

[Second Reprint]

**SENATE, No. 3707**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED APRIL 26, 2021

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**Assemblyman ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Co-Sponsored by:**

**Senator Weinberg, Assemblyman Giblin, Assemblywomen Murphy and Jasey**

**SYNOPSIS**

Repeals statute criminalizing sexual penetration while infected with venereal disease or HIV under certain circumstances; requires that in prosecutions for endangering another by creating substantial risk of transmitting infectious disease, name of defendant and other person be kept confidential.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on January 6, 2022, with amendments.

(Sponsorship Updated As Of: 1/10/2022)

1 AN ACT concerning purposely transmitting a disease <sup>2</sup>by engaging  
2 in an act of sexual penetration and amending], supplementing  
3 chapter 24 of Title 2C of the New Jersey Statutes, and repealing<sup>2</sup>  
4 N.J.S.2C:34-5.

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

8  
9 <sup>2</sup>1. N.J.S.2C:34-5 is amended to read as follows:  
10 2C:34-5. **[Diseased person]** Purposely transmitting a disease  
11 by committing an act of sexual penetration.

12 a. (1) A person is guilty of a **[crime of the fourth degree]**  
13 disorderly persons offense **[who, knowing that he or she is infected**  
14 with a venereal disease such as chancroid, gonorrhea, syphilis,  
15 herpes virus, or any of the varieties or stages of such diseases,  
16 commits an act of sexual penetration without the informed consent  
17 of the other person] if the person purposely transmits <sup>1</sup>[an  
18 infectious or communicable disease] a sexually-transmitted  
19 infection<sup>1</sup> and all of the following apply:

20 (a) the person knows that he or she is diagnosed with <sup>1</sup>[an  
21 infectious or transmissible disease] sexually-transmitted infection<sup>1</sup> ;

22 (b) the person acts with the specific intent to transmit the  
23 <sup>1</sup>[infectious or communicable disease] sexually-transmitted  
24 infection<sup>1</sup> to another person;

25 (c) the person does not take or attempt to take means to prevent  
26 the transmission of the <sup>1</sup>[infectious or communicable disease]  
27 sexually-transmitted infection<sup>1</sup> ; and

28 (d) the person transmits the <sup>1</sup>[infectious or communicable  
29 disease to another person] sexually-transmitted infection<sup>1</sup> .

30 (2) A failure to take or attempt to take means to prevent the  
31 transmission of <sup>1</sup>[an infectious or communicable disease] sexually-  
32 transmitted infection<sup>1</sup> is not by itself sufficient to prove that the  
33 person acted with specific intent to transmit the <sup>1</sup>[infectious or  
34 communicable disease pursuant to] sexually-transmitted infection  
35 for the purposes of<sup>1</sup> paragraph (1) of this subsection.

36 (3) This section shall not apply to a woman with <sup>1</sup>[an infectious  
37 or communicable disease] a sexually-transmitted infection<sup>1</sup> who  
38 transmits the <sup>1</sup>[disease] infection<sup>1</sup> to her child prenatally or during  
39 childbirth.

40 b. **[A person is guilty of a crime of the third degree who,**  
41 knowing that he or she is infected with human immune deficiency  
42 virus (HIV) or any other related virus identified as a probable  
43 causative agent of acquired immune deficiency syndrome (AIDS),

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SHH committee amendments adopted May 6, 2021.

<sup>2</sup>Senate SBA committee amendments adopted January 6, 2022.

1 commits an act of sexual penetration without the informed consent  
2 of the other person. **】** (Deleted by amendment, P.L. , c. (pending  
3 before the Legislature as this bill)

4 c. <sup>1</sup>**【**As used in this section:

5 (1) “Conduct that poses a substantial risk of transmission”  
6 means engaging in an act of sexual penetration in a manner that  
7 poses a substantial risk of the transmission of an infectious or  
8 communicable disease.

