

SENATE, No. 357

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

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District 14 (Mercer and Middlesex)

SYNOPSIS

Establishes permissive inferences related to conduct that serves as predicate to sex offenses against minors.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S357 BEACH, GREENSTEIN

2

1 AN ACT concerning permissive inferences related to sex offenses
2 against minors and amending P.L.1993, c.291 and 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. Section 1 of P.L.1993, c.291 (C.2C:13-6) is amended to read
8 as follows:

9 1. Luring, enticing child by various means, attempts; crime of
10 second degree; subsequent offense, mandatory imprisonment;
11 definitions.

12 a. A person commits a crime of the second degree if he
13 attempts, via electronic or any other means, to lure or entice a child
14 or one who he reasonably believes to be a child into a motor
15 vehicle, structure or isolated area, or to meet or appear at any other
16 place, with a purpose to commit a criminal offense with or against
17 the child.

18 b. As used in this section:

19 "Child" means a person less than 18 years old.

20 "Electronic communication device" means any device capable
21 of transmitting information by wire, radio, optical cable,
22 electromagnetic, or other similar means. "Electronic
23 communication device" includes, but is not limited to, a computer
24 or any other device with Internet capability, telephone, wireless
25 phone or other wireless communications device, pager or electronic
26 text messaging device.

27 "Electronic means" includes, but is not limited to, the Internet,
28 which shall have the meaning set forth in N.J.S.2C:24-4, or any
29 electronic communication device.

30 "Structure" means any building, room, ship, vessel or airplane
31 and also means any place adapted for overnight accommodation of
32 persons, or for carrying on business therein, whether or not a person
33 is actually present.

34 c. Nothing herein shall be deemed to preclude, if the evidence
35 so warrants, an indictment and conviction for attempted kidnapping
36 under the provisions of N.J.S.2C:13-1.

37 d. A person convicted of a second or subsequent offense under
38 this section shall be sentenced to a term of imprisonment.
39 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6,
40 the term of imprisonment shall include, unless the person is
41 sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory
42 minimum term of one-third to one-half of the sentence imposed, or
43 three years, whichever is greater, during which time the defendant
44 shall not be eligible for parole. If the person is sentenced pursuant
45 to N.J.S.2C:43-7, the court shall impose a minimum term of one-

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 third to one-half of the sentence imposed, or five years, whichever
2 is greater. The court may not suspend or make any other non-
3 custodial disposition of any person sentenced as a second or
4 subsequent offender pursuant to this section.

5 For the purposes of this section, an offense is considered a
6 second or subsequent offense if the actor has at any time been
7 convicted pursuant to this section, or under any similar statute of
8 the United States, this State or any other state for an offense that is
9 substantially equivalent to this section.

10 e. A person convicted of an offense under this section who has
11 previously been convicted of a violation of N.J.S.2C:14-2,
12 subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4 shall be sentenced
13 to a term of imprisonment. Notwithstanding the provisions of
14 subsection a. of N.J.S.2C:43-6, the term of imprisonment shall
15 include, unless the person is sentenced pursuant to the provisions of
16 N.J.S.2C:43-7, a mandatory minimum term of five years, during
17 which time the defendant shall not be eligible for parole. The court
18 may not suspend or make any other non-custodial disposition of any
19 person sentenced pursuant to this section.

20 For the purposes of this subsection, an offense is considered a
21 previous conviction of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-
22 3 or N.J.S.2C:24-4 if the actor has at any time been convicted under
23 any of these sections or under any similar statute of the United
24 States, this State or any other state for an offense that is
25 substantially equivalent to any of these sections.

26 f. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
27 law, a conviction under this section shall not merge with a
28 conviction of any other criminal offense, nor shall such other
29 conviction merge with a conviction under this section, and the court
30 shall impose separate sentences upon each violation of this section
31 and any other criminal offense. The court may not suspend or make
32 any other non-custodial disposition of any person sentenced
33 pursuant to this section.

34 g. For purposes of this section, the following permissive
35 inferences shall apply.

