

**ASSEMBLY, No. 1000**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Middlesex, Morris, Somerset and Union)**

**Assemblyman JAY WEBBER**

**District 26 (Morris and Passaic)**

**Co-Sponsored by:**

**Assemblywomen Dunn and Matsikoudis**

**SYNOPSIS**

Provides that unlawful use, manufacture, or distribution of controlled dangerous substance by parent or caregiver in presence of child constitutes crime of endangering welfare of that child.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1   **AN ACT** concerning endangering the welfare of a child and  
2       amending N.J.S.2C:24-4.

3  
4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5       *of New Jersey:*

6  
7       1. N.J.S.2C:24-4 is amended to read as follows:  
8       2C:24-4. Endangering Welfare of Children.

9       a. (1) Any person having a legal duty for the care of a child or  
10      who has assumed responsibility for the care of a child who engages  
11      in sexual conduct which would impair or debauch the morals of the  
12      child is guilty of a crime of the second degree. Any other person  
13      who engages in conduct or who causes harm as described in this  
14      paragraph to a child is guilty of a crime of the third degree.

15      (2) (a) Any person having a legal duty for the care of a child or  
16      who has assumed responsibility for the care of a child who causes  
17      the child harm that would make the child an abused or neglected  
18      child as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974,  
19      c.119 (C.9:6-8.21) is guilty of a crime of the second degree. Any  
20      other person who engages in conduct or who causes harm as  
21      described in this paragraph to a child is guilty of a crime of the third  
22      degree.

23      (b) (i) Any person having a legal duty for the care of a child or  
24      who has assumed responsibility for the care of a child who violates  
25      the provisions of N.J.S.2C:35-5 while in the presence of such child  
26      is guilty of a crime of the third degree.

27      (ii) Any person having a legal duty for the care of a child or who  
28      has assumed responsibility for the care of a child who violates the  
29      provisions of N.J.S.2C:35-10 while in the presence of such child is  
30      guilty of a crime of the fourth degree.

31      (c) Any other person who engages in conduct or who causes  
32      harm as described in subparagraph (a) of this paragraph to a child is  
33      guilty of a crime of the third degree.

34      Nothing in this subsection shall preclude a prosecution for any  
35      other offense set forth in chapter 35 of Title 2C of the New Jersey  
36      Statutes or any other offense defined by the laws of this State.

37      b. (1) As used in this subsection:

38      "Child" means any person under 18 years of age.

39      "Distribute" means to sell, or to manufacture, give, provide, lend,  
40      trade, mail, deliver, publish, circulate, disseminate, present, exhibit,  
41      display, share, advertise, offer, or make available via the Internet or  
42      by any other means, whether for pecuniary gain or not. The term  
43      also includes an agreement or attempt to distribute.

44      "File-sharing program" means a computer program, application,  
45      software or operating system that allows the user of a computer on  
46      which such program, application, software or operating system is

**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.

1 installed to designate files as available for searching by and copying  
2 to one or more other computers, to transmit such designated files  
3 directly to one or more other computers, and to request the  
4 transmission of such designated files directly from one or more  
5 other computers. The term "file-sharing program" includes but is  
6 not limited to a computer program, application or software that  
7 enables a computer user to participate in a peer-to-peer network.

8 "Internet" means the international computer network of both  
9 federal and non-federal interoperable packet switched data  
10 networks.

11 "Item depicting the sexual exploitation or abuse of a child"  
12 means a photograph, film, video, an electronic, electromagnetic or  
13 digital recording, an image stored or maintained in a computer  
14 program or file or in a portion of a file, or any other reproduction or  
15 reconstruction which :

16 (a) depicts a child engaging in a prohibited sexual act or in the  
17 simulation of such an act; or

18 (b) portrays a child in a sexually suggestive manner.

19 "Peer-to-peer network" means a connection of computer systems  
20 through which files are shared directly between the systems on a  
21 network without the need of a central server.

