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

Establishes first degree crime of sexual assault by fraud.

PRIME Sponsor \_\_\_\_\_ / \_\_\_\_\_

<u>CO-Sponsor</u>	<u>District</u>	<u>CO-Sponsor</u>	<u>District</u>

Same as \_\_\_\_\_ 12/13      Same as \_\_\_\_\_ 14/15

Suggested allocation:

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

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

1. N.J.S.2C:14-1 is amended to read as follows:  
2C:14-1. Definitions. The following definitions apply to this chapter:

- a. "Actor" means a person accused of an offense proscribed under this act;
- b. "Victim" means a person alleging to have been subjected to offenses proscribed by this act;
- c. "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of commission of the crime;
- d. "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present;
- e. "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person;
- f. "Severe personal injury" means severe bodily injury, disfigurement, disease, incapacitating mental anguish or chronic pain;
- g. "Physically helpless" means that condition in which a person is unconscious or is physically unable to flee or is physically unable to communicate unwillingness to act;
- h. (Deleted by amendment, P.L.2011, c.232)
- i. "Mentally incapacitated" means that condition in which a person is rendered temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct;
- j. "Coercion" as used in this chapter shall refer to those acts which are defined as criminal coercion in section 2C:13-5(1), (2), (3), (4), (6) and (7);
- k. "Committed by fraud" as used in this chapter means an act of sexual penetration to which a person has given consent because the actor has misrepresented the purpose of the act or has represented he is someone he is not.

**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.

(cf: P.L.2011, c.232, s.3)

2. N.J.S.2C:14-2 is amended to read as follows:
- 2C:14-2. Sexual assault. a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:
- (1) The victim is less than 13 years old;
  - (2) The victim is at least 13 but less than 16 years old; and
  - (a) The actor is related to the victim by blood or affinity to the third degree, or
  - (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or
  - (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;
  - (3) The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape;
  - (4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object;
  - (5) The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion;
  - (6) The actor uses physical force or coercion and severe personal injury is sustained by the victim;
  - (7) The victim is one whom the actor knew or should have known was physically helpless or incapacitated, intellectually or mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent;
  - (8) The act is committed by fraud.
- Aggravated sexual assault is a crime of the first degree.
- Except as otherwise provided in subsection d. of this section, a person convicted under paragraph (1) of this subsection shall be sentenced to a specific term of years which shall be fixed by the court and shall be between 25 years and life imprisonment of which the person shall serve 25 years before being eligible for parole, unless a longer term of parole ineligibility is otherwise provided pursuant to this Title.
- b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.
  - c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

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

(2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;

(3) The victim is at least 16 but less than 18 years old and:

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

(b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or

(c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;

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

Sexual assault is a crime of the second degree.

d. Notwithstanding the provisions of subsection a. of this section, where a defendant is charged with a violation under paragraph (1) of subsection a. of this section, the prosecutor, in consideration of the interests of the victim, may offer a negotiated plea agreement in which the defendant would be sentenced to a specific term of imprisonment of not less than 15 years, during which the defendant shall not be eligible for parole. In such event, the court may accept the negotiated plea agreement and upon such conviction shall impose the term of imprisonment and period of parole ineligibility as provided for in the plea agreement, and may not impose a lesser term of imprisonment or parole or a lesser period of parole ineligibility than that expressly provided in the plea agreement. The Attorney General shall develop guidelines to ensure the uniform exercise of discretion in making determinations regarding a negotiated reduction in the term of imprisonment and period of parole ineligibility set forth in subsection a. of this section.

(cf: 2014, c.7, s.1)

3. This act shall take effect immediately.

#### STATEMENT

This bill would expand the penalties for aggravated sexual assault to include an act of sexual penetration that is committed by fraud.

Pursuant to N.J.S.2C:14-2, a person who commits an unlawful act of sexual penetration or sexual contact is guilty of aggravated sexual assault or sexual assault. Whether the crime will be the first degree crime of aggravated sexual assault or the second degree crime of sexual assault depends on the circumstances surrounding the act. These circumstances include, but are not limited to, any use

of force by the defendant; the degree of injury suffered by the victim; whether the defendant and the victim had a family relationship or supervisory relationship; the victim's age, if the victim was under age 18; and whether the act was committed during the commission of another crime.

A person who commits aggravated sexual assault is guilty of a crime of the first degree punishable by a term of imprisonment of 10 to 20 years and a fine of up to \$200,000 or both. If committed against a victim who is less than 13 years old, the crime of aggravated sexual assault is punishable by a sentence of not less than 25 years and up to a term of life imprisonment, or a negotiated plea agreement for not less than 15 years. The person must serve at least the minimum number of specified years of the sentence before being eligible for parole. Sexual assault is a second degree crime punishable by a term of imprisonment of five to 10 years and a fine of up to \$150,000.

In New Jersey, the use of force is not required for a conviction of aggravated sexual assault. A person may be found guilty of aggravated sexual assault in the absence of force if an act of sexual penetration is committed against a victim whom the actor knew or should have known was physically helpless or incapacitated, intellectually or mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent.

Pursuant to subsection i. of N.J.S.2C:14-1, "Mentally incapacitated" refers to the condition in which a person is rendered temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct.

A number of states have enacted statutes which criminalize sexual penetration when accomplished by an actor who fraudulently obtains the consent of the victim, also referred to as the crime of "rape by fraud" or "rape by deception." In these cases, the victim's consent is obtained by the actor's misrepresentation as to the purpose of the sexual act, or by the actor misrepresenting his identity. However, in New Jersey, sexual penetration or sexual contact accomplished through fraud is not currently a crime.

In the sponsor's view, consent to sexual penetration that is fraudulently obtained is negated, resulting in non-consensual sexual penetration. Under the bill, a person who commits an act of sexual penetration by fraud is guilty of the first degree crime of aggravated sexual assault. "Committed by fraud" is defined in section 1 of the bill to mean an act of sexual penetration to which a person has given consent because the actor has misrepresented the purpose of the act or has represented he is someone he is not.

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