3) The actor knowingly promotes prostitution of a child under 18
34 whether or not the actor mistakenly believed that the child was 18
35 years of age or older, even if such mistaken belief was reasonable;

36 (4) The actor knowingly promotes prostitution of the actor's child,
37 ward, or any other person for whose care the actor is responsible;

38 (5) The actor compels another to engage in or promote
39 prostitution;

40 (6) The actor promotes prostitution of the actor's spouse; or

41 (7) The actor knowingly engages in prostitution with a person
42 under the age of 18, or if the actor enters into or remains in a house of
43 prostitution for the purpose of engaging in sexual activity with a child
44 under the age of 18, or if the actor solicits or requests a child under
45 the age of 18 to engage in sexual activity. It shall be no defense to a
46 prosecution under this paragraph that the actor mistakenly believed

1 that the child was 18 years of age or older, even if such mistaken belief
2 was reasonable.

3 c. Grading of offenses under subsection b. (1) An offense under
4 subsection b. constitutes a crime of the second degree if the offense
5 falls within paragraph (3) or (4) of that subsection.

6 (2) An offense under subsection b. constitutes a crime of the third
7 degree if the offense falls within paragraph (5), (6) or (7) of that
8 subsection.

9 (3) An offense under paragraph (2) of subsection b. constitutes a
10 crime of the third degree if the conduct falls within subparagraph (a),
11 (b), or (c) of paragraph (4) of subsection a. Otherwise the offense is
12 a crime of the fourth degree.

13 (4) An offense under subsection b. constitutes a disorderly persons
14 offense if the offense falls within paragraph (1) of that subsection.

15 d. Presumption from living off prostitutes. A person, other than
16 the prostitute or the prostitute's minor child or other legal dependent
17 incapable of self-support, who is supported in whole or substantial
18 part by the proceeds of prostitution is presumed to be knowingly
19 promoting prostitution.

20 e. Any person who has been notified pursuant to subsection b. of
21 section 4 of P.L.1993, c.364 (C.2C:43-2.2) that the person is infected
22 with the acquired immune deficiency syndrome (AIDS) or with the
23 human immunodeficiency virus (HIV) or any other related virus
24 identified as a probable causative agent of AIDS, and who commits a
25 subsequent act of prostitution in violation of paragraph (1) of
26 subsection b. of this section, is guilty of a crime of the third degree.
27 (cf: P.L.1991, c.211, s.1)

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29 3. This act shall take effect immediately.

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STATEMENT

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34 This bill adds prostitution to the enumerated offenses for which a
35 court shall order a defendant to submit to AIDS and HIV testing. The
36 court order shall require testing to be performed as soon as practicable
37 by the Commissioner of the Department of Corrections or by a
38 provider of health care or at a health facility licensed pursuant to
39 section 12 of P.L.1971, c.136 (C.26:2H-12). The order shall also
40 require that the results of the test be reported to the offender. A court
41 may order an offender at the time of sentencing to reimburse the State
42 for the costs of the tests.

43 The result of a test shall be confidential and a health care provider
44 and employees of the Department of Corrections and other employees
45 involved shall not disclose the result of a test performed pursuant to
46 this section except as authorized in the bill or as otherwise authorized

1 by law or court order.

2 Persons who perform these tests in accordance with accepted
3 medical standards for the performance of such tests shall be immune
4 from civil and criminal liability arising from their conduct.

5 The bill further provides that any person who is convicted of having
6 committed a subsequent act of prostitution after receiving notification
7 of a positive test result, is guilty of a crime of the third degree. A
8 crime of the third degree is punishable by up to five years
9 imprisonment, a fine up to \$10,000, or both.

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14 Adds offense of prostitution to offenses requiring AIDS and HIV
15 testing; imposes enhanced penalties for subsequent acts of prostitution
16 by infected persons.