36 (1) Proof that a defendant agreed to meet with a child or a
37 person whom the defendant reasonably believed to be a child
38 without first taking reasonable steps to determine whether the other
39 person was actually a child shall give rise to a permissive inference
40 that the defendant believed the other person to be a child.

41 (2) Proof that a defendant traveled any distance either within
42 this State, to this State, or from this State by any means, or
43 attempted to do so, or caused another to do so or to attempt to do
44 so, to meet with a child or a person whom the defendant reasonably
45 believed to be a child without first taking reasonable steps to
46 determine whether the other person was actually a child shall give

1 rise to a permissive inference that the defendant believed the other
2 person to be a child.

3 (3) Proof that a defendant 25 years of age or older who falsely
4 represents his age as less than 25 years of age when communicating
5 via electronic means with another person shall give rise to a
6 permissive inference that the defendant believed the other person to
7 be a child.

8 (4) Proof that the defendant transmitted by any means to a
9 person who is a child or who the actor reasonably believes to be a
10 child an image of any kind depicting a prohibited sexual act as
11 defined in paragraph (1) of subsection b. of N.J.S.2C:24-4 or a
12 simulation thereof, including but not limited to a depiction of a
13 cartoon or graphic character or characters engaged in a prohibited
14 sexual act, shall give rise to a permissive inference that the
15 defendant acted with the purpose to commit a criminal offense with
16 or against the child.

17 (5) Proof that a defendant violated N.J.S.2C:34-3 shall give rise
18 to a permissive inference that, with respect to the victim of such
19 violation, defendant acted with the purpose to commit a criminal
20 offense with or against the child.

21 (6) Proof that the defendant transmitted by any means to a
22 person who is a child or who the actor reasonably believes to be a
23 child obscene material in violation of subsection b. of N.J.S.2C:34-
24 3 shall give rise to a permissive inference that the defendant acted
25 with the purpose to commit a criminal offense with or against the
26 child.

27 (7) Proof that the defendant, with respect to another person who
28 is a child or who the actor reasonably believes to be a child, directly
29 or indirectly solicited a child or a person who the defendant
30 reasonably believed to be a child to engage in sexual activities,
31 discuss sexual conduct or intimate parts as that term is defined in
32 N.J.S.2C:14-1, or provide personal sexual information shall give
33 rise to an inference that the defendant acted with the purpose to
34 commit a criminal offense against the child.

35 (8) Proof that the defendant directly or indirectly discussed
36 sexual conduct or intimate parts as that term is defined in
37 N.J.S.2C:14-1 with, or provided personal sexual information to,
38 another person who is a child or who the actor reasonably believes
39 to be a child shall give rise to an inference that the defendant acted
40 with the purpose to commit a criminal offense against the child.

41 h. It shall not be a defense to a prosecution for an attempt to
42 lure or entice a child that the defendant did not travel any distance,
43 or attempt to do so, or cause another to do so or to attempt to do so,
44 to meet with a child or a person whom the defendant reasonably
45 believed to be a child.

46 i. If the child who is subjected to conduct in violation of
47 subsection a. of this section is less than 18 years old, the actor shall

1 be strictly liable and it shall not be a defense that the actor did not
2 know that the child was less than 18 years old, nor shall it be a
3 defense that the actor believed that the child was 18 years of age or
4 older, even if such a mistaken belief was reasonable.

5 (cf: P.L.2007, c.273, s.1)

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7 2. 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, or who causes the child harm that would make the child an
13 abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and
14 P.L.1974, c.119, s.1 (C.9:6-8.21) is guilty of a crime of the second
15 degree. Any other person who engages in conduct or who causes
16 harm as described in this subsection to a child under the age of 16 is
17 guilty of a crime of the third degree.

18 (2) For purposes of this subsection, the following permissive
19 inferences shall apply.

20 (i) Proof that a defendant traveled any distance either within
21 this State, to this State, or from this State by any means, or
22 attempted to do so, or caused another to do so or to attempt to do
23 so, to meet with a child or a person whom the defendant reasonably
24 believed to be a child without first taking reasonable steps to
25 determine whether the other person was actually a child shall give
26 rise to a permissive inference that the defendant was attempting to
27 engage in sexual conduct which would impair or debauch the
28 morals of the child.

