

2A:30B-1

LEGISLATIVE HISTORY CHECKLIST
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(Children-sexual exploitation)

NJSA: 2A:30B-1

LAWS OF: 1992 CHAPTER: 7

BILL NO: A381

SPONSOR(S): Heck

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage
denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: February 10, 1992

SENATE: April 2, 1992

DATE OF APPROVAL: May 13, 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:

HEARINGS:

See newspaper clippings-attached

KBG:pp

P.L.1992, CHAPTER 7, *approved May 13, 1992*

1992 Assembly No. 381 (*First Reprint*)

1 **AN ACT** establishing a civil action against persons who sexually
2 exploit children for profit and supplementing Title 2A of the
3 New Jersey Statutes.

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

7 1. The Legislature finds and declares that:

8 a. Child pornography is a lucrative business which sexually
9 exploits children and preys on their vulnerability.

10 b. While criminal laws exist to penalize those who sexually
11 exploit children, these laws are sometimes insufficient to
12 protect and indemnify the victim and prevent the perpetrators
13 from accumulating large profits from the making and
14 distribution of "kiddie porn."

15 c. This act is designed to give the victims of child
16 pornography a civil action against those persons who sexually
17 exploit them for profit ¹directly or indirectly¹ which can be
18 brought through a parent or guardian or child advocacy
19 organization or by the victim upon reaching the age of
20 majority. ¹Any director, officer, servant, employee or other
21 person authorized to act on behalf of a corporation may be
22 personally liable if found liable individually or jointly with the
23 corporation under the provisions of this act.¹

24 d. The act will allow victims to recover three times the
25 financial gains made by those who exploit them and will
26 authorize injunctive relief to halt the making and distribution of
27 films and other materials.

28 2. As used in this act:

29 a. "Child" means any person under 18 years of age;

30 b. "Person" means any natural person, association,
31 partnership, corporation or other entity ¹. "Corporation"
32 includes any director, officer, servant, employee or other person
33 authorized to act on behalf of a corporation¹ ;

34 c. "Prohibited sexual act" means

35 (1) Sexual intercourse; or

36 (2) Anal intercourse; or

37 (3) Masturbation; or

38 (4) Bestiality; or

39 (5) Sadism; or

40 (6) Masochism; or

41 (7) Fellatio; or

42 (8) Cunnilingus; or

43 (9) Nudity, if depicted for the purpose of sexual stimulation

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted February 3, 1992.

- 1 or gratification of any person who may view the depiction.
- 2 3. a. A child, through a parent or guardian or child advocacy
3 organization or personally upon reaching the age of majority,
4 may bring a civil action in the Superior Court, in any county
5 where venue lies, for monetary damages or injunctive relief or
6 both, against a person who:
- 7 (1) Permits, entices or coerces the child to engage in a
8 prohibited sexual act or in the simulation of such an act if the
9 person knows, has reason to know or intends that the prohibited
10 act may be photographed, filmed, reproduced, or reconstructed
11 in any manner or may be part of an exhibition or performance;
- 12 (2) Photographs or films the child in a prohibited sexual act
13 or in the simulation of such an act or who uses any device to
14 reproduce or reconstruct the image of the child in a prohibited
15 sexual act or in the simulation of such an act;
- 16 (3) Knowingly receives for the purpose of selling or who
17 knowingly sells, procures, manufactures, gives, provides, lends,
18 trades, mails, delivers, transfers, publishes, distributes,
19 circulates, disseminates, presents, exhibits, advertises, offers or
20 agrees to offer any photograph, film, video tape or any other
21 reproduction or reconstruction which depicts the child engaging
22 in a prohibited sexual act or in the simulation of such an act.
- 23 b. In any action brought pursuant to this act, the court shall,
24 upon a finding for the plaintiff, award recovery of three times
25 the amount of damages consisting of financial gains to the
26 defendant resulting from the conduct described in paragraphs
27 (1), (2) and (3) of subsection a. of this section, together with full
28 costs and reasonable attorney's fees.
- 29 4. If the parent or guardian is to be a defendant in the action,
30 the court shall appoint a special guardian to bring the action on
31 behalf of the child.
- 32 5. The Supreme Court is directed to adopt appropriate rules
33 to effectuate the purposes of this act.
- 34 6. Every action brought pursuant to this act shall be
35 commenced within two years after the child reaches the age of
36 majority.
- 37 7. The right to bring an action under this act is in addition to
38 and not in derogation of the right to bring any other civil or
39 criminal action. ¹This act shall be construed so that any
40 director, officer, servant, employee or other person authorized
41 to act on behalf of a corporation may be personally liable under
42 the provisions of this act.¹
- 43 8. This act shall take effect on the 180th day after
44 enactment ¹and shall apply to any cause of action accruing on or
45 after the effective date¹, except for section 5 which shall take
46 effect immediately.
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- 51 Establishes a civil action against persons who sexually exploit
52 children for profit.

