

ASSEMBLY, No. 4477

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 3, 2024

Sponsored by:

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SYNOPSIS

Establishes affirmative defense to prosecution for any crime committed by victim of human trafficking under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/3/2024)

1 AN ACT concerning crimes committed by victims of human
2 trafficking and amending various parts of the statutory law.

3

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

6

7 1. Section 1 of P.L.2005, c.77 (C.2C:13-8) is amended to read
8 as follows:

9 1. Human trafficking. a. A person commits the crime of human
10 trafficking if he:

11 (1) knowingly holds, recruits, lures, entices, harbors, transports,
12 provides or obtains, by any means, another, to engage in sexual
13 activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-
14 1 or to provide labor or services:

15 (a) by causing or threatening to cause serious bodily harm or
16 physical restraint against the person or any other person;

17 (b) by means of any scheme, plan, or pattern intended to cause
18 the person to believe that the person or any other person would
19 suffer serious bodily harm or physical restraint;

20 (c) by committing a violation of N.J.S.2C:13-5 against the
21 person;

22 (d) by destroying, concealing, removing, confiscating, or
23 possessing any passport, immigration-related document as defined
24 in section 1 of P.L.1997, c.1 (C.2C:21-31), or other document
25 issued by a governmental agency to any person which could be used
26 as a means of verifying the person's identity or age or any other
27 personal identifying information;

28 (e) by means of the abuse or threatened abuse of the law or legal
29 process;

30 (f) by means of fraud, deceit, or misrepresentation against the
31 person; or

32 (g) by facilitating access to a controlled dangerous substance or
33 controlled substance analog as set forth in chapter 35 of Title 2C of
34 the New Jersey Statutes; or

35 (2) receives anything of value from participation as an
36 organizer, supervisor, financier or manager in a scheme or course of
37 conduct which violates paragraph (1) of this subsection; or

38 (3) knowingly holds, recruits, lures, entices, harbors, transports,
39 provides or obtains, by any means, a child under 18 years of age, to
40 engage in sexual activity as defined in paragraph (2) of subsection
41 a. of N.J.S.2C:34-1, whether or not the actor mistakenly believed
42 that the child was 18 years of age or older, even if that mistaken
43 belief was reasonable.

44 b. An offense under this section constitutes a crime of the first
45 degree.

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 c. It is an affirmative defense to prosecution for **[a violation of**
2 **this section]** any offense enumerated in Title 2C of the New Jersey
3 Statutes that**[,]** :

4 (1) during the time of the alleged commission of the offense **[of**
5 **human trafficking created by this section]**, the defendant was a
6 victim of human trafficking; and

7 (2) the defendant committed the offense as a direct result of the
8 human trafficking offense committed against the defendant.

9 An affirmative defense pursuant to this subsection shall not be
10 precluded solely due to the fact that a prosecution for the human
11 trafficking offense committed against the defendant terminated
12 without a conviction.

13 d. Notwithstanding the provisions of N.J.S.2C:43-6, the term of
14 imprisonment imposed for a crime of the first degree under
15 paragraph (2) or (3) of subsection a. of this section shall be either a
16 term of 20 years during which the actor shall not be eligible for
17 parole, or a specific term between 20 years and life imprisonment,
18 of which the actor shall serve 20 years before being eligible for
19 parole. Notwithstanding the provisions of N.J.S.2C:43-3, the
20 sentence for a conviction for a crime of the first degree under this
21 section shall include a fine in an amount of not less than \$25,000,
22 which shall be collected as provided for the collection of fines and
23 restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4) and
24 forwarded to the Department of the Treasury to be deposited in the
25 "Human Trafficking Survivor's Assistance Fund" established by
26 section 2 of P.L.2013, c.51 (C.52:17B-238).

