

# SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

## STATEMENT TO **SENATE, No. 3707**

with committee amendments

# STATE OF NEW JERSEY

DATED: MAY 6, 2021

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 3707.

As amended by the committee, this bill reduces the criminal penalties that apply to the offense of committing an act of sexual penetration while infected with a venereal disease without the informed consent of the other person.

Under current law, it is a crime of the fourth degree if a person, knowing that he or she is infected with a venereal disease such as chancroid, gonorrhea, syphilis, herpes virus, or any of the varieties or stages of such diseases, commits an act of sexual penetration without the informed consent of the other person. It is a crime of the third degree if the person knows that he or she is infected with AIDS or HIV and commits an act of sexual penetration without the informed consent of the other person. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both; a crime of the third degree, by a term of three to five years or a fine up to \$15,000, or both.

This bill would revise the statute to apply only to a person who purposely transmits a sexually-transmitted infection by engaging in an act of sexual penetration when:

- (1) the person knows that he or she is diagnosed with a sexually-transmitted infection;
- (2) the person acts with the specific intent to transmit the sexually-transmitted infection to another person;
- (3) the person does not take or attempt to take means to prevent the transmission of the sexually-transmitted infection; and
- (4) the person transmits the sexually-transmitted infection to another person.

The bill provides that, in determining whether a person acted with the specific intent to transmit a sexually-transmitted infection, a failure to take or attempt to take means to prevent the transmission of the sexually-transmitted infection is not, by itself, sufficient to prove specific intent to transmit the sexually-transmitted infection.

The bill reduces the offense to a disorderly persons offense, which is punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

As used in the bill, “sexual penetration” means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction. “Sexually-transmitted infection” means any communicable or infectious disease that may be readily transmitted by an act of sexual penetration in the absence of the use of an appropriate means to prevent transmission of the sexually-transmitted infection. “Means to prevent transmission” is defined as a method, device, behavior, or activity demonstrated scientifically to measurably reduce the risk of transmission of a sexually-transmitted infection, including, but not limited to, the use of a condom, barrier protection, or prophylactic device, or compliance with a medical treatment regimen prescribed by a licensed health care professional that prevents or measurably reduces the risk of transmitting the sexually-transmitted infection to another person through an act of sexual penetration.

In addition, the bill provides that no surveillance reports or records maintained by State or local health officials shall be subpoenaed or released for the sole purpose of establishing the specific intent.

As amended, the bill specifies that all records are to be confidential and will not be made available to any individual or institution except as otherwise provided by law.

The bill specifies that the defendant may submit medical evidence to show the absence of the specific stated intent.

#### COMMITTEE AMENDMENTS:

The committee amendments revise the bill to clarify that the bill applies to sexually-transmitted infections. The amendments revise the synopsis of the bill and the definitions section to reflect these changes.

The committee amendments remove certain language concerning the confidentiality of records used in the prosecution of an offense under the bill and replace those provisions with confidentiality language used elsewhere in the Criminal Code.

The committee amendments remove a provision indicating that nothing in the bill is to be deemed to preclude an indictment and conviction for any other offense.

The committee amendments make a technical change involving the structure of the bill, to move the definition section to the end of the bill.