

CHAPTER 232

AN ACT concerning the Criminal Code and amending various parts of the statutory law.

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

1. Section 2 of P.L.1999, c.47 (C.2C:12-10.2) is amended to read as follows:

C.2C:12-10.2 Temporary restraining order for alleged stalking; conditions.

2. a. In any case involving an allegation of stalking where the victim is a child under the age of 18 years or is developmentally disabled as defined in section 3 of P.L.1977, c.200 (C.5:5-44.4) or where the victim is 18 years of age or older and has a mental disease or defect which renders the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent, the court may issue a temporary restraining order against the defendant which limits the contact of the defendant and the victim.

b. The provisions of subsection a. of this section are in addition to, and not in lieu of, the provisions of section 3 of P.L.1996, c.39 (C.2C:12-10.1) which provide that a judgment of conviction for stalking shall operate as an application for a permanent restraining order limiting the contact of the defendant and the victim.

c. The parent or guardian of the child or the person described in subsection a. of this section may file a complaint with the Superior Court in conformity with the rules of court seeking a temporary restraining order against a person alleged to have committed stalking against the child or the person described in subsection a. of this section. The parent or guardian may seek emergency, ex parte relief. A decision shall be made by the judge regarding the emergency relief forthwith. If it appears that the child or the person described in subsection a. of this section is in danger of being stalked by the defendant, the judge shall issue a temporary restraining order pursuant to subsection e. of this section.

d. A conviction of stalking shall not be a prerequisite for the grant of a temporary restraining order under this act.

e. A temporary restraining order issued under this act shall limit the contact of the defendant and the child or the person described in subsection a. of this section who was stalked and in addition may grant all other relief specified in section 3 of P.L.1996, c.39 (C.2C:12-10.1).

f. A hearing shall be held in the Superior Court within 10 days of the issuance of any temporary restraining order which was issued on an emergency, ex parte basis. A copy of the complaint shall be served on the defendant in conformity with the rules of court. At the hearing the standard for continuing the temporary restraining order shall be by a preponderance of the evidence.

g. If the court rules that the temporary restraining order shall be continued, the order shall remain in effect until either:

(1) the defendant is convicted of stalking, in which case the court shall hold a hearing on the issue of whether a permanent restraining order shall be entered pursuant to section 3 of P.L.1996, c.39 (C.2C:12-10.1); or

(2) the victim's parent or guardian or, in the case of a victim who has reached the age of 18, the victim, requests that the restraining order be dismissed and the court finds just cause to do so.

2. N.J.S.2C:13-4 is amended to read as follows:

Interference with custody.

2C:13-4. Interference with custody.

a. Custody of children. A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if he:

(1) Takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or parenting time with the minor child; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and parenting time rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody or parenting time, or to evade the jurisdiction of the courts of this State; or

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or

(4) After the issuance of a temporary or final order specifying custody, joint custody rights or parenting time, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or parenting time order.

Interference with custody is a crime of the second degree if the child is taken, detained, enticed or concealed: (i) outside the United States or (ii) for more than 24 hours. Otherwise, interference with custody is a crime of the third degree but the presumption of non-imprisonment set forth in subsection e. of N.J.S.2C:44-1 for a first offense of a crime of the third degree shall not apply.

b. Custody of committed persons. A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, person with a mental disease, defect or illness, or other dependent or incompetent person, entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

c. It is an affirmative defense to a prosecution under subsection a. of this section, which must be proved by clear and convincing evidence, that:

(1) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Children and Families;

(2) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or

(3) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

d. It is an affirmative defense to a prosecution under subsection a. of this section that a parent having the right of custody reasonably believed he was fleeing from imminent

physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Children and Families; or

(2) Commences an action affecting custody in an appropriate court.

e. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

f. (1) In addition to any other disposition provided by law, a person convicted under subsection a. of this section shall make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

(2) In imposing sentence under subsection a. of this section the court shall consider, in addition to the factors enumerated in chapter 44 of Title 2C of the New Jersey Statutes:

(a) Whether the person returned the child voluntarily; and

(b) The length of time the child was concealed or detained.

g. As used in this section, "parent" means a parent, guardian or other lawful custodian of a minor child.

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

Definitions.

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).

4. N.J.S.2C:14-2 is amended to read as follows:

Sexual assault.

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, 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.

Aggravated sexual assault is a crime of the first degree.

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.

5. This act shall take effect on the 60th day following enactment.

Approved January 17, 2012.