ASSEMBLY, No. 381

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Assemblywomen HECK and CRECCO

1 AN ACT establishing a civil action against persons who sexually
2 exploit children for profit and supplementing Title 2A of the
3 New Jersey Statutes.

4

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

7 1. The Legislature finds and declares that:

8 a. Child pornography is a lucrative business which sexually
9 exploits children and preys on their vulnerability.

10 b. While criminal laws exist to penalize those who sexually
11 exploit children, these laws are sometimes insufficient to
12 protect and indemnify the victim and prevent the perpetrators
13 from accumulating large profits from the making and
14 distribution of "kiddie porn."

15 c. This act is designed to give the victims of child
16 pornography a civil action against those persons who sexually
17 exploit them for profit which can be brought through a parent or
18 guardian or child advocacy organization or by the victim upon
19 reaching the age of majority.

20 d. The act will allow victims to recover three times the
21 financial gains made by those who exploit them and will
22 authorize injunctive relief to halt the making and distribution of
23 films and other materials.

24 2. As used in this act:

25 a. "Child" means any person under 18 years of age;

26 b. "Person" means any natural person, association,
27 partnership, corporation or other entity;

28 c. "Prohibited sexual act" means

29 (1) Sexual intercourse; or

30 (2) Anal intercourse; or

31 (3) Masturbation; or

32 (4) Bestiality; or

33 (5) Sadism; or

34 (6) Masochism; or

35 (7) Fellatio; or

36 (8) Cunnilingus; or

37 (9) Nudity, if depicted for the purpose of sexual stimulation
38 or gratification of any person who may view the depiction.

39 3. a. A child, through a parent or guardian or child advocacy
40 organization or personally upon reaching the age of majority,
41 may bring a civil action in the Superior Court, in any county
42 where venue lies, for monetary damages or injunctive relief or
43 both, against a person who:

44 (1) Permits, entices or coerces the child to engage in a
45 prohibited sexual act or in the simulation of such an act if the

1 person knows, has reason to know or intends that the prohibited
2 act may be photographed, filmed, reproduced, or reconstructed
3 in any manner or may be part of an exhibition or performance;

4 (2) Photographs or films the child in a prohibited sexual act
5 or in the simulation of such an act or who uses any device to
6 reproduce or reconstruct the image of the child in a prohibited
7 sexual act or in the simulation of such an act;

8 (3) Knowingly receives for the purpose of selling or who
9 knowingly sells, procures, manufactures, gives, provides, lends,
10 trades, mails, delivers, transfers, publishes, distributes,
11 circulates, disseminates, presents, exhibits, advertises, offers or
12 agrees to offer any photograph, film, video tape or any other
13 reproduction or reconstruction which depicts the child engaging
14 in a prohibited sexual act or in the simulation of such an act.

15 b. In any action brought pursuant to this act, the court shall,
16 upon a finding for the plaintiff, award recovery of three times
17 the amount of damages consisting of financial gains to the
18 defendant resulting from the conduct described in paragraphs
19 (1), (2) and (3) of subsection a. of this section, together with full
20 costs and reasonable attorney's fees.

21 4. If the parent or guardian is to be a defendant in the action,
22 the court shall appoint a special guardian to bring the action on
23 behalf of the child.

24 5. The Supreme Court is directed to adopt appropriate rules
25 to effectuate the purposes of this act.

26 6. Every action brought pursuant to this act shall be
27 commenced within two years after the child reaches the age of
28 majority.

29 7. The right to bring on action under this act is in addition to
30 and not in derogation of the right to bring any other civil or
31 criminal action.

32 8. This act shall take effect on the 180th day after
33 enactment, except for section 5 which shall take effect
34 immediately.

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STATEMENT

39 This bill gives victims of child pornography a civil action
40 against those persons who sexually exploit them for profit and is
41 directed at "kiddie porn." The bill allows victims to recover
42 three times the financial gains made by those who exploit them
43 and authorizes injunctive relief to halt distribution of films and
44 other materials. The action may be brought by the victim
45 through a parent or guardian or child advocacy organization or
46 personally upon the victim's reaching the age of majority.

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51 Establishes a civil action against persons who sexually exploit
52 children for profit.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 381

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 30, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 381.

