

**ADMISSABILITY OF EVIDENCE IN SEX CRIMES CASES**

“Lewd acts” shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

Amended 1992, c.8, s.1.

2C:14-5. Provisions generally applicable to Chapter 14

- a. The prosecutor shall not be required to offer proof that the victim resisted, or resisted to the utmost, or reasonably resisted the sexual assault in any offense proscribed by this chapter.
- b. No actor shall be presumed to be incapable of committing a crime under this chapter because of any age or impotency or marriage to the victim.
- c. It shall be no defense to a prosecution for a crime under this chapter that the actor believed the victim to be above the age stated for the offense, even if such a mistaken belief was reasonable.

L.1978, c. 95, s. 2C:14-5, eff. Sept. 1, 1979.

2C:14-6. Sentencing

If a person is convicted of a second or subsequent offense under sections 2C:14-2 or 2C:14-3a., the sentence imposed under those sections for the second or subsequent offense shall, unless the person is sentenced pursuant to the provisions of 2C:43-7, include a fixed minimum sentence of not less than 5 years during which the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentences as a second or subsequent offender pursuant to this section. For the purpose of this section an offense is considered a second or subsequent offense, if the actor has at any time been convicted under sections 2C:14-2 or 2C:14-3a. or under any similar statute of the United States, this state, or any other state for an offense that is substantially equivalent to sections 2C:14-2 or 2C:14-3a.

L.1978, c. 95, s. 2C:14-6, eff. Sept. 1, 1979.

2C:14-7. Victim’s previous sexual conduct; manner of dress

2C:14-7. a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of a child in violation of N.J.S.2C:14-4, evidence of the victim’s previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the

evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and highly material and meets the requirements of subsections c. and d. of this section and that the probative value of the evidence offered substantially outweighs its collateral nature of the provability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

b. In the absence of clear and convincing proof to the contrary, evidence of the victims sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

c. Evidence of previous sexual conduct with persons other than the defendant which is offered by any lay or expert witness shall not be considered relevant unless it is material to proving the source of semen, pregnancy or disease.

d. Evidence of the victim's previous sexual conduct with the defendant shall be considered relevant if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.

e. Evidence of the manner in which the victim was dressed at the time an offense was committed shall not be admitted unless such evidence is determined by the court to be relevant and admissible in the interest of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury or at such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination. A statement by the court of its findings shall also be included in the record.

f. For the purposes of this section, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, sexual activities reflected in gynecological records, living arrangement and life style.

Amended 1988, c.69:1994, c.95:1995, c.237.