



NEW JERSEY LAW REVISION COMMISSION

Tentative Report Addressing New Jersey's Child Endangerment Statute Regarding Impairing or Debauching the Morals of a Child in N.J.S. 2C:24-4(a)(1)

September 16, 2021

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **November 15, 2021**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Executive Summary

The term “sexual conduct” is not defined in New Jersey’s child endangerment statute.¹ The term, however, does appear in the context of behavior “which would impair or debauch the morals of the child.”²

Forty-two years after N.J.S. 2C:24-4 was enacted, in *State v. Johnson*, the New Jersey Superior Court, Law Division, considered whether sexually suggestive messages sent to a minor by way of social media constituted they type of sexual conduct that would impair or debauch the morals of a child.³

The Commission recommends the modification of New Jersey’s Child Endangerment statute to remove references to the anachronistic and undefined terms and to replace them with language that clearly sets forth the prohibited conduct.

Statute Considered

N.J.S. 2C:24-1(a)(1) provides:

a. (1) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in **sexual conduct** which would **impair or debauch the morals of the child** is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree [...] [Emphasis added].

Background

In *State v. Johnson*, a high school senior (hereinafter J.T.), received a message via social media from the defendant, a middle school guidance counselor at the same school, requesting a partially nude photograph of the victim.⁴ Upon receipt of this message, J.T. blocked him on Instagram.⁵ In addition, she notified her guidance counselor that she received several messages from a male staff member via social media.⁶ As a result of these communications, J.T. began to feel uncomfortable.⁷ The defendant never admitted sending messages to J.T.⁸

The defendant was charged, pursuant to a warrant, with endangering the welfare of a child under N.J.S. 2C:24-4(a)(1).⁹ Subsequently, the Grand Jury returned an indictment against the

¹ N.J.S. 2C:24-4(a)(1).

² *Id.*

³ *State v. Johnson*, 460 N.J. Super. 481 (Law Div. 2019).

⁴ *Id.* at 487.

⁵ *Id.* at 490, n.5. *See also Instagram*, <https://help.instagram.com/> (last visited Mar. 30, 2020).

⁶ *Id.* at 490.

⁷ *Id.* *See also* n.6.

⁸ *Id.* at 490.

⁹ *Id.* at 488.

defendant based upon the probable cause presented in the warrant.¹⁰ The defendant filed a motion seeking a dismissal of the indictment pursuant to New Jersey’s de minimis infraction statute.¹¹ Pursuant to the requirements of the de minimis infractions statute, this matter was heard before the Assignment Judge.^{12, 13.}

Analysis

In New Jersey, an individual is guilty of endangerment if they engage in sexual conduct that would impair or debauch the morals of the child.¹⁴ For purposes of this statute, a “child” is defined as “any person under 18 years of age.”¹⁵ In *State v. Johnson*, the trial court recognized that the term “sexual conduct” is not defined in New Jersey’s Code of Criminal Justice.¹⁶

Despite the absence of a definition for the term “sexual conduct”, the courts have determined that the statute does not require physical contact. In New Jersey, an individual can be convicted of child endangerment for showing explicit nude photographs to minors.¹⁷ In addition, sexual conversations have also been deemed a sufficient basis for a jury finding of “sexual conduct” within the meaning of N.J.S. 2C:24-4(a)(1).¹⁸ There is nothing in the child endangerment statute that requires that the sexual conduct occur in the physical presence of the victim.¹⁹ Thus, the defendant’s sexual conduct can be communicated via telephone.²⁰

To endanger a child, the prohibited conduct must impair or debauch the morals of the child.²¹ The Court, in *Johnson*, determined that “[t]he plain language of the statute unambiguously indicated that the Legislature intended for the preeminent inquiry to be the effect of the conduct in question on the child.”²² The “second element of the endangerment statute need not actually impair or debauch the victim’s morals to satisfy this standard.”²³ The trial court observed that, “[t]he word ‘would’ signals the futurity of a likely event; it does not require the event’s actual occurrence.”²⁴

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* See N.J.S. 2C:2-11.

¹³ A discussion of the de minimis infraction statute exceeds the scope of the instant Memorandum. For a thoughtful discussion of the New Jersey’s de minimis infractions statute, see *Id.* at 490.

¹⁴ N.J.S. 2C:24-4(a)(1).

¹⁵ N.J.S. 2C:24-4(b)(1).

¹⁶ *State v. Johnson*, 460 N.J. Super. at 494.

¹⁷ *Id.* See *State v. Hackett*, 323 N.J. Super. 460, 472 (App. Div. 1999) (holding that “sexual conduct” includes showing nude or explicit photographs to children). Compare with New Jersey’s obscenity statute, N.J. Stat. Ann. § 2C:34-30(b)(2).

¹⁸ *Id.* See *State v. McInerney*, 428 N.J. Super. 432, 451 (App. Div. 2012) (holding that defendant’s encouragement of boys to accept payment for reporting on sexual behavior directed by him was conduct clearly falling within the statute as that type of conduct would debauch their morals).

¹⁹ *Id.* citing *State v. Maxwell*, 361 N.J. Super. 502, 518 (Law Div. 2001).

²⁰ *Id.*

²¹ N.J.S. 2C:24-4(a)(1).

²² *State v. Johnson*, 460 N.J. Super. at 495 [emphasis in original].

²³ *Id.* citing *State v. Hackett*, 166 N.J. 66, 80 (2001).

²⁴ *Id.*

The Court in *State v. Johnson*, determined that the defendant’s electronic request to J.T. that she send him a partially nude photograph of herself constituted sexual conduct.²⁵ The Court found that, “[t]he message at issue was exactly the type of conduct that the statute was enacted to prohibit.”²⁶ The Court then turned its attention to whether the defendant’s conduct impaired or debauched the morals of the child.