29 (ii) Proof that the defendant transmitted by any means to a
30 person who is a child or who the actor reasonably believed to be a
31 child an image of any kind depicting a prohibited sexual act as
32 defined in paragraph (1) of subsection b. of this section or a
33 simulation thereof, including but not limited to a depiction of a
34 cartoon or graphic character or characters engaged in a prohibited
35 sexual act, shall give rise to a permissive inference that the
36 defendant was attempting to engage in sexual conduct which would
37 impair or debauch the morals of the child.

38 (iii) Proof that a defendant violated N.J.S.2C:34-3 shall give rise
39 to a permissive inference that, with respect to the victim of such
40 violation, defendant was attempting to engage in sexual conduct
41 which would impair or debauch the morals of the child.

42 (iv) Proof that the defendant transmitted by any means to a
43 person who is a child or who the actor reasonably believed to be a
44 child obscene material in violation of subsection b. of N.J.S.2C:34-
45 3 shall give rise to a permissive inference that the defendant was
46 attempting to engage in sexual conduct which would impair or
47 debauch the morals of the child.

1 (v) Proof that the defendant, with respect to another person who
2 is a child or who the actor reasonably believes to be a child, directly
3 or indirectly solicited a child or a person who the defendant
4 reasonably believed to be a child to engage in sexual activities,
5 discuss sexual conduct or intimate parts as that term is defined in
6 N.J.S.2C:14-1, or provide personal sexual information shall give
7 rise to an inference that the defendant was attempting to engage in
8 sexual conduct which would impair or debauch the morals of the
9 child.

10 (vi) Proof that the defendant directly or indirectly discussed
11 sexual conduct or intimate parts as that term is defined in
12 N.J.S.2C:14-1 with, or provided personal sexual information to,
13 another person who is a child or who the actor reasonably believes
14 to be a child shall give rise to an inference that the defendant acted
15 with the purpose to commit a criminal offense against the child.

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

17 “Child” means any person under 16 years of age.

18 “Internet” means the international computer network of both
19 federal and non-federal interoperable packet switched data
20 networks.

21 “Prohibited sexual act” means

22 (a) Sexual intercourse; or

23 (b) Anal intercourse; or

24 (c) Masturbation; or

25 (d) Bestiality; or

26 (e) Sadism; or

27 (f) Masochism; or

28 (g) Fellatio; or

29 (h) Cunnilingus;

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

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

34 “Reproduction” means, but is not limited to, computer generated
35 images.

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

37 (3) A person commits a crime of the second degree if he causes
38 or permits a child to engage in a prohibited sexual act or in the
39 simulation of such an act if the person knows, has reason to know
40 or intends that the prohibited act may be photographed, filmed,
41 reproduced, or reconstructed in any manner, including on the
42 Internet, or may be part of an exhibition or performance. If the
43 person is a parent, guardian or other person legally charged with the
44 care or custody of the child, the person shall be guilty of a crime of
45 the first degree.

46 (4) Any person who photographs or films a child in a prohibited
47 sexual act or in the simulation of such an act or who uses any

1 device, including a computer, to reproduce or reconstruct the image
2 of a child in a prohibited sexual act or in the simulation of such an
3 act is guilty of a crime of the second degree.

4 (5) (a) Any person who knowingly receives for the purpose of
5 selling or who knowingly sells, procures, manufactures, gives,
6 provides, lends, trades, mails, delivers, transfers, publishes,
7 distributes, circulates, disseminates, presents, exhibits, advertises,
8 offers or agrees to offer, through any means, including the Internet,
9 any photograph, film, videotape, computer program or file, video
10 game or any other reproduction or reconstruction which depicts a
11 child engaging in a prohibited sexual act or in the simulation of
12 such an act, is guilty of a crime of the second degree.

