

ASSEMBLY, No. 5639

STATE OF NEW JERSEY

222nd LEGISLATURE

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SYNOPSIS

Clarifies that voluntary incapacitation by alleged victim of sexual assault does not bar prosecution of defendant.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning sexual assault and amending N.J.S.2C:14-1 and
2 N.J.S.2C:14-2.

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:14-1 is amended to read as follows:

8 2C:14-1. Definitions. The following definitions apply to this
9 chapter:

10 **[a.]** “Actor” means a person accused of an offense proscribed
11 under this act**;**

12 “Coercion” as used in this chapter shall refer to those acts which
13 are defined as criminal coercion in paragraphs (1), (2), (3), (4), (6),
14 and (7) of N.J.S.2C:13-5.

15 “Intimate parts” means the following body parts: sexual organs,
16 genital area, anal area, inner thigh, groin, buttock or breast of a
17 person.

18 “Mentally incapacitated” means that condition in which a person
19 is rendered temporarily incapable of understanding or controlling
20 the person’s conduct due to the influence of a narcotic, anesthetic,
21 intoxicant, or other substance, or due to an act committed upon that
22 person which rendered the person incapable of appraising or
23 controlling the person’s conduct.

24 “Physically helpless” means that condition in which a person is
25 unconscious or is physically unable to flee or is physically unable to
26 communicate unwillingness to act.

27 “Severe personal injury” means severe bodily injury,
28 disfigurement, disease, incapacitating mental anguish or chronic
29 pain.

30 “Sexual contact” means an intentional touching by the victim or
31 actor, either directly or through clothing, of the victim’s or actor’s
32 intimate parts for the purpose of degrading or humiliating the victim
33 or sexually arousing or sexually gratifying the actor. Sexual contact
34 of the actor with the actor’s intimate parts must be in view of the
35 victim whom the actor knows to be present.

36 “Sexual penetration” means vaginal intercourse, cunnilingus,
37 fellatio, or anal intercourse between persons, or insertion of a hand,
38 a finger or an object into the anus or vagina either by the actor or
39 upon the actor’s instruction. The depth of insertion shall not be
40 relevant as to the question of commission of the crime.

41 **[b.]** “Victim” means a person alleging to have been subjected to
42 offenses proscribed by this act**;**

43 c. "Sexual penetration" means vaginal intercourse, cunnilingus,
44 fellatio or anal intercourse between persons or insertion of the hand,
45 finger or object into the anus or vagina either by the actor or upon

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 the actor's instruction. The depth of insertion shall not be relevant
2 as to the question of commission of the crime;

3 d. "Sexual contact" means an intentional touching by the victim
4 or actor, either directly or through clothing, of the victim's or actor's
5 intimate parts for the purpose of degrading or humiliating the victim
6 or sexually arousing or sexually gratifying the actor. Sexual contact
7 of the actor with himself must be in view of the victim whom the
8 actor knows to be present;

9 e. "Intimate parts" means the following body parts: sexual
10 organs, genital area, anal area, inner thigh, groin, buttock or breast
11 of a person;

12 f. "Severe personal injury" means severe bodily injury,
13 disfigurement, disease, incapacitating mental anguish or chronic
14 pain;

15 g. "Physically helpless" means that condition in which a person
16 is unconscious or is physically unable to flee or is physically unable
17 to communicate unwillingness to act;

18 h. (Deleted by amendment, P.L.2011, c.232)

19 i. "Mentally incapacitated" means that condition in which a
20 person is rendered temporarily incapable of understanding or
21 controlling his conduct due to the influence of a narcotic,
22 anesthetic, intoxicant, or other substance administered to that
23 person without his prior knowledge or consent, or due to any other
24 act committed upon that person which rendered that person
25 incapable of appraising or controlling his conduct;

26 j. "Coercion" as used in this chapter shall refer to those acts
27 which are defined as criminal coercion in section 2C:13-5(1), (2),
28 (3), (4), (6) and (7)】.

29 (cf: P.L.2011, c.232, s.3)

30
31 2. N.J.S.2C:14-2 is amended to read as follows:

32 2C:14-2. Sexual assault.

33 a. Aggravated sexual assault. Aggravated sexual assault is a
34 crime of the first degree.

35 An actor is guilty of aggravated sexual assault if the actor
36 commits an act of sexual penetration with another person under any
37 one of the following circumstances:

38 (1) The victim is less than 13 years old;

39 (2) The victim is at least 13 but less than 16 years old; and

40 (a) The actor is related to the victim by blood or affinity to the
41 third degree, or

42 (b) The actor has supervisory or disciplinary power over the
43 victim by virtue of the actor's legal, professional, or occupational
44 status, or

45 (c) The actor is a resource family parent, a guardian, or stands
46 in loco parentis within the household;

47 (3) The act is committed during the commission, or attempted
48 commission, whether alone or with one or more other persons, of

1 robbery, carjacking, kidnapping, homicide, aggravated assault on
2 the victim or a person other than the victim, burglary, arson, or
3 criminal escape;

4 (4) The actor is armed with a weapon or any object fashioned in
5 such a manner as to lead the victim to reasonably believe it to be a
6 weapon and threatens by word or gesture to use the weapon or
7 object;

8 (5) The actor is aided or abetted by one or more other persons
9 and the actor commits the act using coercion or without the victim's
10 affirmative and freely-given permission;

11 (6) The actor commits the act using coercion or without the
12 victim's affirmative and freely-given permission and severe
13 personal injury is sustained by the victim; or

14 (7) The victim, at the time of sexual penetration, is one whom
15 the actor knew or should have known **【was】**:

16 (a) was physically helpless or incapacitated;

17 (b) was intellectually or mentally incapacitated; or

18 (c) had a mental disease or defect which rendered the victim
19 temporarily or permanently incapable of understanding the
20 distinctively sexual nature of the conduct, including, but not limited
21 to, being incapable of providing consent, or incapable of
22 understanding or exercising the right to refuse to engage in the
23 conduct.