22 "Portray a child in a sexually suggestive manner" means:

23 (a) to depict a child's less than completely and opaquely covered  
24 intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by  
25 means of the posing, composition, format, or animated sensual  
26 details, emits sensuality with sufficient impact to concentrate  
27 prurient interest on the child; or

28 (b) to depict any form of contact with a child's intimate parts, as  
29 defined in N.J.S.2C:14-1, in a manner that, by means of the posing,  
30 composition, format, or animated sensual details, emits sensuality  
31 with sufficient impact to concentrate prurient interest on the child;  
32 or

33 (c) to otherwise depict a child for the purpose of sexual  
34 stimulation or gratification of any person who may view the  
35 depiction where the depiction does not have serious literary, artistic,  
36 political, or scientific value.

37 "Prohibited sexual act" means

38 (a) Sexual intercourse; or

39 (b) Anal intercourse; or

40 (c) Masturbation; or

41 (d) Bestiality; or

42 (e) Sadism; or

43 (f) Masochism; or

44 (g) Fellatio; or

45 (h) Cunnilingus; or

46 (i) Nudity, if depicted for the purpose of sexual stimulation or  
47 gratification of any person who may view such depiction; or

1 (j) Any act of sexual penetration or sexual contact as defined in  
2 N.J.S.2C:14-1.

3 "Reproduction" means, but is not limited to, computer generated  
4 images.

5 (2) (Deleted by amendment, P.L.2001, c.291).

6 (3) A person commits a crime of the first degree if he causes or  
7 permits a child to engage in a prohibited sexual act or in the  
8 simulation of such an act or to be portrayed in a sexually suggestive  
9 manner if the person knows, has reason to know or intends that the  
10 prohibited act or portrayal may be photographed, filmed,  
11 reproduced, or reconstructed in any manner, including on the  
12 Internet, or may be part of an exhibition or performance.

13 (4) A person commits a crime of the second degree if he  
14 photographs or films a child in a prohibited sexual act or in the  
15 simulation of such an act or for portrayal in a sexually suggestive  
16 manner or who uses any device, including a computer, to reproduce  
17 or reconstruct the image of a child in a prohibited sexual act or in  
18 the simulation of such an act or for portrayal in a sexually  
19 suggestive manner.

20 (5) (a) A person commits a crime if, by any means, including but  
21 not limited to the Internet, he:

22 (i) knowingly distributes an item depicting the sexual  
23 exploitation or abuse of a child;

24 (ii) knowingly possesses an item depicting the sexual  
25 exploitation or abuse of a child with the intent to distribute that  
26 item; or

27 (iii) knowingly stores or maintains an item depicting the sexual  
28 exploitation or abuse of a child using a file-sharing program which  
29 is designated as available for searching by or copying to one or  
30 more other computers.

31 In a prosecution under sub-subparagraph (iii) of this  
32 subparagraph, the State shall not be required to offer proof that an  
33 item depicting the sexual exploitation or abuse of a child had  
34 actually been searched, copied, transmitted or viewed by another  
35 user of the file-sharing program, or by any other person, and it shall  
36 be no defense that the defendant did not intend to distribute the item  
37 to another user of the file-sharing program or to any other person.  
38 Nor shall the State be required to prove that the defendant was  
39 aware that the item depicting the sexual exploitation or abuse of a  
40 child was available for searching or copying to one or more other  
41 computers, and the defendant shall be strictly liable for failing to  
42 designate the item as not available for searching or copying by one  
43 or more other computers.

44 A violation of this subparagraph that involves 1,000 or more  
45 items depicting the sexual exploitation or abuse of a child is a crime  
46 of the first degree; otherwise it is a crime of the second degree.

47 Notwithstanding the provisions of subsection a. of  
48 N.J.S.2C:43-6, a person whose offense under this subparagraph

1 involved at least 25 but less than 1,000 items depicting the sexual  
2 exploitation or abuse of a child shall be sentenced to a mandatory  
3 minimum term of imprisonment, which shall be fixed at, or  
4 between, one-third and one-half of the sentence imposed by the  
5 court or five years, whichever is greater, during which the  
6 defendant shall be ineligible for parole.

