

SENATE, No. 358

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Co-Sponsored by:

Senators Stack and Greenstein

SYNOPSIS

Makes it a crime to communicate or transmit sexually suggestive communications to a minor under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning criminal prohibitions against sexually
2 suggestive communications made to a minor and supplementing
3 2C of the New Jersey Statutes.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. (1) Any person who communicates with or transmits an
9 image via electronic means to any person for the purpose of
10 committing, attempting to commit, conspiring to commit, or
11 soliciting another person to commit any offense enumerated in
12 paragraph (2) of subsection b. of N.J.S.2C:7-2 in which the victim
13 or intended victim is, or the actor reasonably believes to be, less
14 than 13 years of age, commits a crime of the fourth degree.

15 (2) Any person who communicates with or transmits an image
16 via electronic means to any person for the purpose of committing,
17 attempting to commit, conspiring to commit, or soliciting another
18 person to commit any offense enumerated in paragraph (2) of
19 subsection b. of N.J.S.2C:7-2 in which the victim or intended victim
20 is, or the actor reasonably believes to be, at least 13 but less than 16
21 years old and at least four years younger than the actor, commits a
22 crime of the fourth degree if the actor is or reasonably believes he is
23 at least four years older than the victim or intended victim.

24 (3) For purposes of this section, “electronic means” includes,
25 but is not limited to, the Internet, which shall have the meaning set
26 forth in N.J.S.2C:24-4, or any electronic communication device.
27 “Electronic communication device” means any device capable of
28 transmitting information by wire, radio, optical cable,
29 electromagnetic, or other similar means. “Electronic
30 communication device” includes but is not limited to a computer or
31 any other device with Internet capability, telephone, wireless phone
32 or other wireless communications device, pager or electronic text
33 messaging device.

34 b. A person convicted of a second or subsequent offense under
35 this section or a person convicted under this section who has
36 previously been convicted of a violation of any offense enumerated
37 in paragraph (2) of subsection b. of N.J.S.2C:7-2 shall be guilty of a
38 crime of the third degree and sentenced to a term of imprisonment.
39 Notwithstanding the provisions of paragraph (2) of subsection a. of
40 N.J.S.2C:43-6, the term of imprisonment shall include, unless the
41 person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a
42 mandatory minimum term of three years, during which time the
43 defendant shall not be eligible for parole. If the person is sentenced
44 pursuant to N.J.S.2C:43-7, the court shall impose a minimum term
45 of one-third to one-half of the sentence imposed, or five years,
46 whichever is greater. The court may not suspend or make any other

1 non-custodial disposition of any person sentenced as a second or
2 subsequent offender pursuant to this section.

3 c. Nothing herein shall be deemed to preclude, if the evidence
4 so warrants, an indictment and conviction for any other crime or
5 offense.

6 d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
7 law, a conviction under this section shall not merge with a
8 conviction of any other criminal offense, nor shall such other
9 conviction merge with a conviction under this section, and the court
10 shall impose separate sentences upon each violation of this section
11 and any other criminal offense. The court may not suspend or make
12 any other non-custodial disposition of any person sentenced
13 pursuant to this section.

14 e. (1) There shall be a permissive inference that a person 25
15 years of age or older who falsely represents his age as less than 25
16 years of age when communicating via electronic means with
17 another person believes the other person to be less than 16 years of
18 age.

19 (2) There shall be a permissive inference that a person who
20 transmits to another person via electronic means an image of any
21 kind depicting a prohibited sexual act as defined in paragraph (1) of
22 subsection b. of N.J.S.2C:24-4 or a simulation thereof, including
23 but not limited to a depiction of a cartoon or graphic character or
24 characters engaged in a prohibited sexual act, acts with the purpose
25 of committing, attempting to commit, conspiring to commit, or
26 soliciting another person to commit an offense enumerated in
27 paragraph (2) of subsection b. of N.J.S.2C:7-2.

28 (3) There shall be a permissive inference that a person who uses
29 electronic means to promote obscene material in violation of
30 subsection b. of N.J.S.2C:34-3 acted with the purpose of
31 committing, attempting to commit, conspiring to commit, or
32 soliciting another person to commit an offense enumerated in
33 paragraph (2) of subsection b. of N.J.S.2C:7-2.

34 (4) There shall be a permissive inference that a person who
35 directly or indirectly solicits a person under the age of 16 or who
36 the actor reasonably believe to be under the age of 16 to engage in
37 sexual activities, discuss sexual conduct or intimate parts as that
38 term is defined in N.J.S.2C:14-1, or provide personal sexual
39 information acted with the purpose of committing, attempting to
40 commit, conspiring to commit, or soliciting another person to
41 commit an offense enumerated in paragraph (2) of subsection b. of
42 N.J.S.2C:7-2.

43 (5) There shall be a permissive inference that a person who
44 directly or indirectly discusses sexual conduct or intimate parts as
45 that term is defined in N.J.S.2C:14-1 with, or provides personal
46 sexual information to a person under the age of 16 or who the actor
47 reasonably believes to be under the age of 16 acted with the purpose

1 of committing, attempting to commit, conspiring to commit, or
2 soliciting another person to commit an offense enumerated in
3 paragraph (2) of subsection b. of N.J.S.2C:7-2.

