

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:14-1; 2C:14-2 (Sexual assault-redefine in relation to mentally retarded victim)

LAWS OF: 1983

CHAPTER: 249

Bill No: A1844

Sponsor(s): Lesniak and Deverin

Date Introduced: September 30, 1982

Committee: Assembly: Judiciary, Law, Public Safety and Defense  
Senate: Judiciary

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: December 6, 1982  
Senate: May 23, 1983

Date of Approval: July 7, 1983

Following statements are attached if available:

Sponsor statement: Yes (Below)

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

Sponsor's Statement:

This bill will amend subsection C. (2) of N.J.S. 2C:14-2 to provide that an actor is guilty of sexual assault if he commits an act of penetration with a mentally defective person. The amendment will fill a gap in the existing law.

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**ASSEMBLY, No. 1844**

**STATE OF NEW JERSEY**

INTRODUCED SEPTEMBER 30, 1982

By Assemblymen LESNIAK and DEVERIN

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

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 \*1. N. J. S. 2C:14-1 is amended to read as follows:

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

4 a. "Actor" means a person accused of an offense proscribed  
5 under this act;

6 b. "Victim" means a person alleging to have been subjected to  
7 offenses proscribed by this act;

8 c. "Sexual penetration" means vaginal intercourse, cunnilingus,  
9 fellatio or anal intercourse between persons or insertion of the  
10 hand, finger or object into the anus or vagina either by the actor or  
11 upon the actor's instruction. The depth of insertion shall not be  
12 relevant as to the question of commission of the crime;

13 d. "Sexual contact" means an intentional touching by the victim  
14 or actor, either directly or through clothing, of the victim's or  
15 actor's intimate parts for the purpose of degrading or humiliating  
16 the victim or sexually arousing or sexually gratifying the actor.  
17 Sexual contact of the actor with himself must be in view of the  
18 victim whom the actor knows to be present;

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

22 f. "Severe personal injury" means severe bodily injury, dis-

**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 printed in italics *thus* is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

**\*—Senate committee amendments adopted March 30, 1983.**

23 figurement, disease, incapacitating mental anguish or chronic pain;  
 24 g. "Physically helpless" means that condition in which a person  
 25 is unconscious or is physically unable to flee or is physically unable  
 26 to communicate unwillingness to act;

27 h. "Mentally defective" means that condition in which a person  
 28 suffers from a mental disease or defect which renders that person  
 29 temporarily or permanently incapable of **[appraising]** *understand-*  
 30 *ing* the nature of his conduct;

31 i. "Mentally incapacitated" means that condition in which a per-  
 32 son is rendered temporarily incapable of **[appraising]** *understand-*  
 33 *ing* or controlling his conduct due to the influence of a narcotic,  
 34 anesthetic intoxicant, or other substance administered to that  
 35 person without his prior knowledge or consent, or due to any other  
 36 act committed upon that person which rendered that person in-  
 37 capable of appraising or controlling his conduct;

38 j. "Coercion" as used in this chapter shall refer to those acts  
 39 which are defined as criminal coercion in section 2C:13-5(1), (2),  
 40 (3), (4), (6) and (7).\*

1 \***[1.]**\* \*2.\* N. J. S. 2C:14-2 is amended to read as follows:

2 2C:14-2. Sexual Assault. a. An actor is guilty of aggravated  
 3 sexual assault if he commits an act of sexual penetration with  
 4 another person under any one of the following circumstances:

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

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

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

9 (b) The actor has supervisory or disciplinary power over  
 10 the victim by virtue of the actor's legal, professional, or oc-  
 11 cupational status, or

12 (c) The actor is a foster parent, a guardian, or stands in  
 13 loco parentis within the household;

14 (3) The act is committed during the commission, or attempted  
 15 commission, whether alone or with one or more other persons, of  
 16 robbery, kidnapping, homicide, aggravated assault on another,  
 17 burglary, arson or criminal escape;

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

22 (5) The actor is aided or abetted by one or more other persons  
 23 and either of the following circumstances exists:

24 (a) The actor uses physical force or coercion, or

25 (b) The victim is one whom the actor knew or should have  
26 known was physically helpless, mentally defective or mentally  
27 incapacitated;

28 (6) The actor uses physical force or coercion and severe personal  
29 injury is sustained by the victim.

30 Aggravated sexual assault is a crime of the first degree.

31 b. An actor is guilty of sexual assault if he commits an act of  
32 sexual contact with a victim who is less than 13 years old and the  
33 actor is at least four years older than the victim.

34 c. An actor is guilty of sexual assault if he commits an act of  
35 sexual penetration with another person under any one of the fol-  
36 lowing circumstances:

37 (1) The actor uses physical force or coercion, but the victim  
38 does not sustain severe personal injury;

39 (2) The victim is one whom the actor knew or should have  
40 known was physically helpless, *mentally defective* or mentally in-  
41 capacitated;

42 (3) The victim is on probation or parole, or is detained in a  
43 hospital, prison or other institution \***[or is mentally defective]**\*  
44 and the actor has supervisory or disciplinary power over the victim  
45 by virtue of the actor's legal, professional or occupational status;

46 (4) The victim is at least 16 but less than 18 years old and the  
47 actor is a member of the victim's household with supervisory or  
48 disciplinary power over the victim;

49 (5) The victim is at least 13 but less than 16 years old and the  
50 actor is at least four years older than the victim.

51 Sexual assault is a crime of the second degree.

1 \***[2.]**\* \*3.\* This act shall take effect immediately.

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ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO  
ASSEMBLY, No. 1844

**STATE OF NEW JERSEY**

DATED: OCTOBER 18, 1982

Assembly Bill No. 1844 amends present law to provide that a person would be guilty of sexual assault if he commits an act of penetration with a mentally defective person. Under N. J. S. 2C:14-1(h), mentally defective means a "condition in which a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his conduct."

Under N. J. S. 2C:14-2(5)(b), a person is guilty of aggravated sexual assault if he is aided and abetted by one or more other persons to commit an act of sexual penetration with a mentally defective person.

This bill is identical to the original version of Senate Bill No. 1241 before it was amended and released by the Senate Judiciary Committee. The amendment to Senate Bill No. 1241 provides that a person commits a sexual assault only when he engages in sexual acts with a mentally defective person who is detained in a hospital, prison or other institution. The purpose of the amendment, as explained by the committee statement, is an attempt to avoid penalizing a person who is married to a mentally defective person because, under the penal code, marriage to an alleged victim does not preclude a prosecution for sexual assault.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1844

**STATE OF NEW JERSEY**

DATED: MARCH 30, 1983

Presently, under chapter 14 of the penal code, a person commits a sexual assault if he engages in sexual acts with a mentally defective person under certain circumstances even if there was no force or coercion involved. Those circumstances are when the person is joined by a third person or when the person is in a supervisory or disciplinary position who is mentally defective. Assembly Bill No. 1844 would provide that under all circumstances who knowingly engages in a sexual act with a mentally defective person commits a crime.

In reviewing Assembly Bill No. 1844, it was suggested that its enactment as drafted might result in the criminalization of consensual sexual acts by even mildly retarded adults. In order to minimize this possibility, the committee adopted amendments to definitions of the terms "mentally defective" and "mentally incapacitated" as used in chapter 14 so that only those incapable of understanding the nature of their conduct would be unable to consent to sexual activities.