13 (b) Any person who knowingly possesses, receives or
14 knowingly views any photograph, film, videotape, computer
15 program or file, video game or any other reproduction or
16 reconstruction which depicts a child engaging in a prohibited sexual
17 act or in the simulation of such an act, including on the Internet, is
18 guilty of a crime of the fourth degree.

19 (6) For purposes of this subsection, a person who is depicted as
20 or presents the appearance of being under the age of 16 in any
21 photograph, film, videotape, computer program or file, video game
22 or any other reproduction or reconstruction shall be rebuttably
23 presumed to be under the age of 16.

24 If the child who is depicted as engaging in, or who is caused to
25 engage in, a prohibited sexual act or simulation of a prohibited
26 sexual act is under the age of 16, the actor shall be strictly liable
27 and it shall not be a defense that the actor did not know that the
28 child was under the age of 16, nor shall it be a defense that the actor
29 believed that the child was 16 years of age or older, even if such a
30 mistaken belief was reasonable.

31 (cf: P.L.2001, c.291, s.1)

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33 3. This act shall take effect immediately.

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STATEMENT

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38 This bill amends the luring and enticing law (N.J.S.A.2C:13-6)
39 and the endangering the welfare of minors law (N.J.S.A.2C:24-4) to
40 establish permissive inferences which are related to conduct which
41 serves as a predicate to sex offenses against minors.

42 Section 1 of the bill amends N.J.S.A.2C:13-6 to expand the
43 definition of “electronic means” to include not only the Internet but
44 also any electronic communication device. “Electronic
45 communication device” is defined as any device capable of
46 transmitting information by wire, radio, optical cable,
47 electromagnetic, or other similar means. “Electronic

1 communication device” includes, but is not limited to, a computer
2 or any other device with Internet capability, telephone, wireless
3 phone or other wireless communications device, pager or electronic
4 text messaging device.

5 Section 1 of the bill also amends N.J.S.A.2C:13-6 to establish
6 the following permissive inferences concerning the luring and
7 enticing of a child:

8 (1) Proof that a defendant agreed to meet with a child or
9 a person whom the defendant reasonably believed to be a
10 child without first taking reasonable steps to determine
11 whether the other person was actually a child shall give rise
12 to a permissive inference that the defendant believed the
13 other person to be a child.

14 (2) Proof that a defendant traveled any distance either
15 within this State, to this State, or from this State by any
16 means, or attempted to do so, or caused another to do so or
17 to attempt to do so, to meet with a child or a person whom
18 the defendant reasonably believed to be a child without
19 first taking reasonable steps to determine whether the other
20 person was actually a child shall give rise to a permissive
21 inference that the defendant believed the other person to be
22 a child.

23 (3) Proof that a defendant 25 years of age or older who
24 falsely represents his age as less than 25 years of age when
25 communicating via electronic means with another person
26 shall give rise to a permissive inference that the defendant
27 believed the other person to be a child.

28 (4) Proof that the defendant transmitted by any means to
29 a person who is a child or who the actor reasonably
30 believes to be a child an image of any kind depicting a
31 prohibited sexual act as defined in paragraph (1) of
32 subsection b. of N.J.S.2C:24-4 or a simulation thereof,
33 including but not limited to a depiction of a cartoon or
34 graphic character or characters engaged in a prohibited
35 sexual act, shall give rise to a permissive inference that the
36 defendant acted with the purpose to commit a criminal
37 offense with or against the child.

38 (5) Proof that a defendant violated N.J.S.2C:34-3
39 (obscene material) shall give rise to a permissive inference
40 that, with respect to the victim of such violation, defendant
41 acted with the purpose to commit a criminal offense with
42 or against the child.

43 (6) Proof that the defendant transmitted by any means to
44 a person who is a child or who the actor reasonably
45 believes to be a child obscene material in violation of
46 subsection b. of N.J.S.2C:34-3 shall give rise to a
47 permissive inference that the defendant acted with the

1 purpose to commit a criminal offense with or against the
2 child.

