

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Deputy Director
Re: Definition of Minor as discussed in *State v. Farkas*, 2022 WL 803466 (App. Div. Mar. 17, 2022).
Date: April 10, 2023

MEMORANDUM

Project Summary

To protect children from the dangers posed by persons who commit sexual offenses, the New Jersey Legislature enacted a registration system for sex offenders¹ that is designed to provide law enforcement officials with the information necessary to prevent, or resolve, sexual abuse cases.² A person who is convicted³ of a sex offense against a minor must register with the designated registering agency.⁴ The term “minor,” however, is not defined by the Act.

In *State v. Farkas*, the Appellate Division considered whether the seventeen-year-old victim of criminal sexual contact was a minor; thus requiring the defendant to comply with the requirements of Megan’s Law.⁵ In an attempt to determine the meaning of the term “minor” the Court examined the definition of “minor” found in secondary sources;⁶ the definition of “adult” in Title 9;⁷ and the definitions of “emancipated”⁸ and “unemancipated minor.”⁹ The Court determined that in New Jersey, a minor is a person under the age of eighteen.¹⁰

In its decision, the Court did not address the two conflicting definitions of the term “minor” found in Title 2C – the New Jersey Code of Criminal Justice (“Code”).¹¹

Statute Considered

N.J.S. 2C:7-2, provides in relevant part:

a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

¹ L.1994, c. 133, § 1, eff. Oct. 31, 1994. N.J. STAT. ANN. §§ 2C:7-1 – 23 (West 2023) (“Megan’s Law” or the “Act”).

² N.J. STAT. ANN. § 2C:7-1 (West 2023).

³ N.J. STAT. ANN. § 2C:7-2 (West 2023) (providing that persons who have been “convicted, adjudicated delinquent, or found not guilty by reason of insanity for commission of a sex offense” are required to register with the designated registering agency).

⁴ N.J. STAT. ANN. § 2C:7-2(a)(1), (b)(1)-(2).

⁵ *State v. Farkas*, 2022 WL 803466 (App. Div. Mar. 17, 2022).

⁶ *Id.* at * 5. (Black’s Law Dictionary).

⁷ *Id.*; N.J. STAT. ANN. § 9:17B-3 (West 2023).

⁸ *Farkas*, 2022 WL 803466 at *5; N.J. STAT. ANN. § 2C:25-19(e) (West 2023).

⁹ *Farkas*, 2022 WL 803466 at *6; N.J. STAT. ANN. § 2C:14-14 (West 2023).

¹⁰ *Id.* at * 5.

¹¹ Compare N.J. STAT. ANN. § 2C:13-10(e) (defining “minor” in the Human Trafficking statutes as “a person who is under the age of 18 years of age”) with N.J. STAT. ANN. § 2C:58-15(c) (defining the term “minor” as “a person under the age of 16 for purposes of licensing and other provisions relating to firearms).

* * *

b. For the purposes of this act a sex offense shall include the following:

* * *

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for . . . criminal sexual contact pursuant to N.J.S.2C:14-3b. if the victim is a minor; . . . or false imprisonment pursuant to N.J.S.2C:13-3 if the victim is a minor and the offender is not the parent of the victim. . . or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date of this act. . . .

Background

In 1996, John Farkas (“Defendant”) pled guilty to fourth-degree criminal sexual contact¹² and criminal restraint in the third degree¹³ of his seventeen-year-old victim.¹⁴ The Defendant’s plea form did not include a reference compliance with Megan’s Law or community supervision for life.¹⁵

The Defendant’s judgment of conviction was inconsistent with the plea form.¹⁶ The judgment of conviction erroneously reflected that the defendant pled guilty to aggravated criminal sexual contact instead of criminal sexual contact.¹⁷ Like the plea form, the judgment of conviction did not reference the Defendant’s mandatory compliance with Megan’s Law.¹⁸ A decade later, the Judiciary attempted to ameliorate these errors.

In 2006, the Defendant’s 1996 judgment of conviction was amended to add the requirement that he serve the special sentence of parole supervision for life (“PSL”).¹⁹ This modification did not include the requirement that he comply with Megan’s Law.²⁰ The judgment of conviction was amended a second time to reflect the Defendant’s plea to criminal sexual contact with a minor and not aggravated criminal sexual contact.²¹ In addition, the court directed the Defendant to comply with the requirements of Megan’s Law.²²

In 2020, the Defendant moved to correct his alleged illegal sentence.²³ The Defendant

¹² N.J. STAT. ANN. § 2C:14-3(a) (West 2023).

¹³ N.J. STAT. ANN. § 2C:13-2 (West 2023).

¹⁴ *Farkas*, 2022 WL 803466 at *1, *2.

¹⁵ *Id.* at *2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at *3.