The plain language of the statute prohibits conduct “which would impair or debauch the morals of the child.”²⁷ The court determined that “the child,” as set forth in the statute, referred to the victim, J.T.²⁸ In addition, the trial court acknowledged that the New Jersey Supreme Court has determined that the endangerment statute “prohibits any sexual conduct that would result in the impairing or debauching of **an average child in the community**.”²⁹ In rendering its decision, the trial court examined the impact of the defendant’s conduct on both the victim and the “average child in the community.”³⁰

The Court determined that the defendant’s message “impair[ed] or debauch[ed] J.T.’s morals.”³¹ The Court concluded that J.T.’s “actions upon receipt of the message clearly and unequivocally indicated that she was so affected... [thus]... ‘the child’ was harmed by the defendant’s conduct.”³² Upon receiving the defendant’s message, J.T. blocked the defendant from further communication and advised her guidance counselor of the defendant’s conduct.³³ Objectively, J.T. appears to have demonstrated a firm, unimpaired sense of morality. Although the morals of the victim in this case do not appear to have been impaired or debauched, she is no less worthy of protection from the behavior engaged in by the defendant. Although not stated in the statute, the State need only prove that the defendant’s conduct had the “capacity” to impair or debauch the morals of the child in question.³⁴

The Court then turned its analysis to the standard promulgated by the New Jersey Supreme Court. The trial court observed that, “[a] message from an adult guidance counselor at the same school as the student, seeking a partially nude photograph... would impair or debauch the morals of an average seventeen-year-old in the community.”³⁵ This Court’s analysis does not set forth how to determine whose morals are to be used as the baseline for determining the applicability of the child endangerment statute. In addition, the child endangerment statute does not define “impair.”

²⁵ *Id.* at 499.

²⁶ *Id.* at 500.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* citing *State v. Hackett*, 166 N.J. 66, 80 (2001) [emphasis added].

³⁰ *Id.*

³¹ *Id.* at 501.

³² *Id.*

³³ *Id.* at 490 and n.5.

³⁴ *State v. Bryant*, 419 N.J. Super. 15 (App. Div. 2011).

³⁵ *Id.* at 501.

The trial court denied the defendant's motion to dismiss pursuant to the de minimis infractions statute, N.J.S. 2C:2-11.³⁶

Model Jury Charge

In *State v. Hackett*, the Court considered a case in which defendant Charles Hackett stood nude on several occasions near the front window of his home and in full view of three girls under the age of fourteen who were waiting at their school bus stop.³⁷ Convicted and sentenced to a four-year term on the charge of endangerment and a concurrent eighteen-month term for lewdness, the defendant appealed as of right.³⁸

The majority of the Appellate Division concluded that while the defendant could be convicted for both crimes, the State failed to present adequate evidence that the lewd conduct would tend to impair or debauch the morals of a child.³⁹ In addition, a majority of the court concluded that the child endangerment jury instruction used at the time lacked sufficient clarity.⁴⁰ A dissenting opinion provided the State with the opportunity to appeal the matter to the New Jersey Supreme Court.⁴¹

In 2001, the New Jersey Supreme Court considered the sufficiency and clarity of the Model Jury Charge (MJC) used in cases where a defendant was charged with endangering the welfare of a child.⁴² At the time, the charge provided that “[s]exual conduct [that] would impair or debauch the morals of a child is conduct which *tends to corrupt, mar or spoil the morals of a child under sixteen (16) years of age.*”⁴³ The Court, affirming a modified judgment of the Appellate Division, agreed with the majority of the Appellate Division regarding the endangerment jury charge and commented on the language.⁴⁴ The Court also observed that “[...]the] explanatory language [of the endangerment statute] could, in our view, be supplemented to more clearly inform the jury of its obligation to consider the proof of sexual conduct offered by the State and to evaluate that proof in the context of objectively reasonable contemporary standards in determining whether that conduct would tend to impair the morals of the victim.”⁴⁵

For over twenty years, the MJC regarding endangerment has defined sexual conduct that would impair or debauch the morals of a child.⁴⁶ The MJC provides, in relevant part, that “[s]exual

³⁶ *Id.* at 502.

³⁷ *State v. Hackett*, 166 N.J. 66, 71 (2001).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* See also R. 2:2-1(a)(2) (2021).

⁴² *Id.* at 86.

⁴³ *Id.* [emphasis added by the New Jersey Supreme Court]. The italicized language does not appear in N.J.S. 2C:24-4(a)(1). This language was added to the endangering charge as part of a June 19, 2000, revision prepared by the Committee on Model Jury Charges, Criminal.

⁴⁴ *Id.* The Supreme Court “part[ed] ways with the majority... by concluding that the evidence adduced at trial was sufficient to have enabled a properly-instructed jury to conclude that the defendant’s conduct would debauch or impair the morals of girls aged thirteen and under.” *Id.* at 77.

⁴⁵ *Id.*

⁴⁶ See *supra* text accompanying note 43.

conduct which would impair or debauch the morals of a child is conduct which tends to corrupt, mar, or spoil the morals of a child under eighteen (18)⁴⁷ years of age.”⁴⁸ In addition, the MJC for child endangerment explicitly incorporates the supplemental language posited by the Supreme Court in *Hackett*. A jury in a child endangerment case is now instructed that, “[i]n analyzing the proofs to determine whether the evidence demonstrates that defendant’s conduct would tend to impair or debauch the morals of the child, [they should] evaluate the proofs in the context of objectively reasonable contemporary standards.”⁴⁹

To this time, neither the language of the Committee on Model Jury Charges nor the clarifying language provided by the New Jersey Supreme Court in *Hackett* has been incorporated into the endangerment statute.