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

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

15 (4) “Means to prevent transmission” means a method, device,  
16 behavior, or activity demonstrated scientifically to measurably  
17 reduce the risk of transmission of an infectious or communicable  
18 disease, including but not limited to the use of a condom, barrier  
19 protection, or prophylactic device, or compliance with a medical  
20 treatment regiment for the infectious or communicable disease  
21 prescribed by a health care professional or physician.

22 d. (1) All court decisions, orders, petitions, motions, and other  
23 documents filed by the parties and the prosecutor shall be redacted  
24 to protect the name and other personal identifying information of  
25 the complaining witness from public disclosure, unless the  
26 complaining witness requests otherwise.

27 (2) The court shall enter appropriate orders to bar the disclosure  
28 of the name or other personal identifying information of the  
29 complaining witness by the parties, attorneys, law enforcement, and  
30 any other persons, unless the complaining witness requests  
31 otherwise.

32 (3) As used in this subsection, “personal identifying  
33 information” means any name, address, or other information that  
34 may be used, alone or in conjunction with any other information, to  
35 identify a specific individual, and any photographic image,  
36 reproduction, or other depiction of a person.

37 e.<sup>1</sup> (1) The defendant’s medical records, including but not  
38 limited to any medications or medical devices prescribed for or  
39 used by the defendant, shall not be the sole basis for establishing  
40 the specific intent required by subparagraph (b) of paragraph (1) of  
41 subsection a. of this section.

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

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

4       <sup>1</sup>[f. Nothing in this section shall be deemed to preclude an  
5 indictment and conviction for any other offense.]

6       d. All records shall be confidential and shall not be made  
7 available to any individual or institution except as otherwise  
8 provided by law.

9       e. As used in this section:

10       “Means to prevent transmission” means a method, device,  
11 behavior, or activity demonstrated scientifically to measurably  
12 reduce the risk of transmission of a sexually-transmitted infection  
13 through an act of sexual penetration, including, but not limited to,  
14 the use of a condom, barrier protection, or prophylactic device, or  
15 compliance with a medical treatment regimen prescribed by a  
16 licensed health care professional that prevents or measurably  
17 reduces the risk of transmitting the sexually-transmitted infection to  
18 another person through an act of sexual penetration.

19       “Sexual penetration” means the same as that term is defined in  
20 subsection c. of N.J.S.2C:14-1.

21       “Sexually-transmitted infection” means any communicable or  
22 infectious disease that may be readily transmitted by an act of  
23 sexual penetration in the absence of the use of an appropriate means  
24 to prevent transmission of the sexually-transmitted infection.<sup>1</sup>

25 (cf: P.L.1997, c.201, s.1)<sup>2</sup>

26  
27       <sup>2</sup>1. a. As used in this section:

28       “Infectious or communicable disease” means a non-airborne  
29 disease spread from person to person that is fatal or causes  
30 disabling long-term consequences in the absence of treatment and  
31 management.

32       “Personal identifying information” means any name, address, or  
33 other information that may be used, alone or in conjunction with  
34 any other information, to identify a specific individual, and any  
35 photographic image, reproduction, or other depiction of a person.

36       b. In a prosecution under section 1 of P.L.2015, c.186 (C.2C:24-  
37 7.1) against a person who knowingly or recklessly engages in  
38 conduct which creates a substantial risk of transmitting an  
39 infectious or communicable disease to another person, all court  
40 decisions, orders, petitions, motions, and other documents filed by  
41 the parties and the prosecutor shall be redacted to protect the name  
42 and other personal identifying information of the other person from  
43 public disclosure, unless the other person requests otherwise.  
44 Additionally, the court shall enter appropriate orders to bar the  
45 disclosure of the name or other personal identifying information of  
46 the other person by the parties, attorneys, law enforcement, and any  
47 other persons, unless the other person requests otherwise.<sup>2</sup>

S3707 [2R] VITALE, RUIZ

5

1       2. <sup>2</sup>N.J.S.2C:34-5 is repealed.<sup>2</sup>

2

3       <sup>2</sup>**[2.]** 3.<sup>2</sup> This act shall take effect on the 60<sup>th</sup> day following  
4 enactment.