

**To: New Jersey Law Review Commission**  
**From: Samuel M. Silver, Deputy Director**  
**Re: The Jessica Lunsford Act in N.J.S. 2C:14-2 and Plea Bargains as Discussed in**  
***State v. A.T.C.*, 239 N.J. 450 (2019)**  
**Date: March 08, 2021**

## MEMORANDUM

### Executive Summary

An offender convicted of an aggravated sexual assault in which the victim is less than 13 years old will be sentenced to life imprisonment and must serve a minimum of twenty-five years of this sentence.<sup>1</sup> A prosecutor “in consideration of the interests of the victim” may offer the defendant a negotiated plea agreement of fifteen years, during which the defendant would not be eligible for parole.<sup>2</sup>

The Jessica Lunsford Act (JLA)<sup>3</sup> does not require the State to present a statement of reasons explaining the departure from the twenty-five-year mandatory minimum sentence.<sup>4</sup> The JLA also does not provide a sentencing court with the opportunity to review the prosecutor’s exercise of discretion to “protect against arbitrary and capricious prosecutorial decisions.”<sup>5</sup> The absence of these safeguards served as the basis of the constitutional challenge considered by the New Jersey Supreme Court in *State v. A.T.C.*<sup>6</sup>

### Statute Considered

N.J.S. 2C:14-2 subsection a.(1) provides, in pertinent part:

a. An actor is guilty of aggravated sexual assault if the actor 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;...

Subsection a. of the statute also provides, with regard to sentencing, that:

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. [emphasis added]

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<sup>1</sup> N.J. STAT. ANN. §§ 2C:14-2(a), (d) (West 2021), commonly referred to as the Jessica Lunsford Act (JLA).

<sup>2</sup> *Id.*

<sup>3</sup> See *supra* note 1.

<sup>4</sup> N.J. STAT. ANN. §§ 2C:14-2(a), (d) (West 2021).

<sup>5</sup> *State v. A.T.C.*, 239 N.J. 450, 456 (2019), quoting *State v. Vasquez*, 129 N.J. 189, 196 (1992).

<sup>6</sup> *State v. A.T.C.*, 239 N.J. 450, 456 (2019).

Subsection d. to which subsection a. refers, provides that:

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.

### **Background**

In 2014, the defendant in *State v. A.T.C.* admitted, during the course of a child pornography investigation, that his computer contained video files of his girlfriend's daughter that he had recorded on a number of occasions beginning when she was ten years old.<sup>7</sup> The victim, then twelve years old, corroborated the defendant's confession in addition confirming that he had sexually assaulted her on multiple occasions.<sup>8</sup>

Defendant waived his right to indictment and a trial by jury.<sup>9</sup> Subject to the mandatory minimum term of incarceration set forth in the JLA, the defendant accepted a negotiated plea agreement from the State pursuant to which he would plead guilty to first-degree sexual assault of a child under thirteen years of age.<sup>10</sup> At the plea hearing, the trial court noted the recommended term of incarceration pursuant to the plea agreement – twenty years imprisonment, with a twenty-year period of parole ineligibility.<sup>11</sup>

Prior to the scheduled date of his sentencing, the defendant moved to modify his sentence.<sup>12</sup> He argued that the JLA violates the separation of powers doctrine by “vesting in the prosecutor sentencing authority constitutionally delegated to the judiciary.”<sup>13</sup> The Court denied the defendant's motion, holding that since sentencing courts retain the right to reject plea agreements under the JLA, the statute does not run afoul of the separation of powers doctrine.<sup>14</sup>

At the defendant's sentencing hearing the State advised the Court that it had “balance[d]

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<sup>7</sup> *A.T.C.*, 239 N.J. at 456-457.

<sup>8</sup> *Id.* at 457.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* The defendant also pled guilty to second-degree endangering the welfare of a child by distributing child pornography, contrary to N.J.S. 2C:24-4(b)(5)(a).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 458.