7 Notwithstanding the provisions of subsection a. of  
8 N.J.S.2C:43-6, a person whose offense under this subparagraph  
9 involved 1,000 or more items depicting the sexual exploitation or  
10 abuse of a child shall be sentenced to a mandatory minimum term of  
11 imprisonment, which shall be fixed at, or between, one-third and  
12 one-half of the sentence imposed by the court or 10 years,  
13 whichever is greater, during which the defendant shall be ineligible  
14 for parole.

15 Notwithstanding the provisions of subsection a. of  
16 N.J.S.2C:43-6, a person convicted of a second or subsequent  
17 offense under this subparagraph shall be sentenced to an extended  
18 term of imprisonment as set forth in N.J.S.2C:43-7. For the  
19 purposes of this subparagraph, an offense is considered a second or  
20 subsequent offense if the actor has at any time been convicted  
21 pursuant to paragraph (3), (4), or (5) of this subsection, or under  
22 any similar statute of the United States, this State, or any other state  
23 for an offense that is substantially equivalent to paragraph (3), (4),  
24 or (5) of this subsection.

25 For purposes of this subparagraph, the term "possess" includes  
26 receiving, viewing, or having under one's control, through any  
27 means, including the Internet.

28 (b) (i) A person commits a crime of the first degree if he  
29 knowingly possesses, knowingly views, or knowingly has under his  
30 control, through any means, including the Internet, 100,000 or more  
31 items depicting the sexual exploitation or abuse of a child.

32 (ii) A person commits a crime of the second degree if he  
33 knowingly possesses, knowingly views, or knowingly has under his  
34 control, through any means, including the Internet, at least 1,000  
35 but less than 100,000 items depicting the sexual exploitation or  
36 abuse of a child.

37 (iii) A person commits a crime of the third degree if he  
38 knowingly possesses, knowingly views, or knowingly has under his  
39 control, through any means, including the Internet, less than 1,000  
40 items depicting the sexual exploitation or abuse of a child.

41 Notwithstanding the provisions of subsection e. of  
42 N.J.S.2C:44-1, in any instance where a person was convicted of an  
43 offense under this subparagraph that involved 100 or more items  
44 depicting the sexual exploitation or abuse of a child, the court shall  
45 impose a sentence of imprisonment unless, having regard to the  
46 character and condition of the defendant, it is of the opinion that  
47 imprisonment would be a serious injustice which overrides the need  
48 to deter such conduct by others.

1       Notwithstanding the provisions of subsection a. of  
2       N.J.S.2C:43-6, a person convicted of a second or subsequent  
3       offense under this subparagraph shall be sentenced to an extended  
4       term of imprisonment as set forth in N.J.S.2C:43-7. For the  
5       purposes of this subparagraph, an offense is considered a second or  
6       subsequent offense if the actor has at any time been convicted  
7       pursuant to paragraph (3), (4), or (5) of this subsection, or under  
8       any similar statute of the United States, this State, or any other state  
9       for an offense that is substantially equivalent to paragraph (3), (4),  
10      or (5) of this subsection.

11      Nothing in this subparagraph shall be construed to preclude or  
12      limit any prosecution or conviction for the offense set forth in  
13      subparagraph (a) of this paragraph.

14      (6) For purposes of this subsection, a person who is depicted as  
15      or presents the appearance of being under the age of 18 in any  
16      photograph, film, videotape, computer program or file, video game,  
17      or any other reproduction or reconstruction shall be rebuttably  
18      presumed to be under the age of 18. If the child who is depicted as  
19      engaging in, or who is caused to engage in, a prohibited sexual act  
20      or simulation of a prohibited sexual act or portrayed in a sexually  
21      suggestive manner is under the age of 18, the actor shall be strictly  
22      liable and it shall not be a defense that the actor did not know that  
23      the child was under the age of 18, nor shall it be a defense that the  
24      actor believed that the child was 18 years of age or older, even if  
25      such a mistaken belief was reasonable.