27 e. In addition to any other disposition authorized by law, any
28 person who violates the provisions of this section shall be ordered
29 to make restitution to any victim. The court shall award to the
30 victim restitution which is the greater of:

31 (1) the gross income or value to the defendant of the victim's
32 labor or services; or

33 (2) the value of the victim's labor or services as determined by
34 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
35 56.25 et seq.), the "New Jersey State Wage and Hour Law,"
36 P.L.1966, c.113 (C.34:11-56a et seq.), the Seasonal Farm Labor
37 Act, P.L.1945, c.71 (C.34:9A-1 et seq.), the laws concerning the
38 regulation of child labor in chapter 2 of Title 34 of the Revised
39 Statutes, or any other applicable State law, and the "Fair Labor
40 Standards Act of 1938," 29 U.S.C. s.201 et seq., or any other
41 applicable federal law.

42 (cf: P.L.2013, c.51, s.3)

43
44 2. Section 5 of P.L.2013, c.51 (C.2C:13-9) is amended to read
45 as follows:

46 5. a. A person commits a crime of the second degree if he:

47 (1) provides services, resources, or assistance with the
48 knowledge that the services, resources, or assistance are intended to

1 be used in furtherance of the commission of the crime of human
2 trafficking in violation of section 1 of P.L.2005, c.77 (C.2C:13-8).

3 (a) For purposes of this paragraph, "services, resources, or
4 assistance" shall include financial support, business services,
5 lodging, transportation, the provision of false documentation or
6 identification, equipment, facilities, or any other service or property
7 with a pecuniary value that exceeds \$200, whether or not a person is
8 compensated for the services, resources, or assistance, but shall not
9 include humanitarian or charitable aid or services provided directly
10 to a victim of human trafficking.

11 (b) For purposes of this paragraph, the requisite knowledge that
12 services, resources, or assistance are intended to be used in
13 furtherance of the commission of the crime of human trafficking
14 may be inferred if the defendant was aware that a person to whom
15 the defendant was providing services, resources, or assistance: (i)
16 was subject to or subjected another to restrictions on the person's
17 freedom of movement, so that the person could not leave without
18 accompaniment of another person or was otherwise subjected to
19 obvious restrictions on mobility; or (ii) did not possess or have
20 access to any means of communication, including but not limited to
21 a cellular or other wireless telephone or other electronic
22 communication device, and was not permitted or was otherwise
23 unable to communicate with another person without supervision or
24 permission; or

25 (2) procures or attempts to procure a person to engage in sexual
26 activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-
27 1, or to provide labor or services, whether for himself or another
28 person, knowing that the person provided or to be provided was a
29 victim of human trafficking, or under circumstances in which a
30 reasonable person would conclude that there was a substantial
31 likelihood that the person was a victim of human trafficking.

32 (a) For purposes of this paragraph, there shall be a rebuttable
33 presumption that the defendant knew, and that a reasonable person
34 would conclude there was a substantial likelihood, that a person was
35 a victim of human trafficking if the person: (i) could not leave the
36 premises where the person provided labor or services without
37 accompaniment of another person or was otherwise subjected to
38 significant restrictions on the person's freedom of movement; or (ii)
39 did not possess or have access to any means of communication,
40 including but not limited to a cellular or other wireless telephone or
41 other electronic communication device, and was not permitted or
42 was otherwise unable to communicate with another person without
43 supervision or permission.

44 (b) For the purposes of this paragraph, there shall be a
45 rebuttable presumption that: (i) a person knew that a child under
46 the age of 18 years of age procured to engage in sexual activity or
47 for whom attempts were made to procure for that activity was a
48 victim of human trafficking; and (ii) a reasonable person would

1 conclude that there was a substantial likelihood that a child under
2 the age of 18 years of age procured to engage in sexual activity or
3 for whom attempts were made to procure for that activity was a
4 victim of human trafficking.

5 b. (1) **It** Pursuant to the provisions of subsection c. of section 1
6 of P.L.2005, c.77, (C.2C:13-8), is an affirmative defense to
7 prosecution for a violation of this section that **It**:

8 (a) during the time of the alleged commission of the crime, the
9 defendant was a victim of human trafficking; and

10 (b) the defendant committed the crime as a direct result of the
11 human trafficking offense committed against the defendant.