<sup>14</sup> *Id.*

the relevant factors set forth in the Attorney General Guidelines.”<sup>15</sup> The State did not, however, present a statement of reasons “justifying its decision to waive the twenty-five-year term of incarceration and period of parole ineligibility prescribed by N.J.S.A. 2C:14-2(a).”<sup>16</sup> There was no discussion, either at the plea hearing or during sentencing, as to why the “interests of the victim” warranted such a departure, or the degree thereof.<sup>17</sup>

The Court, consistent with the plea agreement, sentenced the defendant to incarceration for twenty years, with twenty years of parole ineligibility.<sup>18</sup>

The defendant appealed his convictions and the denial of his motion to modify his sentence.<sup>19</sup> The Appellate Division rejected the defendant’s argument that the JLA’s mandatory sentencing provisions violated the separation of powers doctrine.<sup>20</sup> The Court noted, however, that the authority to decide the punishment a defendant shall receive cannot be given to the prosecuting authority by the Legislature.<sup>21</sup> Instead, the authority to impose a punishment is strictly a judicial function.<sup>22</sup> The Court determined that the JLA “reserve[s] to the judiciary the power to approve or reject any agreement between the defendant and the *State*.”<sup>23</sup>

The New Jersey Supreme Court granted the defendant’s petition for certification for the limited purpose of addressing his facial challenge to the JLA as “unconstitutional for violating the separation of powers doctrine.”<sup>24</sup>

### Analysis

Before the New Jersey Supreme Court, the defendant argued that the JLA was unconstitutional because it authorizes a prosecutor to negotiate a plea agreement that has a recommended sentence outside the range set forth in the statute without requiring a statement of reasons that would permit judicial review. Defendant urged the Court to hold the Act unconstitutional unless it is amended by the Legislature to “confer on sentencing judges the discretion to sentence defendants to any term of incarceration between fifteen and twenty-five-years.”<sup>25</sup>

- *The Jessica Lunsford Act*

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<sup>15</sup> *Id.* at 459. See *Uniform Plea Negotiations Guidelines to Implement the Jessica Lunsford Act*, P.L. 2014, c. 7 (May 29, 2014), [https://www.state.nj.us/lps/dcj/agguide/lumsford\\_act.pdf](https://www.state.nj.us/lps/dcj/agguide/lumsford_act.pdf) (JLA Guidelines) (last visited Mar. 01, 2021). It should be noted that the link uses the name Lumsford instead of Lunsford.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* The defendant was also sentenced to a concurrent twenty-year term, with twenty years parole ineligibility for his conviction of distribution of child pornography.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 460.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (Emphasis in original).

<sup>24</sup> See *State v. A.T.C.*, 236 N.J. 112 (2018) and *Id.*

<sup>25</sup> *A.T.C.*, 239 N.J. at 461.

The Jessica Lunsford Act was enacted on May 15, 2014.<sup>26</sup> Pursuant to the JLA, defendants who are convicted of the aggravated sexual assault of a child under thirteen years of age will be sentenced to specific term of imprisonment between 25 years and life imprisonment.<sup>27</sup> As an incentive for defendants to plead guilty, thereby sparing the victim from having to participate in a trial, the JLA authorizes plea bargaining.<sup>28</sup> The Attorney General was required by the JLA to promulgate guidelines for use in sexual assault cases, and did so.<sup>29</sup>

- *The JLA Guidelines*

In the JLA Guidelines, the Attorney General identified seven “factors and circumstances” for the State to consider when contemplating the reduction of the twenty-five-year term of incarceration and parole ineligibility imposed by N.J.S. 2C:14-2(a).<sup>30</sup> The amount of the reduction, however, “is vested in the reasoned discretion of the prosecutor and latitude therefore is afforded to reduce the stipulated sentence based upon variable factors considering the interests of the victim.”<sup>31</sup>

In *A.T.C.*, the New Jersey Supreme Court observed that “the JLA and the Attorney General’s JLA Guidelines recognize the court’s discretion to accept or reject a plea bargain entered into by the defendant and the State.”<sup>32</sup> Neither the JLA nor the JLA Guidelines, however, “ensure[] that the court is informed of the prosecutor’s reasoning when it determines whether to accept or reject a plea agreement offered pursuant to N.J.S.A. 2C:14-2(a).”<sup>33</sup>

- *The Separation of Powers*

The New Jersey Constitution, in Article III, paragraph 1, sets forth the separation of governmental power between the three branches, stating that those powers “shall be divided among three distinct branches, the legislative, executive, and judicial.”<sup>34</sup> It further states that “[n]o person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others...”<sup>35</sup>

The constitution empowers the Legislature to define crimes and to establish appropriate punishments.<sup>36</sup> This authority means that the Legislature may enact mandatory-sentencing statutes that eliminate the opportunity for a lesser punishment.<sup>37</sup> The executive branch, through the prosecutor, “determines the extent of a defendant’s sentencing exposure when deciding what

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<sup>26</sup> See *L. 2014, c. 7*, § 1. *Id.* at 462.