24 **【Aggravated sexual assault is a crime of the first degree.】**

25 Except as otherwise provided in subsection d. of this section, a
26 person convicted under paragraph (1) of this subsection shall be
27 sentenced to a specific term of years which shall be fixed by the
28 court and shall be between 25 years and life imprisonment of which
29 the person shall serve 25 years before being eligible for parole,
30 unless a longer term of parole ineligibility is otherwise provided
31 pursuant to this Title.

32 b. Sexual assault via sexual contact. Sexual assault is a crime
33 of the second degree.

34 An actor is guilty of sexual assault if the actor commits an act of
35 sexual contact with a victim who is less than 13 years old and the
36 actor is at least four years older than the victim.

37 c. Sexual assault via sexual penetration. Sexual assault is a
38 crime of the second degree. An actor is guilty of sexual assault if
39 the actor commits an act of sexual penetration with another person
40 under any one of the following circumstances:

41 (1) The actor commits the act using coercion or without the
42 victim's affirmative and freely-given permission, but the victim
43 does not sustain severe personal injury;

44 (2) The victim is on probation or parole, or is detained in a
45 hospital, prison or other institution and the actor has supervisory or
46 disciplinary power over the victim by virtue of the actor's legal,
47 professional or occupational status;

48 (3) The victim is at least 16 but less than 18 years old and:

- 1 (a) The actor is related to the victim by blood or affinity to the
2 third degree; or
3 (b) The actor has supervisory or disciplinary power of any
4 nature or in any capacity over the victim; or
5 (c) The actor is a resource family parent, a guardian, or stands
6 in loco parentis within the household;
7 (4) The victim is at least 13 but less than 16 years old and the
8 actor is at least four years older than the victim; or
9 (5) The victim is a pupil at least 18 but less than 22 years old
10 and has not received a high school diploma and the actor is a
11 teaching staff member or substitute teacher, school bus driver, other
12 school employee, contracted service provider, or volunteer and the
13 actor has supervisory or disciplinary power of any nature or in any
14 capacity over the victim. As used in this paragraph, “teaching staff
15 member” has the meaning set forth in N.J.S.18A:1-1.

16 **【Sexual assault is a crime of the second degree.】**

17 d. Notwithstanding the provisions of subsection a. of this
18 section, where a defendant is charged with a violation under
19 paragraph (1) of subsection a. of this section, the prosecutor, in
20 consideration of the interests of the victim, may offer a negotiated
21 plea agreement in which the defendant would be sentenced to a
22 specific term of imprisonment of not less than 15 years, during
23 which the defendant shall not be eligible for parole. In such event,
24 the court may accept the negotiated plea agreement and upon such
25 conviction shall impose the term of imprisonment and period of
26 parole ineligibility as provided for in the plea agreement, and may
27 not impose a lesser term of imprisonment or parole or a lesser
28 period of parole ineligibility than that expressly provided in the plea
29 agreement. The Attorney General shall develop guidelines to
30 ensure the uniform exercise of discretion in making determinations
31 regarding a negotiated reduction in the term of imprisonment and
32 period of parole ineligibility set forth in subsection a. of this
33 section.

34 (cf: P.L.2019, c.474, s.1)

35

36 3. This act shall take effect immediately.

37

38

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STATEMENT

40

41 This bill clarifies that the fact that an alleged victim of sexual
42 assault was voluntarily incapacitated at the time of the assault does
43 not bar a prosecution for aggravated sexual assault or sexual
44 assault.

45 Aggravated sexual assault is a crime of the first degree. A crime
46 of the first degree is punishable by a term of imprisonment of 10 to
47 20 years, a fine of up to \$200,000, or both. Sexual assault is a
48 crime of the second degree. A crime of the second degree is

1 punishable by a term of imprisonment of five to 10 years, a fine of
2 up to \$150,000, or both.

3 Currently, New Jersey uses an affirmative consent standard for
4 sexual assault prosecutions. The New Jersey Supreme Court has
5 held that any act of sexual penetration engaged in by the defendant
6 without the affirmative and freely-given permission of the alleged
7 victim to the specific act of penetration constitutes the offense of
8 sexual assault. State in Interest of M.T.S., 129 N.J. 422 (1992).
9 The Legislature codified this holding in 2020 with the enactment of
10 P.L.2019, c.474. In 2021, the New Jersey Supreme Court
11 reaffirmed its support of M.T.S. in C.R. v. M.T., 248 N.J. 428
12 (2021). Because New Jersey requires affirmative consent, it is not a
13 bar to prosecution for aggravated sexual assault or sexual assault
14 that an alleged victim who had voluntarily consumed alcohol or
15 drugs was unable to or did not refuse sexual intercourse.

16 To better reflect current law, this bill removes potentially
17 ambiguous language, specifically the phrase “without his prior
18 knowledge or consent,” from the definition of “mentally
19 incapacitated” for purposes of the definition of aggravated sexual
20 assault. In addition, the bill makes technical and grammatical
21 changes to enhance readability.

22 This bill is in response an alleged sexual assault that took place
23 at Cornell University in 2024, in which the victim had voluntarily
24 consumed drugs and alcohol before the sexual assault.