This bill would provide victims of child pornography, "kiddie porn", with a civil remedy against those persons who sexually exploit them for profit. The bill would allow victims to recover in damages three times the financial gains made by those who exploit them. The bill also authorizes injunctive relief to halt distribution of films and other materials. The action may be brought by the victim through a parent or guardian or child advocacy organization or personally upon the victim's reaching the age of majority. An action must be brought within two years after the child reaches majority.

The committee amendments are intended to clarify that persons serving in certain corporate positions may be personally liable for damages, either individually or jointly with the corporation. A corporate officer, for example, sued under the provisions of this bill may not attempt to avoid liability because of his corporate position. The amendments also clarify the effective date to provide that the act shall apply to all causes of action accruing on or after the effective date. Thus, a person who is less than 20 years of age as of the effective date of this bill may pursue this civil action for damages if he or she has been victimized under the bill's provisions since the bill provides in section 6 that the action must be commenced within two years of the victim's attaining the age of majority, 18 years.

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. 381

STATE OF NEW JERSEY

DATED: MARCH 23, 1992

The Senate Judiciary Committee reports favorably Assembly Bill No. 381.

This bill would provide victims of child pornography with a civil remedy against those persons who sexually exploit them for profit. The bill would allow victims to recover in damages three times the financial gains made by those who exploit them. The bill also authorizes injunctive relief to halt distribution of films and other materials. The action may be brought by the victim through a parent or guardian or child advocacy organization or personally upon the victim's reaching the age of majority. An action must be brought within two years after the child reaches majority.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact:

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TRENTON, N.J. 08625

Release:

Wednesday
May 13, 1992

GOVERNOR FLORIO SIGNS LAWS TOUGHENING PENALTIES AND BOOSTING CHILD PROTECTION EFFORTS

EDISON -- Because children are the most vulnerable members of our society, Governor Jim Florio today signed a trio of bills toughening laws and increasing penalties for persons who exploit and abuse children.

"Today we sign child protection legislation in the form of three bills that reflect our commitment to the cherished place children hold in our hearts. The well-being of our children demands that we provide increased deterrence for heinous crimes. Too often, their cries and needs go unheard," said Governor Florio. "After all, children are our most important, but the most vulnerable members of our society. And our children are not represented by lobbyists or political action committees."

"It is our responsibility to protect our children from the moral vultures that prey upon them. In government, we must use the full measure of the law to protect the rights of the innocent. Today, we're taking a major step toward fulfilling that mandate," he said.

The bills would:

- **Establish tougher penalties against persons who sexually exploit children for profit.** The bill would establish a civil action against persons who sexually exploit children for profit through the distribution of child pornography or through other means. The bill allows a child, either personally upon reaching the age of 18 or through a parent or child advocacy group, to seek an injunction or damages against a person or company who sexually exploits the child. If successful, the child would be entitled to damages equal to three times the defendant's financial gain from the exploitation. A 381/S 541 was sponsored by Assemblypersons Rose Marie Heck and Marion Crecco, and Senator Jack Sinagra.
- **Increases penalties for lewdness committed in the presence of a child under 13 or a mentally disabled person.** The law upgrades the crime from a disorderly persons offense (six months in jail) to a fourth degree crime with a standard penalty of 18 months imprisonment and a maximum fine of \$7,500. A 850 was sponsored by Assemblypersons Harriet Derman and Frank Catania.

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- ***Increase penalties for endangering the welfare of a child.*** This offense is defined as either engaging in sexual conduct that would impair or debauch the morals of the child or causing the child harm that would make the child abused and neglected. Included are conducts such as willful failure to provide food to a child and creation of a substantial risk of physical injury by other than accidental means.

The bill increases the crime from third degree to a second-degree crime when committed by a parent or other adult with a legal duty to care for the child and authorizes a longer prison term of up to five to ten years, from the previous five year maximum. Making it a second degree crime carries a presumption of incarceration, so even in the case of first-time offenders, a jail term is nearly guaranteed. A 307/S 563 was sponsored by Assemblypersons Marion Crecco and Gary Stuhltrager, and Senator John Matheussen.

New Jersey law already prohibits the sale and production of child pornography. And in April, Governor Florio signed a law giving law enforcement officials another tool in efforts to crack down on the exploitive child pornography business by making it a crime in the state to possess pornographic materials using children.

The law 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. 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

"Our new laws will make sure that criminals pay with hard time and significant fines and these laws should further our efforts to destroy any and all markets that exploit children," said Governor Florio. "Child pornography and sexual abuse leave our children with scars that may be invisible. But they are deep and crippling and sometimes, they are permanent. There is no place for such behavior in a civilized society and we will not tolerate it in New Jersey."

"On behalf of all the brave survivors of childhood sexual abuse and especially on behalf of the children, it is my pleasure to sign into laws these bills that will help make their world safer," he said.

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