26      (7) For aggregation purposes, each depiction of the sexual  
27      exploitation or abuse of a child shall be considered a separate item,  
28      provided that each depiction that is in the form of a photograph,  
29      picture, image, or visual depiction of a similar nature shall be  
30      considered to be one item and each depiction that is in the form of a  
31      film, video, video-clip, movie, or visual depiction of a similar  
32      nature shall be considered to be 10 separate items, and each  
33      individual act of distribution of an item depicting the sexual  
34      exploitation or abuse of a child shall be considered a separate item.  
35      For purposes of determining the number of items depicting the  
36      sexual exploitation or abuse of a child for purposes of sentencing  
37      pursuant to subparagraph (a) of paragraph (5) of this subsection, the  
38      court shall aggregate all items involved, whether the act or acts  
39      constituting the violation occurred at the same time or at different  
40      times and, with respect to distribution, whether the act or acts of  
41      distribution were to the same person or several persons or occurred  
42      at different times, provided that each individual act was committed  
43      within the applicable statute of limitations. For purposes of  
44      determining the number of items depicting the sexual exploitation  
45      or abuse of a child for purposes of sentencing pursuant to  
46      subparagraph (b) of paragraph (5) of this subsection, the court shall  
47      aggregate all items involved, whether the possession of such items  
48      occurred at the same time or at different times, provided that each

1 individual act was committed within the applicable statute of  
2 limitations.  
3 (cf: P.L.2017, c.141, s.1)  
4

5 2. This act shall take effect immediately.  
6  
7

8 STATEMENT  
9

10 This bill provides that a parent or caregiver who unlawfully uses,  
11 manufactures, or distributes a controlled dangerous substance while  
12 in the presence of a child is guilty of the crime of endangering the  
13 welfare of that child.

14 The bill provides that any person with a legal duty for the care of  
15 a child or who has assumed responsibility for the care of a child  
16 who violates the provisions of N.J.S.2C:35-5 while in the presence  
17 of such child would be guilty of a crime of the third degree pursuant  
18 to N.J.S.2C:24-4, endangering the welfare of a child. The  
19 underlying statute, N.J.S.2C:35-5, concerns unlawfully  
20 manufacturing, distributing, or dispensing, or having under one's  
21 control with intent to manufacture, distribute, or dispense, a  
22 controlled dangerous substance. Penalties for violations of  
23 N.J.S.2C:35-5 range from a crime of the fourth degree to a crime of  
24 the first degree, depending on the particular substance involved and  
25 its quantity.

26 Under the bill, a violation of the provisions of N.J.S.2C:35-10  
27 while in the presence of a child by a person with a legal duty for the  
28 care of the child or who has assumed responsibility for the care of  
29 the child would constitute a crime of the fourth degree pursuant to  
30 N.J.S.2C:24-4, endangering the welfare of a child. The underlying  
31 statute, N.J.S.2C:35-10, concerns obtaining, possessing, or using a  
32 controlled dangerous substance. Penalties for violations of  
33 N.J.S.2C:35-10 range from a disorderly persons offense to a crime  
34 of the third degree, depending on the particular substance involved  
35 and its quantity.

36 A crime of the first degree is punishable by a term of  
37 imprisonment of ten to 20 years or a fine of up to \$200,000, or both;  
38 a crime of the second degree, by a term of five to ten years or a fine  
39 up to \$150,000, or both; a crime of the third degree, by a term of  
40 three to five years or a fine up to \$15,000, or both, and a crime of  
41 the fourth degree, by a term up to 18 months or a fine up to  
42 \$10,000, or both. A disorderly persons offense is punishable by a  
43 term of imprisonment of up to six months or a fine of up to \$1,000  
44 or both. A petty disorderly persons offense is punishable by a term  
45 of imprisonment of up to 30 days or a fine of up to \$500 or both.

46 The bill specifies that it does not preclude a prosecution for any  
47 other offense set forth in chapter 35 of Title 2C of the New Jersey  
48 Statutes or any other offense defined by the laws of this State. The

1 intent of this provision is to clarify that a prosecution for  
2 endangering the welfare of a child under the bill is separate and  
3 distinct from any prosecution for the underlying drug offense or any  
4 other criminal prosecution.