50 State Survey

While New Jersey’s Model Jury Charge provides a definition for “sexual conduct which would impair or debauch the morals of [a] child,” the statute criminalizing such behavior contains no definition for the term “sexual conduct”⁵⁰ so New Jersey’s child endangerment statute was compared to similar statutes throughout the country.⁵¹

Definition of “Sexual Conduct”

The majority of states, and the District of Columbia, define the term “sexual conduct.”⁵² Each of these statutes explicitly enumerate the type of sexual activity proscribe by their respective

⁴⁷ In 2013, the Legislature broadened the scope of N.J.S.A. 2C:24-4a. by raising the age of statutorily protected children from sixteen to eighteen. *See State v. Fuqua*, 234 N.J. 583, 595, (2018) (citing *L.* 2013, c. 51, § 13).

⁴⁸ Model Jury Charge (Criminal) N.J.S. 2C:24-4a.(1) “Endangering the Welfare of a Child, Sexual Conduct (Second Degree)” (Apr. 2014).

⁴⁹ *Id.*

⁵⁰ *See* N.J.S. 2C:24-4a.(1); *see, State v. Johnson*, 460 N.J. Super. 481, 494 (Law Div. Apr. 12, 2019) (noting that “[t]he term “sexual conduct” is not defined in this statute.”).

⁵¹ *See* Fig. 1

⁵² ALA. CODE § 13A-12-200.1 (West 2021); ALASKA STAT. ANN. § 11.66.150 (West 2021); ARIZ. REV. STAT. ANN. § 13-3551 (West 2021); ARK. CODE ANN. § 5-27-401 (West 2021); CAL. PENAL CODE § 311.3 (West 2021); COLO. REV. STAT. ANN. § 18-3-418 (West 2021); D.C. CODE ANN. § 22-3101 (West 2021); HAW. REV. STAT. ANN. § 712-1210 (West 2021); IDAHO CODE ANN. § 18-1507 (West 2021); 720 ILL. COMP. STAT. ANN. 5/11-0.1 (West 2021); IND. CODE ANN. § 35-49-1-9 (West 2021); Kan. Stat. Ann. § 21-6402 (West 2021); Ky. Rev. Stat. Ann. § 529.010 (West 2021); Md. Code Ann., Crim. Law § 11-101 (West 2021); Mass. Gen. Laws Ann. ch. 272, § 31 (West 2021); Minn. Stat. Ann. § 609.352 (West 2021); Mo. Ann. Stat. § 566.200 (West 2021); Mont. Code Ann. § 45-5-625 (West 2021); Neb. Rev. Stat. Ann. § 28-807 (West 2021); Nev. Rev. Stat. Ann. § 201.520 (West 2021); N.H. Rev. Stat. Ann. § 571-B:1 (West 2021); N.M. Stat. Ann. § 30-37-1 (West 2021); N.Y. Penal Law § 130.00 (McKinney 2021); N.C. Gen. Stat. Ann. § 50C-1 (West 2021); N.D. Cent. Code Ann. § 12.1-27.2-01 (West 2021); Ohio Rev. Code Ann. § 2907.01 (West 2021); Okla. Stat. Ann. tit. 21, § 1040.75 (West 2021); Or. Rev. Stat. Ann. § 163.575 (West 2021); 18 Pa. Stat. and Cons. Stat. Ann. § 5903 (West 2021); 11 R.I. Gen. Laws Ann. § 11-34.1-1 (West 2021); S.D. Codified Laws § 22-24-27 (West 2021); Tenn. Code Ann. § 39-17-901 (West 2021); Tex. Penal Code Ann. § 43.25 (West 2021); Utah Code Ann. § 76-10-1201 (West 2021); Vt. Stat. Ann. tit. 13, § 2821 (West 2021); Va. Code Ann. § 18.2-390 (West 2021); Wash. Rev. Code Ann. § 7.90.010 (West 2021); W. Va. Code Ann. § 29-12B-3 (West 2021); Wis. Stat. Ann. § 944.21 (West 2021); and Wyo. Stat. Ann. § 6-4-301 (West 2021).

legislatures.⁵³

Although the New Jersey endangerment statute does not define “sexual conduct”, it does define the phrase “prohibited sexual acts” in a way that is comparable to the definition of “sexual conduct” found in those states that define the term.⁵⁴

The term sexual conduct is not the only undefined term in New Jersey’s child endangerment statute. New Jersey is the only state in the country that uses the term “impair or debauch the morals of a child” but it does not specify what type of behavior may serve as the basis for a violation of this statute.⁵⁵ An examination of the historical origins of the statute provides some insight into the type of behavior involving children that the government sought to outlaw.

Impair or Debauch the Morals of a Child

In New Jersey, laws designed to protect children from immoral conduct date back to 1898.⁵⁶ As originally enacted, it was unlawful for any individual who had custody or control of a minor⁵⁷ to, “sell, apprentice, give way, let out, employ, hire or otherwise dispose of such minor... for the purpose of begging, singing and playing on musical instruments, ropewalking, dancing, or for any mendicant or wandering business whatsoever, or *in any immoral conduct or occupation* in the streets, roads or other highways, or public place of this state....”⁵⁸ “Immoral conduct,” however, was not defined when the law was enacted.

In 1915, the Senate and the General Assembly enacted a law concerning the welfare of children.⁵⁹ Gone from that endangering statute were the references to “begging, singing and playing on musical instruments, ropewalking, or dancing.” In place of these specific references to “immoral conduct,” the Legislature sought to prohibit six specific actions.⁶⁰ These activities included:

“(a) disposing of the custody of a child contrary to law; (b) employing or permitting a child to be a child to be employed in any vocation or employment injurious to its health or dangerous to its life, limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child or children; (d) the habitual use by the parent... in the hearing of such child, of profane, indecent or obscene language;

⁵³ See *supra* notes 51-52.

⁵⁴ Compare N.J. STAT. ANN. § 2C:24-4b. (West 2021) (defining “prohibited sexual act” as sexual intercourse; anal intercourse; masturbation; bestiality; sadism; masochism; fellatio; cunnilingus; nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1) with *supra* notes 51-52.