<sup>27</sup> N.J. STAT. ANN. § 2C:14-2(a) (West 2021).

<sup>28</sup> N.J. STAT. ANN. § 2C:14-2(d) (West 2021), see *A.T.C.*, 239 N.J. at 463-464.

<sup>29</sup> *Id.* at 464.

<sup>30</sup> *Id.* See [https://www.state.nj.us/lps/dcj/agguide/lumsford\\_act.pdf](https://www.state.nj.us/lps/dcj/agguide/lumsford_act.pdf) (JLA Guidelines). *JLA Guidelines* at 2-3 (a) – (g).

<sup>31</sup> *Id.* at 464-465.

<sup>32</sup> *Id.* at 465. N.J. STAT. ANN. § 2C:14-2(d) (West 2021) (providing that the court “may” accept the negotiated plea agreement).

<sup>33</sup> *Id.* at 465-466.

<sup>34</sup> N.J. Const., art. III, ¶ 1.

<sup>35</sup> *Id.*

<sup>36</sup> *A.T.C.*, 239 N.J. at 467.

<sup>37</sup> *Id.* at 467-468.

charges will be brought.”<sup>38</sup> Finally, the determination of “[a] criminal sentence is always and solely committed to the discretion of the trial court...”<sup>39</sup> This authority must be exercised “within the standards prescribed by the Code of Criminal Justice.”<sup>40</sup>

- *Plea Bargains*

A plea agreement between a prosecutor and defense attorney encompasses a discussion about the alleged criminal transgression and the possible sentence.<sup>41</sup> The role of the prosecutor is “strictly limited to an agreement to recommend a form of leniency....”<sup>42</sup> After being made aware of the terms of the plea agreement, the court, in its discretion, is required to give the agreement due consideration “after being made aware of the full situation.”<sup>43</sup> Even when the State and a defendant have effectuated a plea agreement, the judge retains the exclusive authority to sentence the defendant.<sup>44</sup> A court may not simply accept a plea bargain “without reviewing the factual support and the circumstance surrounding its formation.”<sup>45</sup>

- *Constitutionality*

The New Jersey Supreme Court found that the JLA does not violate the separation of powers doctrine if: (1) the State provides the court with a statement of reasons explaining its decision to depart from the twenty-five-year mandatory minimum sentence; and (2) the court reviews the prosecutor’s exercise of discretion to determine whether it was arbitrary and capricious.<sup>46</sup>

### **Pending Bills**

To this time, six bills have been introduced in the current session of the New Jersey Legislature that concern N.J.S. 2C:14-2.<sup>47</sup> None of these bills address the issue discussed in this Memorandum nor do they show N.J.S. 2C:14-2 subsection d. as proposed for modification or removal from the statute.

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<sup>38</sup> *Id.* at 467-468 citing *State v. Lagares*, 127 N.J. 20, 27 (1992).

<sup>39</sup> *Id.* at 468 citing *State v. Hess*, 207 N.J. 123, 151 (2011).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 470.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* citing *Lagares*, 127 N.J. at 28.

<sup>46</sup> *Id.*

<sup>47</sup> See A.B. 3796, 219th Leg., First Annual Sess. (N.J. 2020) (Makes it aggravated sexual assault or sexual contact for transportation network company or taxicab driver to commit act of sexual penetration or sexual contact using coercion or without permission on passenger); S.B. 1594, 219th Leg., First Annual Sess. (N.J. 2020) is identical to A.B. 2003, 219th Leg., First Annual Sess. (N.J. 2020) (Makes all persons convicted of sexual assault subject to the No Early Release Act) (a version of this bill has been introduced in every session dating back to 2012); A.B. 2736, 219th Leg., First Annual Sess. (N.J. 2020) (provides that crimes committed outside the State under certain circumstances may be prosecuted in New Jersey); A.B. 717, 219th Leg., First Annual Sess. (N.J. 2020) (provides for jurisdiction for prosecution for certain crimes against minors committed outside New Jersey); A.B. 773, 219th Leg., First Annual Sess. (N.J. 2020) (provides for mandatory terms of imprisonment for certain sexual assaults upon a minor) (a version of this bill has been introduced to the Legislature every year since 2000). See <https://www.njleg.state.nj.us/bills/bills0001.asp> (last visited Mar. 02, 2021).

## **Conclusion**

Staff requests authorization to conduct additional research and outreach to determine whether it would be useful to clarify the JLA in response to the constitutional questions considered by the New Jersey Supreme Court in *State v. A.T.C.*