

2C:24-4

LEGISLATIVE HISTORY CHECKLIST
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(Child pornography--crime)

NJSA: 2C:24-4
LAWS OF: 1992 CHAPTER: 2
BILL NO: A263
SPONSOR(S): Stuhltrager
DATE INTRODUCED: Pre-filed
COMMITTEE: ASSEMBLY: Judiciary, Law, Public Safety
SENATE: Judiciary
AMENDED DURING PASSAGE: No
DATE OF PASSAGE: ASSEMBLY: February 10, 1992
SENATE: March 23, 1992
DATE OF APPROVAL: April 1, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes
COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes
FISCAL NOTE: No
VETO MESSAGE: No
MESSAGE ON SIGNING: Yes
FOLLOWING WERE PRINTED:
REPORTS: No
HEARINGS: No

For newspaper clippings see
Legislative history of L.1992, c7

KBG:pp

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LEGISLATIVE HISTORY CHECKLIST

1 AN ACT concerning child pornography and amending
2 N.J.S.2C:24-4.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. N.J.S.2C:24-4 is amended to read as follows:

7 2C:24-4. Endangering Welfare of Children. a. Any person
8 having a legal duty for the care of a child or who has assumed
9 responsibility for the care of a child who engages in sexual
10 conduct which would impair or debauch the morals of the child,
11 or who causes the child harm that would make the child an abused
12 or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and
13 P.L.1974, c.119, s.1 (C.9:6-8.21) is guilty of a crime of the third
14 degree. Any other person who engages in conduct or who causes
15 harm as described in this subsection to a child under the age of 16
16 is guilty of a crime of the fourth degree.

17 b. As used in this subsection:

18 (1) "Child" shall mean any person under 16 years of age.

19 (2) "Prohibited sexual act" means

20 (a) Sexual intercourse; or

21 (b) Anal intercourse; or

22 (c) Masturbation; or

23 (d) Bestiality; or

24 (e) Sadism; or

25 (f) Masochism; or

26 (g) Fellatio; or

27 (h) Cunnilingus; or

28 (i) Nudity, if depicted for the purpose of sexual stimulation or
29 gratification of any person who may view such depiction.

30 (3) Any person, including any parent, guardian, or other person
31 legally charged with the care or custody of a child, who causes or
32 permits a child to engage in a prohibited sexual act or in the
33 simulation of such an act if the person knows, has reason to know
34 or intends that the prohibited act may be photographed, filmed,
35 reproduced, or reconstructed in any manner or may be part of an
36 exhibition or performance is guilty of a crime of the second
37 degree.

38 (4) Any person who photographs or films a child in a prohibited
39 sexual act or in the simulation of such an act or who uses any
40 device to reproduce or reconstruct the image of a child in a
41 prohibited sexual act or in the simulation of such an act is guilty
42 of a crime of the second degree.

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

9 (b) Any person who knowingly possesses or knowingly views any
10 photograph, film, video tape or any other reproduction or
11 reconstruction which depicts a child engaging in a prohibited
12 sexual act or in the simulation of such an act, is guilty of a crime
13 of the fourth degree.

14 (6) For purposes of this subsection, a person who is depicted as
15 or presents the appearance of being under the age of 16 in any
16 photograph or film shall be rebuttably presumed to be under the
17 age of 16.

18 (cf: P.L.1983, c.494, s.1)

19 2. This act shall take effect immediately.

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24 **Makes possession of child pornography a crime of the fourth**
25 **degree.**

ASSEMBLY, No. 263

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Assemblymen STUHLTRAGER and LoBIONDO

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2 N.J.S.2C:24-4.

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12 or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and
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18 (cf: P.L.1983, c.494, s.1)

19 2. This act shall take effect immediately.
20
21

22 STATEMENT 23

24 The United States Supreme Court recently ruled that states
25 may make it a crime to possess pornographic photographs of
26 children. Osborne v. Ohio, No. 88-5986 (decided April 18, 1990)
27 held that constitutionally protected privacy rights are not
28 infringed by statutes which allow the prosecution of persons who
29 own or view such material in their own homes.

30 Currently, N.J.S.A.2C:24-4 (which prohibits endangering the
31 welfare of children) makes it a crime of the second degree to
32 manufacture, sell or distribute any photograph, film, video tape
33 or any other material which depicts a child engaging in an actual
34 or simulated sexual act. Possession of such material is not
35 currently prohibited.