⁵⁵ See Fig. 1

⁵⁶ See L.1898, c.235, § 56, p. 809 [C.S. p. 1763, § 56].

⁵⁷ Pursuant to L.1898, c.235, § 56, p. 809 [C.S. p. 1763, § 56], a minor was an individual under the age of eighteen years old.

⁵⁸ *Id.* (Emphasis added).

⁵⁹ See L.1915, c. 246, § 1, p. 441 [1924 Suppl. § 52-73c].

⁶⁰ *Id.*

(e) the performing of any indecent, *immoral*... act... in the presence of a child, that may tend to *debauch or endanger or degrade the morals of a child*, or (f) ...allowing any other person to perform any indecent, *immoral* or unlawful *act* in the presence of the child that may tend to *debauch or endanger the morals* of said child.”⁶¹

This iteration of the endangering law marked the first use of the phrase “debauching the morals of a child”⁶² but the law did not include any reference to the “conduct” the phrase was enacted to prohibit.

Three decades later, on April 25, 1945, the New Jersey Legislature again amended the child endangerment law.⁶³ In this version of the law, the Legislature prohibited “any act which tend[ed] to debauch... or impair... the morals of [a] child...”⁶⁴ Although this modification to the law included the terms “debauch” and “impair” for the first time, it did not define them.

The 1983 version of the endangerment statute held those having a legal duty for the care of a child criminally liable if they engaged in “sexual conduct” which would “impair or debauch the morals of a child...”⁶⁵ Much like the statutes that preceded it, that version of the endangerment statute provided no guidance concerning “impairing or debauching the morals of a child” or the term “sexual conduct.”⁶⁶

The Legislature amended the child endangerment statute eight more times over the next quarter of a century.⁶⁷ None of the resulting versions of the endangering statute clarified what it means to “impair or debauch the morals of a child” nor what was meant by the term “sexual conduct.”

In the absence of a statutory definition for the term “sexual conduct,” common law has filled the void and offered examples of conduct that the judiciary deemed prohibited by the endangering statute. Over the past two decades, the courts have not found that direct sexual contact is necessary for an individual to be guilty of sexual conduct.⁶⁸ In addition, “sexual conduct” has come to include: the showing nude explicit photographs to children⁶⁹; sexual conversations or

⁶¹ *Id.* (Emphasis added).

⁶² *Id.*

⁶³ See C.2:117-6.1 (L.1945, c. 2245, p. 765, § 1.

⁶⁴ *Id.*

⁶⁵ L.1983, c. 494, § 1, eff. Jan. 17, 1984

⁶⁶ *Id.* In N.J.S. 2C:24-4 subsection b. provides a list of definitions that are used in the statute, including the term “prohibited sexual act.”

⁶⁷ L.1992, c. 2, § 1, eff. April 2, 1992; L.1992, c. 6, § 1, eff. May 13, 1992; L.1995, c. 109, § 1, eff. June 1, 1995; L.1998, c. 126, § 1, eff. May 1, 1999; L.2001, c. 291, § 1, eff. Dec. 28, 2001, retroactive to May 1, 1999; L.2013, c. 51, § 13, eff. July 1, 2013; L.2013, c. 136, § 1, eff. Aug. 14, 2013; L.2017, c. 141, § 1, eff. Feb. 1, 2018.

⁶⁸ *State v. Johnson*, 460 N.J. Super. at 494.

⁶⁹ *State v. Hackett*, 323 N.J. Super. 460, 472 (App. Div. 1999) *aff'd as modified*, 166 N.J. 66 (2001). Compare with N.J. Stat. Ann. § 2C:34-3(b)(2) (providing that “[a] person who knowingly shows obscene material to a person under 18 years of age with the knowledge or purpose to arouse, gratify or stimulate himself or another is guilty of a crime of the third degree if the person showing the obscene material is at least four years older than the person under 18 years of age viewing the material.”

encouragement of sexual conduct⁷⁰; or encouraging children to accept payment for reporting on sexual behavior.⁷¹ Courts have also opined that there is nothing in N.J.S. 2C:24-4(a)(1) which requires physical presence, and that sexually explicit conversations which rise to the level of sexual conduct can be communicated by telephone.⁷²

One hundred twenty-three years after the enactment of New Jersey’s child endangerment statutes, it is not clear what constitutes “sexual conduct that would impair or debauch the morals of a child.”

Pending Legislation

There are currently seven pieces of legislation pending regarding N.J.S. 2C:24-4.⁷³ None address the issue presented in *State v. Johnson*.

Conclusion

The Commission is seeking comment regarding the proposed revisions contained in the attached Appendix that are intended to clarify New Jersey’s child endangerment statute by eliminating undefined and anachronistic terms from statute.

As currently drafted, the proposed revisions do not address the circumstances found in *State v. Hackett*.⁷⁴ The Commission is also seeking comment regarding whether the proposed modifications to N.J.S. 2C:24-4a.(6) satisfactorily address situations such as the one presented in *State v. Hackett*.⁷⁵

⁷⁰ *State v. McInerney*, 428 N.J. Super. 432, 451 (App. Div. 2012).

⁷¹ *State v. Maxwell*, 361 N.J. Super. 502, 518 (Law Div. 2001) (finding that this type of conduct would debauch the morals of a child).

⁷² *State v. Johnson*, 460 N.J. Super. at 494-495.

⁷³ A3344, 219th Leg., 1st Ann. Sess. (N.J. 2020) (clarifies that permitting sexual abusers to reside within a child constitutes endangering the welfare of a child); A2736, 219th Leg., 1st Ann. Sess. (N.J. 2020) (provides that crimes committed outside the State under certain circumstances may be prosecuted in New Jersey); A2760, 219th Leg., 1st Ann. Sess. (N.J. 2020) (provides that unlawful use, manufacture, or distribution of controlled dangerous substance by parent or caregiver in presence of child constitutes the crime of endangering welfare of that child); A2401, 219th Leg., 1st Ann. Sess. (N.J. 2020) (provides that allowing a dog to roam off of a leash in the presence of a child constitutes endangerment); S622, 219th Leg., 1st Ann. Sess. (N.J. 2020) (provides for jurisdiction for prosecution for certain crimes against minors committed outside New Jersey); and, A1795, 219th Leg., 1st Ann. Sess. (N.J. 2020) (revises child pornography law).