4
5 2. This act shall take effect immediately.

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8 STATEMENT

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10 This bill supplements Title 2C of the New Jersey Statutes to
11 make it a crime of the fourth degree for any person to communicate
12 with or transmit an image via electronic means to any person who
13 the actor reasonably believes is less than 13 years of age or who is
14 at least 13 but less than 16 years old and at least four years younger
15 than the actor (if the actor is or reasonably believes he is at least
16 four years older than the victim or intended victim) for the purpose
17 of committing, attempting to commit, conspiring to commit, or
18 soliciting another person to commit any offense enumerated in
19 paragraph (2) of subsection b. of N.J.S.2C:7-2.

20 The enumerated crimes are: a conviction, adjudication of
21 delinquency, or acquittal by reason of insanity for aggravated
22 sexual assault; sexual assault; aggravated criminal sexual contact;
23 kidnapping pursuant to N.J.S.2C:13-1; endangering the welfare of a
24 child by engaging in sexual conduct which would impair or debauch
25 the morals of the child pursuant to subsection a. of N.J.S.2C:24-4;
26 endangering the welfare of a child pursuant to paragraph (3) or (4)
27 or subparagraph (a) of paragraph (5) of subsection b. of
28 N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993,
29 c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-
30 3b. if the victim is a minor; kidnapping pursuant to N.J.S.2C:13-1;
31 criminal restraint pursuant to N.J.S.2C:13-2, or false imprisonment
32 pursuant to N.J.S.2C:13-3 if the victim is a minor and the offender
33 is not the parent of the victim; knowingly promoting prostitution of
34 a child pursuant to paragraph (3) or paragraph (4) of subsection b.
35 of N.J.S.2C:34-1; or an attempt to commit any of these enumerated
36 offenses.

37 Under the provisions of the bill, "electronic means" includes, but
38 is not limited to, the Internet, which shall have the meaning set
39 forth in N.J.S.2C:24-4, or any electronic communication device.
40 The bill defines "electronic communication device" as any device
41 capable of transmitting information by wire, radio, optical cable,
42 electromagnetic, or other similar means. "Electronic communication
43 device" includes but is not limited to a computer or any other
44 device with Internet capability, telephone, wireless phone or other
45 wireless communications device, pager or electronic text messaging
46 device.

1 This bill provides that a person convicted of a second or
2 subsequent offense would be guilty of a crime of the third degree
3 and sentenced to a mandatory term of imprisonment of three years,
4 during which time the defendant would not be eligible for parole.

5 In addition, this bill provides for the following permissive
6 inferences:

7 (1) There shall be a permissive inference that a person
8 25 years of age or older who falsely represents his age as
9 less than 25 years of age when communicating via
10 electronic means with another person believes the other
11 person to be less than 16 years of age.

12 (2) There shall be a permissive inference that a person
13 who transmits to another person via electronic means an
14 image of any kind depicting a prohibited sexual act as
15 defined in paragraph (1) of subsection b. of N.J.S.2C:24-4
16 or a simulation thereof, including but not limited to a
17 depiction of a cartoon or graphic character or characters
18 engaged in a prohibited sexual act, acts with the purpose of
19 committing, attempting to commit, conspiring to commit,
20 or soliciting another person to commit an offense
21 enumerated in paragraph (2) of subsection b. of
22 N.J.S.2C:7-2.

23 (3) There shall be a permissive inference that a person
24 who uses electronic means to promote obscene material in
25 violation of subsection b. of N.J.S.2C:34-3 acted with the
26 purpose of committing, attempting to commit, conspiring
27 to commit, or soliciting another person to commit an
28 offense enumerated in paragraph (2) of subsection b. of
29 N.J.S.2C:7-2.

30 (4) There shall be a permissive inference that a person
31 who directly or indirectly solicits a person under the age of
32 16 or who the actor reasonably believe to be under the age
33 of 16 to engage in sexual activities, discuss sexual conduct
34 or intimate parts as that term is defined in N.J.S.2C:14-1,
35 or provide personal sexual information acted with the
36 purpose of committing, attempting to commit, conspiring
37 to commit, or soliciting another person to commit an
38 offense enumerated in paragraph (2) of subsection b. of
39 N.J.S.2C:7-2.

40 (5) There shall be a permissive inference that a person
41 who directly or indirectly discusses sexual conduct or
42 intimate parts as that term is defined in N.J.S.2C:14-1 with,
43 or provides personal sexual information to a person under
44 the age of 16 or who the actor reasonably believes to be
45 under the age of 16 acted with the purpose of committing,
46 attempting to commit, conspiring to commit, or soliciting

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1 another person to commit an offense enumerated in
2 paragraph (2) of subsection b. of N.J.S.2C:7-2.
3 This bill is part of the Attorney General's initiative concerning
4 Internet safety.