36 This bill would make it a crime of the fourth degree to
37 knowingly possess or knowingly view such material. A crime of
38 the fourth degree is punishable by a term of imprisonment of up
39 to 18 months or a fine of up to \$7,500, or both.
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44 Makes possession of child pornography a crime of the fourth
45 degree.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 263

STATE OF NEW JERSEY

DATED: JANUARY 30, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Bill No. 263.

The United States Supreme Court recently ruled that states may make it a crime to possess pornographic photographs of children. Osborne v. Ohio, U.S. 110 S.Ct. 1691 (1990) The court held that constitutionally protected privacy rights are not infringed on by statutes which allow the prosecution of persons who own or view such material in their own homes.

Currently, N.J.S.A.2C:24-4 which prohibits endangering the welfare of children makes it a crime of the second degree to manufacture, sell or distribute any photograph, film, videotape or any other material which depicts a child engaging in an actual or simulated sexual act. Possession of such material is not currently prohibited.

This bill would amend N.J.S.A. 2C:24-4 to make it a crime of the fourth degree to knowingly possess or knowingly view such material. A crime of the fourth degree is punishable by a term of imprisonment not to exceed 18 months or a fine not to exceed \$7,500, or both.

The committee wishes to note that the purpose of this bill is to stop trafficking in child pornography. The rationale underlying the provision is to break the cycle of child pornography by attempting to destroy the market for this material which exploits children. The committee believes the criminalization of knowing possession or viewing of this kind of material is justified by a compelling interest in protecting minors. This bill is intended to criminalize possession of material which shows actual children or their likenesses. Left open to the court's interpretation is the situation which is purely imaginary in that no actual children are depicted. The language being added by this bill must be read in the context of N.J.S.A. 2C:24-4.

This bill was pre-filed for introduction in the 1992 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 263

STATE OF NEW JERSEY

DATED: MARCH 16, 1992

The Senate Judiciary Committee reports favorably Assembly Bill No. 263.

The United States Supreme Court recently ruled that states may make it a crime to possess pornographic photographs of children. Osborne v. Ohio, U.S. 110 S.Ct. 1691 (1990). The court held that constitutionally protected privacy rights are not infringed on by statutes which allow the prosecution of persons who own or view such material in their own homes.

Currently, N.J.S.A.2C:24-4, which prohibits endangering the welfare of children, makes it a crime of the second degree to manufacture, sell or distribute any photograph, film, videotape or any other material which depicts a child engaging in an actual or simulated sexual act. Possession of such material is not currently prohibited. This bill would amend N.J.S.A.2C:24-4 to make it a crime of the fourth degree to knowingly possess or knowingly view such material.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
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TRENTON, N.J. 08625
Release:

Wednesday
April 1, 1992

GOVERNOR SIGNS LAW MAKING CHILD PORNOGRAPHY POSSESSION A CRIME

PRINCETON -- Law enforcement officials will have another tool in efforts to crack down on the exploitive child pornography business as Governor Jim Florio today signed a law making it a crime in the state to possess pornographic materials using children.

"Child pornography is soul-killing sickness. The scars it leaves on its victims may be invisible, but they are deep and crippling and sometimes, they are permanent," said Governor Florio, attending the Child Assault Prevention Conference. "There is no place for such behavior in a civilized society. And we will not tolerate it in New Jersey."

"New Jersey law already prohibits the sale and production of child pornography. But just choking off the supply side isn't enough. Our new child pornography prevention law will destroy the market for the exploitive use of children by making possession of child pornography a crime. From now on, we'll treat anyone who would rob our children of their innocence the same way we treat people who rob banks -- as criminals," he said. "Our new law is among the toughest in the nation."

The bill, A 263, sponsored by Assemblymen Gary Stuhltrager/Frank LoBiondo and Senator Joseph Palaia, makes it a fourth degree crime to possess child pornography materials, with a prison term of up to 18 months and fines up to \$7,500. Currently, New Jersey law makes it a second degree crime to sell child pornography with a prison term of between five and ten years.

In 1990, the U.S. Supreme Court ruled that states could ban possession of child pornography materials without violating the federal Constitution. The Court based its ruling on its finding that a state was justified in protecting children by banning possession as a way to cut off the market.

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"Childhood ought to be a time of wonder and discovery, a time to be safe, strong and free. Every child needs and deserves such a time but not every child gets it. Some are robbed of it by people who prey on the trust and innocence -- producers and collectors of child pornography," Governor Florio said. "We have a responsibility to protect our children from these moral vultures. And we have a responsibility in government to use the law to protect the rights of the innocent. Today, we're taking another step toward fulfilling that mandate."

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