

[Second Reprint]

SENATE, No. 3707

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 26, 2021

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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 ²by engaging
 2 in an act of sexual penetration and amending], supplementing
 3 chapter 24 of Title 2C of the New Jersey Statutes, and repealing²
 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 ²[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 ¹[an
 18 infectious or communicable disease] a sexually-transmitted
 19 infection¹ and all of the following apply:

20 (a) the person knows that he or she is diagnosed with ¹[an
 21 infectious or transmissible disease] sexually-transmitted infection¹ ;

22 (b) the person acts with the specific intent to transmit the
 23 ¹[infectious or communicable disease] sexually-transmitted
 24 infection¹ to another person;

25 (c) the person does not take or attempt to take means to prevent
 26 the transmission of the ¹[infectious or communicable disease]
 27 sexually-transmitted infection¹ ; and

28 (d) the person transmits the ¹[infectious or communicable
 29 disease to another person] sexually-transmitted infection¹ .

30 (2) A failure to take or attempt to take means to prevent the
 31 transmission of ¹[an infectious or communicable disease] sexually-
 32 transmitted infection¹ is not by itself sufficient to prove that the
 33 person acted with specific intent to transmit the ¹[infectious or
 34 communicable disease pursuant to] sexually-transmitted infection
 35 for the purposes of¹ paragraph (1) of this subsection.

36 (3) This section shall not apply to a woman with ¹[an infectious
 37 or communicable disease] a sexually-transmitted infection¹ who
 38 transmits the ¹[disease] infection¹ 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:

¹Senate SHH committee amendments adopted May 6, 2021.

²Senate 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. ¹**【**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.¹ (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 ¹[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.¹

25 (cf: P.L.1997, c.201, s.1)²

26
27 ²1. 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.²

S3707 [2R] VITALE, RUIZ

5

1 2. ²N.J.S.2C:34-5 is repealed.²

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3 ²**[2.]** 3.² This act shall take effect on the 60th day following
4 enactment.