

ASSEMBLY, No. 4643

STATE OF NEW JERSEY
221st LEGISLATURE

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SYNOPSIS
Creates penalty for child endangerment via use of social media.

CURRENT VERSION OF TEXT
As introduced.



1 AN ACT concerning child endangerment via the use of social media
2 and 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 who
13 engages in conduct or who causes harm as described in this paragraph
14 to a child is guilty of a crime of the third degree.

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

22 (3) A person is guilty of child endangerment if via electronic
23 communication the person knowingly acts in a manner likely to be
24 injurious to the physical, mental or moral welfare of a child under 18
25 years of age or directs or authorizes that child to engage in an
26 occupation involving a substantial risk of danger to the child's life or
27 health. If that person has a legal duty for the care of the child or has
28 assumed responsibility for the care of the child, that person is guilty
29 of a crime of the second degree. Any other person who engages in
30 conduct or causes harm to a child as described in this paragraph is
31 guilty of a crime of the third degree. As used in this paragraph,
32 electronic communication includes, but is not limited to,
33 communication made by means of an Internet website, such as social
34 media and social networking websites.

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

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

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

42 "File-sharing program" means a computer program, application,
43 software or operating system that allows the user of a computer on
44 which such program, application, software or operating system is
45 installed to designate files as available for searching by and copying

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

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

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

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

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

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

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

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

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

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

34 "Prohibited sexual act" means

35 (a) Sexual intercourse; or

36 (b) Anal intercourse; or

37 (c) Masturbation; or

38 (d) Bestiality; or

39 (e) Sadism; or

40 (f) Masochism; or

41 (g) Fellatio; or

42 (h) Cunnilingus; or

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

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

1 "Reproduction" means, but is not limited to, computer generated
2 images.

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

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

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

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

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

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

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

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

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

44 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6,
45 a person whose offense under this subparagraph involved at least 25
46 but less than 1,000 items depicting the sexual exploitation or abuse
47 of a child shall be sentenced to a mandatory minimum term of
48 imprisonment, which shall be fixed at, or between, one-third and one-

1 half of the sentence imposed by the court or five years, whichever is
2 greater, during which the defendant shall be ineligible for parole.

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

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

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

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

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

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

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

43 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6,
44 a person convicted of a second or subsequent offense under this
45 subparagraph shall be sentenced to an extended term of imprisonment
46 as set forth in N.J.S.2C:43-7. For the purposes of this subparagraph,
47 an offense is considered a second or subsequent offense if the actor

1 has at any time been convicted pursuant to paragraph (3), (4), or (5)
2 of this subsection, or under any similar statute of the United States,
3 this State, or any other state for an offense that is substantially
4 equivalent to paragraph (3), (4), or (5) of this subsection.

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

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

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

44 (cf: P.L.2017, c.141, s.1)

45
46 2. This act shall take effect immediately.

STATEMENT

This bill provides that a person may be guilty of child endangerment through the use of social media.

Under the bill, a person is guilty of child endangerment when that person knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than 18 years of age or directs or authorizes a child to engage in an occupation involving a substantial risk of danger to the child's life or health.

The bill provides that violators would be subject to current child endangerment penalties, making this offense a second degree crime if the actor has a legal duty of care to the child or has assumed responsibility of the child. For all other persons, it is a crime of the third degree.

The penalty for a second degree crime is five to 10 years imprisonment, a fine of up to \$150,000, or both. The penalty for a third degree crime is a term of three to five years imprisonment, a fine of up to \$15,000, or both.

As recently reported in the New York Times, convicted sex offenders and pedophilic predators are consuming prurient content posted to social media sites by parents seeking materialistic gain through the receipt of cash payments, products and endorsements. The subjects of these posts are children, the majority of whom are too young to have a social media account. With this bill, it is the sponsor's intent to provide law enforcement another tool to hold accountable opportunists responsible for exploiting children and exposing them to harm.