⁷⁴ *State v. Hackett*, 323 N.J. Super. 460 (App. Div. 1999) (defendant’s act of standing nude in his house in view of children waiting at school bus stop was conduct that fell within the meaning of “sexual conduct” or “conduct” proscribed by child endangerment statute).

⁷⁵ See discussion *supra* at 5 of *State v. Hackett*, 323 N.J. Super. 460 (App. Div. 1999).

Appendix

The text of N.J.S. 2C:24-4, Endangering Welfare of Children, including proposed modifications (proposed additions are shown with underlining, proposed deletions with ~~strikethrough~~), follows:

a. (1) A person commits a crime of the first degree if that person causes or permits a child to:

(A) engage in a prohibited sexual act;

(B) engage in the simulation of a prohibited sexual act; or

(C) be portrayed in a sexually suggestive manner if the person knows, has reason to know or intends that the prohibited sexual act or portrayal may be photographed, filmed, reproduced, reconstructed in any manner, or be part of an exhibition or performance.

[The language above is found in section b., subsection (3) of the current statute.]

(2) A person commits a crime of the second degree if that person photographs or films a child:

(A) engaged in a prohibited sexual act;

(B) engaged in the simulation of a prohibited sexual act;

(C) for portrayal in a sexually suggestive manner; or

(D) who uses any device, ~~including a computer,~~⁷⁶ to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act or for portrayal in a sexually suggestive manner.

[The language above is found in section b., subsection (4) of the current statute.]

~~(4)~~ (3) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child, is guilty of a crime of the second degree if that person ~~who~~ knowingly requests, or otherwise attempts to induce a child to:

(A) engage in a prohibited sexual act;

(B) engage in the simulation of a prohibited sexual act; or

(C) to be portrayed in a sexually suggestive manner if the person knows,

⁷⁶ The general term “any device” includes computers. It may therefore be appropriate to remove the phrase, “including a computer” to avoid any implied limitation that this language carries with it.

has reason to know or intends that the prohibited sexual act or portrayal may be photographed, filmed, reproduced, reconstructed in any manner, or be part of an exhibition or performance.

~~engages in sexual conduct which would impair or debauch the morals of the child is guilty of a crime of the second degree.~~

[The language above would replace the language currently found in section a., subsection (1).]

~~(4) Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree. if that person knowingly requests, or otherwise attempts to induce a child to:~~

(A) engage in a prohibited sexual act;

(B) engage in the simulation of a prohibited sexual act; or

(C) to be portrayed in a sexually suggestive manner if the person knows, has reason to know or intends that the prohibited sexual act or portrayal may be photographed, filmed, reproduced, reconstructed in any manner, or be part of an exhibition or performance.

[The language above would replace section a., subsection (1)]

~~(2) (5) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child, is guilty of a crime of the second degree if that person who knowingly:~~

(A) causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974, c. 119 (C.9:6-8.21); or,

(B) creates or causes to be created a substantial risk of harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974, c. 119 (C.9:6-8.21).

~~is guilty of a crime of the second degree.~~

[The language above would replace section a., subsection (1)]

~~(6) Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree if that person knowingly:~~

(A) causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974, c. 119 (C.9:6-8.21); or,

(B) creates or causes to be created a substantial risk of harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974, c. 119 (C.9:6-8.21).

b. — (1) As used in this subsection:

~~“Child” means any person under 18 years of age.~~

~~“Distribute” means to sell, or to manufacture, give, provide, lend, trade, mail, deliver, publish, circulate, disseminate, present, exhibit, display, share, advertise, offer, or make available via the Internet or by any other means, whether for pecuniary gain or not. The term also includes an agreement or attempt to distribute.~~

~~“File sharing program” means a computer program, application, software or operating system that allows the user of a computer on which such program, application, software or operating system is installed to designate files as available for searching by and copying to one or more other computers, to transmit such designated files directly to one or more other computers, and to request the transmission of such designated files directly from one or more other computers. The term “file sharing program” includes but is not limited to a computer program, application or software that enables a computer user to participate in a peer-to-peer network.~~

~~“Internet” means the international computer network of both federal and non federal interoperable packet switched data networks.~~

~~“Item depicting the sexual exploitation or abuse of a child” means a photograph, film, video, an electronic, electromagnetic or digital recording, an image stored or maintained in a computer program or file or in a portion of a file, or any other reproduction or reconstruction which:~~

~~(a) depicts a child engaging in a prohibited sexual act or in the simulation of such an act; or~~

~~(b) portrays a child in a sexually suggestive manner.~~

~~“Peer to peer network” means a connection of computer systems through which files are shared directly between the systems on a network without the need of a central server.~~

~~“Portray a child in a sexually suggestive manner” means:~~

~~(a) to depict a child’s less than completely and opaquely covered intimate parts, as defined in N.J.S. 2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or~~

~~(b) to depict any form of contact with a child's intimate parts, as defined in N.J.S. 2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or~~

~~(c) to otherwise depict a child for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value.~~

~~“Prohibited sexual act” means~~

~~(a) Sexual intercourse; or~~

~~(b) Anal intercourse; or~~

~~(c) Masturbation; or~~

~~(d) Bestiality; or~~

~~(e) Sadism; or~~

~~(f) Masochism; or~~

~~(g) Fellatio; or~~

~~(h) Cunnilingus; or~~

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

~~(j) Any act of sexual penetration or sexual contact as defined in N.J.S.~~

~~2C:14-1.~~

~~“Reproduction” means, but is not limited to, computer generated images.~~

[The language above has been moved to section f. infra.]