3 (7) Proof that the defendant, with respect to another
4 person who is a child or who the actor reasonably believes
5 to be a child, directly or indirectly solicited a child or a
6 person who the defendant reasonably believed to be a child
7 to engage in sexual activities, discuss sexual conduct or
8 intimate parts as that term is defined in N.J.S.2C:14-1, or
9 provide personal sexual information shall give rise to an
10 inference that the defendant acted with the purpose to
11 commit a criminal offense against the child.

12 (8) Proof that the defendant directly or indirectly
13 discussed sexual conduct or intimate parts with, or
14 provided personal sexual information to, another person
15 who is a child or who the actor reasonably believes to be a
16 child shall give rise to an inference that the defendant acted
17 with the purpose to commit a criminal offense against the
18 child.

19 In addition, the bill provides that it shall not be a defense to a
20 prosecution for luring or enticing a child that the defendant did not
21 travel any distance or attempt to do so, or cause another to do so or
22 to attempt to do so, to meet with a child or a person whom the
23 defendant reasonably believed to be a child. The bill would also
24 eliminate the affirmative defense that the actor did not know that
25 the child was less than 18, nor would it be a defense that the actor
26 believed that the child was 18 years of age or older even if such a
27 mistaken belief was reasonable. Furthermore, this bill provides that
28 a person who violates the luring statute would be strictly liable if
29 the child is less than 18.

30 Section 2 of the bill amends subsection a. of N.J.S.A.2C:24-4 to
31 provide the following permissive inferences concerning
32 endangering the welfare of a child by any person who has the legal
33 duty for the care of the child and who engages in sexual conduct
34 which would impair or debauch the morals of a child:

35 (i) Proof that a defendant traveled any distance either
36 within this State, to this State, or from this State by any
37 means, or attempted to do so, or caused another to do so or
38 to attempt to do so, to meet with a child or a person whom
39 the defendant reasonably believed to be a child without
40 first taking reasonable steps to determine whether the other
41 person was actually a child shall give rise to a permissive
42 inference that the defendant was attempting to engage in
43 sexual conduct which would impair or debauch the morals
44 of the child.

45 (ii) Proof that the defendant transmitted by any means to
46 a person who is a child or who the actor reasonably
47 believed to be a child an image of any kind depicting a

1 prohibited sexual act as defined in paragraph (1) of
2 subsection b. of this section or a simulation thereof,
3 including but not limited to a depiction of a cartoon or
4 graphic character or characters engaged in a prohibited
5 sexual act, shall give rise to a permissive inference that the
6 defendant was attempting to engage in sexual conduct
7 which would impair or debauch the morals of the child.

8 (iii) Proof that a defendant violated N.J.S.2C:34-3 shall
9 give rise to a permissive inference that, with respect to the
10 victim of such violation, defendant was attempting to
11 engage in sexual conduct which would impair or debauch
12 the morals of the child.

13 (iv) Proof that the defendant transmitted by any means
14 to a person who is a child or who the actor reasonably
15 believed to be a child obscene material in violation of
16 subsection b. of N.J.S.2C:34-3 shall give rise to a
17 permissive inference that the defendant was attempting to
18 engage in sexual conduct which would impair or debauch
19 the morals of the child.

20 (v) Proof that the defendant, with respect to another
21 person who is a child or who the actor reasonably believes
22 to be a child, directly or indirectly solicited a child or a
23 person who the defendant reasonably believed to be a child
24 to engage in sexual activities, discuss sexual conduct or
25 intimate parts as that term is defined in N.J.S.2C:14-1, or
26 provide personal sexual information shall give rise to an
27 inference that the defendant was attempting to engage in
28 sexual conduct which would impair or debauch the morals
29 of the child.

30 (vi) Proof that the defendant directly or indirectly
31 discussed sexual conduct or intimate parts as that term is
32 defined in N.J.S.2C:14-1 with, or provided personal sexual
33 information to, another person who is a child or who the
34 actor reasonably believes to be a child shall give rise to an
35 inference that the defendant acted with the purpose to
36 commit a criminal offense against the child.

37 This bill is part of the Attorney General's initiative concerning
38 Internet safety.