12 (2) There shall be a rebuttable presumption that a child under
13 the age of 18 years of age charged with a violation of this section
14 was a victim of human trafficking.

15 c. (1) Notwithstanding any provision of law to the contrary, a
16 person convicted for a violation of this section shall be sentenced to
17 a term of imprisonment, which shall include a period of parole
18 ineligibility of one-third to one-half of the term of imprisonment
19 imposed or three years, whichever is greater. Notwithstanding the
20 provisions of N.J.S.2C:43-3, the sentence for a conviction under
21 this section shall include a fine in an amount of not less than
22 \$15,000, which shall be collected as provided for the collection of
23 fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4)
24 and forwarded to the Department of the Treasury to be deposited in
25 the "Human Trafficking Survivor's Assistance Fund" established by
26 section 2 of P.L.2013, c.51 (C.52:17B-238).

27 (2) Additionally, upon a finding of guilt or entry of a guilty plea
28 for a crime described under this section, the court shall direct any
29 issuing State, county, or municipal governmental agency to revoke
30 any license, permit, certificate, approval, registration, charter, or
31 similar form of business or professional authorization required by
32 law concerning the operation of that person's business or profession,
33 if that business or profession was used in the course of the crime.

34 d. Nothing in this section shall be construed to preclude, or
35 limit in any way, the prosecution and conviction for any other
36 offense, including prosecution and conviction pursuant to section 1
37 of P.L.2005, c.77 (C.2C:13-8), human trafficking, N.J.S.2C:34-1,
38 prostitution and related offenses, and N.J.S.2C:2-6, liability for
39 another's conduct.

40 (cf: P.L.2013, c.51, s.5)

41

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

43 2C:34-1. Prostitution and Related Offenses.

44 a. As used in this section:

45 (1) "Prostitution" is sexual activity with another person in
46 exchange for something of economic value, or the offer or
47 acceptance of an offer to engage in sexual activity in exchange for
48 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
9 under 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
13 prostitution 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
17 another 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
21 to promote that person's engaging in prostitution, or procuring or
22 paying for transportation with that purpose; or
- 23 (g) Knowingly leasing or otherwise permitting a place
24 controlled by the actor, alone or in association with others, to be
25 regularly used for prostitution or promotion of prostitution, or
26 failure to make a reasonable effort to abate such use by ejecting the
27 tenant, notifying law enforcement authorities, or other legally
28 available means.
- 29 b. A person commits an offense if:
- 30 (1) The actor engages in prostitution as a patron;
- 31 (2) The actor promotes prostitution;
- 32 (3) The actor knowingly promotes prostitution of a child under
33 18 whether or not the actor mistakenly believed that the child was
34 18 years of age or older, even if such mistaken belief was
35 reasonable;
- 36 (4) The actor knowingly promotes prostitution of the actor's
37 child, ward, or any other person for whose care the actor is
38 responsible;
- 39 (5) The actor compels another to engage in or promote
40 prostitution;
- 41 (6) The actor promotes prostitution of the actor's spouse;
- 42 (7) The actor knowingly engages in prostitution with a person
43 under the age of 18, or if the actor enters into or remains in a house
44 of prostitution for the purpose of engaging in sexual activity with a
45 child under the age of 18, or if the actor solicits or requests a child
46 under the age of 18 to engage in sexual activity. It shall be no
47 defense to a prosecution under this paragraph that the actor

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

3 (8) The actor engages in prostitution by personally offering
4 sexual activity in exchange for something of economic value.

5 c. Grading of offenses under subsection b.

6 (1) An offense under subsection b. constitutes a crime of the
7 first degree if the offense falls within paragraph (3) or (4) of that
8 subsection.

9 (2) An offense under subsection b. constitutes a crime of the
10 second degree if the offense falls within paragraph (7) of that
11 subsection.

12 (3) An offense under subsection b. constitutes a crime of the
13 third degree if the offense falls within paragraph (5) or (6) of that
14 subsection.

15 (4) An offense under paragraph (2) of subsection b. constitutes a
16 crime of the third degree if the conduct falls within subparagraph
17 (a), (b), (c), (f), or (g) of paragraph (4) of subsection a. Otherwise
18 the offense is a crime of the fourth degree.