~~(2) (Deleted by amendment, P.L.2001, c. 291).~~

[The language above has been removed from the proposed draft]

~~(3) A person commits a crime of the first degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act or to be portrayed in a sexually suggestive manner if the person knows, has reason to know or intends that the prohibited act or portrayal may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance.~~

[The language above has been moved to section a.(1)]

~~(4) A person commits a crime of the second degree if he photographs or films a child in a prohibited sexual act or in the simulation of such an act or for portrayal in a sexually suggestive manner or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act or for portrayal in a sexually suggestive manner.~~

[The language above has been moved to section a.(2)]

~~(5)(a) **b.(1)** A person commits a crime if, by any means, including but not limited to the Internet,⁷⁷ he that person:~~

~~(i)(A) knowingly distributes an item depicting the sexual exploitation or abuse of a child;~~

~~(ii)(B) knowingly possesses an item depicting the sexual exploitation or abuse of a child with the intent to distribute that item; or~~

~~(iii)(C) knowingly stores or maintains an item depicting the sexual exploitation or abuse of a child using a file-sharing program which is designated as available for searching by or copying to one or more other computers.~~

~~(2) In a prosecution under sub-subparagraph (iii) subsection b.(1)(C) of this subparagraph, the State shall not be required to offer proof that an item depicting the sexual exploitation or abuse of a child had actually been searched, copied, transmitted or viewed by another user of the file-sharing program, or by any other person, and it shall be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or to any other person. Nor shall the State be required to prove that the defendant was aware that the item depicting the sexual exploitation or abuse of a child was available for searching or copying to one or more other computers, and the defendant shall be strictly liable for failing to designate the item as not available for searching or copying by one or more other computers.~~

~~(3) A violation of this subparagraph subsection that involves 1,000 or more items depicting the sexual exploitation or abuse of a child is a crime of the first degree; otherwise, it is a crime of the second degree.~~

~~(4) Notwithstanding the provisions of subsection a. of N.J.S. 2C:43-6, a person whose offense under this subparagraph involved at least 25 but less than 1,000 items depicting the sexual exploitation or abuse of a child shall be sentenced to a mandatory minimum term of imprisonment, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall be ineligible for parole.~~

⁷⁷ The general term “any means” includes the Internet. It may therefore be appropriate to remove the phrase, “including but not limited to the Internet” to avoid any implied limitation that this language carries with it.

(5) Notwithstanding the provisions of subsection a. of N.J.S. 2C:43-6, a person whose offense under this subparagraph involved 1,000 or more items depicting the sexual exploitation or abuse of a child shall be sentenced to a mandatory minimum term of imprisonment, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or 10 years, whichever is greater, during which the defendant shall be ineligible for parole.

(6) Notwithstanding the provisions of subsection a. of N.J.S. 2C:43-6, a person convicted of a second or subsequent offense under this subparagraph shall be sentenced to an extended term of imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this subparagraph, an offense is considered a second or subsequent offense if the actor has at any time been convicted pursuant to ~~paragraph (3), (4), or (5) of this subsection a.(1), a.(2), or b.~~, or under any similar statute of the United States, this State, or any other state for an offense that is substantially equivalent to ~~paragraph (3), (4), or (5) of this subsection a.(1), a.(2), or b.~~

(7) For purposes of this subparagraph, the term “possess” includes receiving, viewing, or having under one’s control, through any means, including the Internet.

~~(b)(i)~~ **c. (1)** A person commits a crime of the first degree if ~~he~~ that person knowingly possesses, knowingly views, or knowingly has under ~~his~~ that person’s control, through any means, including the Internet, 100,000 or more items depicting the sexual exploitation or abuse of a child.

~~(ii)~~ **(2)** A person commits a crime of the second degree if ~~he~~ that person knowingly possesses, knowingly views, or knowingly has under ~~his~~ that person’s control, through any means, including the Internet, at least 1,000 but less than 100,000 items depicting the sexual exploitation or abuse of a child.

~~(iii)~~ **(3)** A person commits a crime of the third degree if ~~he~~ that person knowingly possesses, knowingly views, or knowingly has under that person’s control, through any means, including the Internet, less than 1,000 items depicting the sexual exploitation or abuse of a child.

(4) Notwithstanding the provisions of subsection e. of N.J.S. 2C:44-1, in any instance where a person was convicted of an offense under this subparagraph that involved 100 or more items depicting the sexual exploitation or abuse of a child, the court shall impose a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

(5) Notwithstanding the provisions of subsection a. of N.J.S. 2C:43-6, a person convicted of a second or subsequent offense under this subparagraph shall be sentenced to an extended term of imprisonment as set forth in N.J.S. 2C:43-7. For the purposes of this subparagraph, an offense is considered a second or subsequent offense if the actor has at

any time been convicted pursuant to ~~paragraph (3), (4), or (5) of this subsection~~ a.(1), a.(2), or b. or under any similar statute of the United States, this State, or any other state for an offense that is substantially equivalent to ~~paragraph (3), (4), or (5) of this subsection~~ a.(1), a.(2), or b.

(6) Nothing in this subparagraph shall be construed to preclude or limit any prosecution or conviction for the offense set forth in ~~subparagraph (a) of this paragraph~~ subsection b.

d. (1)(6) For purposes of this ~~subsection~~, a person who is depicted as or presents the appearance of being under the age of 18 in any photograph, film, videotape, computer program or file, video game, or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 18.