19 (5) An offense under subsection b. constitutes a disorderly
20 persons offense if the offense falls within paragraph (1) of that
21 subsection except that a second or third conviction for such an
22 offense constitutes a crime of the fourth degree, and a fourth or
23 subsequent conviction for such an offense constitutes a crime of the
24 third degree. In addition, where a motor vehicle was used in the
25 commission of any offense under paragraph (1) of subsection b. the
26 court shall suspend for six months the driving privilege of any such
27 offender who has a valid driver's license issued by this State. Upon
28 conviction, the court shall immediately collect the offender's
29 driver's license and shall forward it, along with a report stating the
30 first and last day of the suspension imposed pursuant to this
31 paragraph, to the New Jersey Motor Vehicle Commission.

32 (6) An offense under subsection b. constitutes a disorderly
33 persons offense if the offense falls within paragraph (8) of that
34 subsection, except that a second or subsequent conviction for such
35 an offense constitutes a crime of the fourth degree.

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

41 e. 【It】 Pursuant to the provisions of subsection c. of section 1
42 of P.L.2005, c.77, (C.2C:13-8), it is an affirmative defense to
43 prosecution for a violation of this section that, during the time of
44 the alleged commission of the offense, the defendant was:

45 (1) (a) a victim of human trafficking pursuant to section 1 of
46 P.L.2005, c.77 (C.2C:13-8); and

47 (b) the defendant committed the offense as a direct result of the
48 human trafficking offense committed against the defendant; or

1 (2) compelled by another to engage in sexual activity, regardless
2 of the defendant's age.

3 f. (1) Any fine set forth in N.J.S.2C:43-3 that is imposed upon a
4 person by a municipal court for a conviction of a disorderly persons
5 offense under this section shall be collected, notwithstanding the
6 procedures for the collection of fines and restitutions in section 3 of
7 P.L.1979, c.396 (C.2C:46-4), by the municipal court administrator
8 and paid into the municipal treasury of the municipality in which
9 the offense was committed.

10 (2) In addition to any fine, fee, assessment, or penalty
11 authorized under the provisions of Title 2C of the New Jersey
12 Statutes, a person convicted of an offense of prostitution or related
13 offense under paragraph (2), (3), (4), (5), (6), or (7) of subsection b.
14 shall be assessed a penalty of at least \$10,000 but not more than
15 \$50,000, except if the offense involved promotion of the
16 prostitution of a child under the age of 18, the penalty shall be at
17 least \$25,000. All penalties provided for in this subsection,
18 collected as provided for the collection of fines and restitutions in
19 section 3 of P.L.1979, c.396 (C.2C:46-4), shall be forwarded to the
20 Department of the Treasury to be deposited in the "Human
21 Trafficking Survivor's Assistance Fund" established by section 2 of
22 P.L.2013, c.51 (C.52:17B-238).
23 (cf: P.L.2013, c.51, s.9)

24

25 4. This act shall take effect immediately.

26

27

STATEMENT

28

29 This bill establishes an affirmative defense to prosecution for
30 crimes committed by a victim of human trafficking under certain
31 circumstances.

32 Under current law, it is a defense to a prosecution for the
33 following crimes if the perpetrator of the offense is a victim of
34 human trafficking: human trafficking; providing services, resources,
35 or assistance with the knowledge that the services, resources, or
36 assistance are intended to be used in furtherance of the commission
37 of the crime of human trafficking; and prostitution and related
38 offenses.

39 This bill establishes an affirmative defense for human trafficking
40 victims charged with any offense enumerated in Title 2C of the
41 New Jersey Statutes if: (1) during the time of the alleged
42 commission of the offense, the defendant was a victim of human
43 trafficking; and (2) the crime was committed as a direct result of the
44 human trafficking offense that was committed against the
45 defendant. The bill further provides that an affirmative defense
46 under the bill is not precluded based solely on the lack of a
47 conviction for the underlying human trafficking offense committed
48 against the victim.