(2) If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act or portrayed in a sexually suggestive manner is under the age of 18, the actor shall be strictly liable, ~~and~~

(3) ~~It is~~ shall not be a defense that the actor did not know that the child was under the age of 18, nor shall it be a defense that the actor believed that the child was 18 years of age or older, even if such a mistaken belief was reasonable.

e. (1)(7) For aggregation purposes, each depiction of the sexual exploitation or abuse of a child shall be considered a separate item, provided that each depiction that is in the form of a photograph, picture, image, or visual depiction of a similar nature shall be considered to be one item and each depiction that is in the form of a film, video, video-clip, movie, or visual depiction of a similar nature shall be considered to be 10 separate items, and each individual act of distribution of an item depicting the sexual exploitation or abuse of a child shall be considered a separate item.

(2) For purposes of determining the number of items depicting the sexual exploitation or abuse of a child for purposes of sentencing pursuant to ~~subparagraph (a) of paragraph (5) of this subsection~~ b., the court shall aggregate all items involved, whether the act or acts constituting the violation occurred at the same time or at different times and, with respect to distribution, whether the act or acts of distribution were to the same person or several persons or occurred at different times, provided that each individual act was committed within the applicable statute of limitations.

(3) For purposes of determining the number of items depicting the sexual exploitation or abuse of a child for purposes of sentencing pursuant to ~~subparagraph (b) of paragraph (5) of this subsection~~ c., the court shall aggregate all items involved, whether the possession of such items occurred at the same time or at different times, provided that each individual act was committed within the applicable statute of limitations.

f. b.(1) As used in this section:

(1) “Child” means any person under 18 years of age.

(2) “Distribute” means to sell, or to manufacture, give, provide, lend, trade, mail, deliver, publish, circulate, disseminate, present, exhibit, display, share, advertise, offer, or make available via the Internet or by any other means, whether for pecuniary gain or not. The term also includes an agreement or attempt to distribute.

(3) “File-sharing program” means a computer program, application, software or operating system that allows the user of a computer on which such program, application, software or operating system is installed to designate files as available for searching by and copying to one or more other computers, to transmit such designated files directly to one or more other computers, and to request the transmission of such designated files directly from one or more other computers. The term “file-sharing program” includes but is not limited to a computer program, application or software that enables a computer user to participate in a peer-to-peer network.

(4) “Internet” means the international computer network of both federal and non-federal interoperable packet switched data networks.

(5) “Item depicting the sexual exploitation or abuse of a child” means a photograph, film, video, an electronic, electromagnetic or digital recording, an image stored or maintained in a computer program or file or in a portion of a file, or any other reproduction or reconstruction which:

(a) (A) depicts a child engaging in a prohibited sexual act or in the simulation of such an act; or

(b) (B) portrays a child in a sexually suggestive manner.

(6) “Peer-to-peer network” means a connection of computer systems through which files are shared directly between the systems on a network without the need of a central server.

(7) “Portray a child in a sexually suggestive manner” means:

(a) (A) to depict a child’s less than completely and opaquely covered intimate parts, as defined in N.J.S. 2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or

(b) (B) to depict any form of contact with a child’s intimate parts, as defined in N.J.S. 2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or

~~(e)~~ (C) to otherwise depict a child for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value.

(8) “Prohibited sexual act” means

~~(a)~~ (A) Sexual intercourse; or

~~(b)~~ (B) Anal intercourse; or

~~(c)~~ (C) Masturbation; or

~~(d)~~ (D) Bestiality; or

~~(e)~~ (E) Sadism; or

~~(f)~~ (F) Masochism; or

~~(g)~~ (G) Fellatio; or

~~(h)~~ (H) Cunnilingus; or

~~(i)~~ (I) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or

~~(j)~~ (J) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1.

(9) “Reproduction” means, but is not limited to, computer generated images.

Credits: L.1978, c. 95, § 2C:24-4, eff. Sept. 1, 1979. Amended by L.1979, c. 178, § 46, eff. Sept. 1, 1979; L.1983, c. 494, § 1, eff. Jan. 17, 1984; L.1992, c. 2, § 1, eff. April 2, 1992; L.1992, c. 6, § 1, eff. May 13, 1992; L.1995, c. 109, § 1, eff. June 1, 1995; L.1998, c. 126, § 1, eff. May 1, 1999; L.2001, c. 291, § 1, eff. Dec. 28, 2001, retroactive to May 1, 1999; L.2013, c. 51, § 13, eff. July 1, 2013; L.2013, c. 136, § 1, eff. Aug. 14, 2013; L.2017, c. 141, § 1, eff. Feb. 1, 2018.

Comments

• *Reorganization*

Modified twelve times since its original enactment in 1898, amendments to New Jersey’s child endangerment law have left the present statute disjointed and difficult to understand. The proposed modifications are intended to reflect the intent of the Legislature and acknowledge the judicial precedent in this area of law.

The language of the statute has also been rendered gender neutral.

• *Subsection a.(1)*

The first-degree crime of causing or permitting a child to engage in a “prohibited sexual act” is set forth in the middle of the definition section. This portion of the statute has been moved to subsection a.(1) because it sets forth the most serious offense in the endangerment statute.

Although the location of the text has been changed, the substance of this portion of the statute has not been modified. The format of the text has been updated to make it easy to read and understand.

- *Subsection a.(2)*

It is a second-degree crime for a person to photograph or film a child in a prohibited sexual act, or the simulation thereof. In the current statute, the text of this section is found in the middle of the statute’s definition section. This portion of the statute has been moved to subsection a.(2).

Although the location of the text has been changed, the substance of the statute has not been modified. The format of the text has been updated to make it easy to read and understand.

- *Subsections a.(3) and a.(4)*

This newly drafted subsection of the statute sets forth proposed language to modify the existing language in section a.(1) of the current endangerment statute. As in the original statute, this portion of the statute pertains to individuals with a legal duty to care for a child. The proposed modifications remove the undefined term “sexual conduct” and the anachronistic reference to “impair[ing] or debauch[ing] the morals” of a child. As amended, this new section incorporates the use of the already defined term “prohibited sexual act.” In addition, the new language incorporates the majority of the acts prohibited by the common law.⁷⁸

Using parallel language, subsection a.(4) sets forth the prohibited behavior for those who do not have legal duty to care for a child and retains the language “any other person” in identifying these individuals.

- *Subsections a.(5) and a.(6)*⁷⁹

- *Clarification*

The proposed modifications are drafted to reflect the intent of the Legislature, express more clearly the incorporation of Title 9 provisions into the statute, and acknowledge thirty years of judicial precedent.⁸⁰

- *Knowingly*

As enacted, N.J.S. 2C:24-4, in subsection a. (2), does not set forth the mental element required for a defendant to be found guilty of child endangerment. The statute relies upon the “gap filler” statute, N.J.S. 2C:2-2(c)(3), which provides that when no mental state is specified in a criminal statute, the mental state of “knowingly” shall be deemed the required mental element.⁸¹ The proposed revision to the statute explicitly sets forth the mental element of the crime.

- *References to Title 9 - Explicit Incorporation*

Three subsections of Title 9 were incorporated by the Legislature into N.J.S. 2C:24-4(a)(2).⁸² In N.J.S. 9:6-1 the Legislature set forth eight actions that constitute child abuse. Acts of cruelty and neglect are set forth in N.J.S. 9:6-3. The term “abused or neglected” is defined in N.J.S. 9:6-8.21. The New Jersey Legislature expressly

⁷⁸ See discussion *supra* at 8.

⁷⁹ For a full discussion of the proposed modifications to these sections, see Final Report from Samuel M. Silver, Deputy Director, Relating to the Definition of ‘Harm’ in the Child Endangerment Statute – N.J.S. 2C:24-4(a)[(2)] to the New Jersey Law Revision Commission (Feb. 18, 2021) (on file with the Commission). See NEW JERSEY LAW REVISION COMMISSION (2021) ‘Child Endangerment’. *Minutes of NJLRC meeting 18 Feb. 2021*, Newark, New Jersey.

⁸⁰ See *State v. Fuqua*, 234 N.J. 583, 595 (2018) (referencing “thirty years of ample judicial precedent” on this subject matter).

⁸¹ See, *State v. Bryant*, 419 N.J. Super. 15 (App. Div. 2011) (providing that the endangerment statute, N.J. STAT. ANN. § 2C:24-4(a) contained no mental element and that “knowingly was the required mental element).

⁸² N.J. STAT. ANN. §§ 9:6-1, 9:6-3 and 9:6-9.21 (West 2020).

incorporated each of these statutes into N.J.S. 2C:24-4 to protect children from “harm” and “a substantial risk of harm.”

- *Judicial Interpretation*

For decades, the judiciary has held that the State is not required to prove actual harm to a child to convict under N.J.S. 2C:24-4(a)(2).⁸³ Since its enactment in 1978, N.J.S. 2C:24-4 has been amended on ten separate occasions.⁸⁴ The Legislature has not amended the statute to require proof of actual harm.⁸⁵

- *Statutory Overlap*

It is not uncommon for criminal statutes to overlap in prohibiting the same basic act.⁸⁶ In situations involving more than one applicable statute, the State, in the sound exercise of discretion, may proceed under either act.⁸⁷ The New Jersey Supreme Court has addressed the availability of disparate penalties under separate statutory schemes.⁸⁸ Under such circumstances, “the decision to proceed under either or both of the statutes is traditionally the State’s.”⁸⁹

- *Subsections b., c., d., and e.*

These sections set forth what is commonly referred to as the child pornography section of the child endangerment statute. The substance of these sections has not been modified. These subsections have been re-lettered and formatted consistent with contemporary legislative drafting to make them both easily identifiable, and comprehensible.

- *Subsection f.*

The definition section has been moved from subsection b. and re-lettered subsection f. This subsection is now a stand-alone definition section for this statute.

The substance of the definitions has not been altered.

Where appropriate, the structure of some definitions has been re-lettered and re-formatted in a manner consistent with contemporary legislative drafting to make it both easily identifiable, and comprehensible.

⁸³ *State v. Fuqua*, 234 N.J. 583, 593 (2018).

⁸⁴ L.1979, c. 178, § 46, eff. Sept. 1, 1979 (technical amendments, prohibits child participation in pornography); L.1983, c. 494, § 1, eff. Jan. 17, 1984 (fortifies the child pornography law); L.1992, c. 2, § 1, eff. April 2, 1992 (makes possession of child pornography a 4th degree crime); L.1992, c. 6, § 1, eff. May 13, 1992 (increases the penalties for endangering the welfare of a child in certain instances); L.1995, c. 109, § 1, eff. June 1, 1995 (clarifies that the manufacture, sale and possession of computer programs or video games containing child pornography are crimes under the child pornography statute); L.1998, c. 126, § 1, eff. May 1, 1999 (clarifies that depiction and dissemination of images or simulations on the Internet of child pornography constitutes crime; establishes enhanced penalties); L.2001, c. 291, § 1, eff. Dec. 28, 2001, retroactive to May 1, 1999 (technical corrections); L.2013, c. 51, § 13, eff. July 1, 2013 (redefines child as someone under 18); L.2013, c. 136, § 1, eff. Aug. 14, 2013 (reorders sec. a. and adds subsection (1) & (2)); L.2017, c. 141, § 1, eff. Feb. 1, 2018 (establishes additional penalties related to child pornography and expands crime to include portrayal of child in sexual manner; establishes crime of leader of child pornography network).

⁸⁵ *Fuqua*, 234 N.J. at 594-595.

⁸⁶ *Id.* at 596.

⁸⁷ *Id.* citing *State v. States*, 44 N.J. 285, 292 (1965). See *United States v. Batchelder*, 442 U.S. 114, 123-24 (1979)

⁸⁸ *State v. Reed*, 34 N.J. 554, 556 (1961).

⁸⁹ *Id.* at 573.