²² *Id.*

²³ *Id.*

argued, and the trial court agreed, that PSL is not a sentence authorized by law for a criminal sexual assault conviction.²⁴ The judgment of conviction was amended to reflect the charge to which he pled guilty and remove the requirements of community supervision and parole supervision for life.²⁵

The Defendant also maintained that “Megan’s Law is mandated for a conviction of criminal sexual contact only where the victim is a minor.”²⁶ The Defendant argued that “a minor is an individual who is under the age of sixteen and, therefore, his conviction for criminal sexual contact with a seventeen-year-old victim did not permit the imposition of Megan’s Law requirements as a condition of his sentence.”²⁷

The trial court rejected the Defendant’s argument that he was not required to comply with Megan’s Law because his seventeen-year-old victim was not a minor.²⁸ The court concluded that the seventeen-year-old victim was a minor and that the Defendant’s compliance with Megan’s Law was mandated by N.J.S. 2C:27-2(b)(2).²⁹ The court denied the Defendant’s motion to correct what he claimed was an illegal sentence.³⁰ The Defendant appealed.³¹

Analysis

The term “minor” is not defined in Megan’s Law.³² The Appellate Division in *Farkas* opined that the term minor “is not otherwise expressly defined in our Criminal Code” although two conflicting definitions appear in Title 2C.³³ Without referencing either statutory definition, the Court determined that the word “minor” was not a technical term and applied what it considered to be “the generally accepted meaning, according to the approved usage of the language.”³⁴

The *Farkas* Court examined a number of sources in an attempt to define the term “minor” for purposes of Megan’s Law. First, the Court noted that the term “minor” is defined by *Black’s Law Dictionary* as “[s]omeone who has not reached full legal age.”³⁵ The Court also examined Title 9 to see who the Legislature considers to be an adult. Here, the Court noted that “every person

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at *4.

²⁷ *Id.* The Defendant also argued that because he had not been advised of the Megan’s Law requirements at that time of his 1996 plea and sentence that he could not be sentenced to comply with them. This argument exceeds the scope of this memorandum and will not be discussed herein. For a thoughtful analysis of this argument, *see id.* at *6-9. *See State v. Sisco*, 2014 WL 300822 (App. Div. Jan. 29, 2014) (rejecting defendant’s argument that a sixteen-year-old was not a minor pursuant to the definition of “child” contained in the 2003 version of N.J.S. 2C:24-4(b)(1)).

²⁸ *Id.*

²⁹ *Id.* The court did not address the merits of the Defendant’s second argument and directed him to file a motion to withdraw his plea because he had not been advised he would be subject to the requirements of Megan’s law. *Id.* *See supra* text accompanying note 27.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* N.J. STAT. ANN. §§ 2C:7-1 – 23 (West 2023) (“Megan’s Law” or the “Act”).

³³ *Id.* at 5. *Contra* N.J. STAT. ANN. § 2C:13-10(e) (defining “minor” in the Human Trafficking statutes as “a person who is under the age of 18 years of age”); and N.J. STAT. ANN. § 2C:58-15(c) (defining the term “minor” as “a person under the age of 16” among the licensing and other provisions relating to firearms). *See discussion infra* at p. 5.

³⁴ *Id.* N.J. STAT. ANN. § 1:1-1 (West 2023).

³⁵ *Farkas*, 2022 WL 803466 at *5 (citing *Minor*, *Black’s Law Dictionary* 1193 (11th ed. 2019)).

18 or more years of age shall in all ... matters and for all purposes be deemed an adult.”³⁶ Based upon these two uses, the Court concluded that “the plain, ordinary, and well-accepted meaning of minor... is a person who is under the age of eighteen.”³⁷

The Court also examined the Legislature’s *use* of the term minor in Title 2C. The Criminal Code contains definitions for the terms “emancipated” and “unemancipated minor.” As used in the Prevention of Domestic Violence Act, an “emancipated minor” is “a person who is under the age of [eighteen] years of age but who has been married, has entered military service, has a child, or is pregnant or has been previously declared by a court or administrative body to be emancipated.”³⁸ In the context of a protective order, an unemancipated minor refers to individuals who are under eighteen years of age.³⁹ The Court concluded that the Legislature clearly expressed an understanding of the term “minor” to refer to individuals who have not reached the age of eighteen.⁴⁰

Finally, the Court analyzed the Defendant’s argument that the term “‘minor’ is synonymous with” the 1996 definition of “child” found in Code’s statute governing child endangerment.⁴¹ The Defendant contended that at the time he committed his crime, the child endangerment statute defined “child” as “any person under [sixteen] years of age.”⁴² The Court opined that the Legislature’s use of the phrase *as used in* “expressly limited [the definition of child] to the crime of endangering the welfare of a child in N.J.S.[] 2C:24-4....”⁴³ In rejecting the Defendant’s argument, the Court reasoned that the definition of “child” in N.J.S. 2C:24-4 is not otherwise applied elsewhere in the Code and that there was no basis to apply this definition to the term “minor” as used in Megan’s Law.⁴⁴

The *Farkas* Court affirmed the trial court’s denial of the Defendant’s motion and found that he could be sentenced to Megan’s Law compliance because the seventeen-year-old victim was

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* N.J. STAT. ANN. § 2C:25-19(e) (West 2023).

³⁹ *Farkas*, 2022 WL 803466 at *6 (noting that the victim of certain sexual offenses committed by an unemancipated minor shall seek a protective order under the New Jersey Code of Criminal Justice, 2A:4A-20 – 49 instead of the Sexual Assault Survivor Protection Act of 2015 N.J.S. 2C:14-13 to – 23). N.J. STAT. ANN. §§ 2C:14-14 (West 2023).

⁴⁰ *Farkas*, 2022 WL 803466 at *6. *See e.g.* N.J. STAT. ANN. § 2C:34-3b(1)–(2) (West 2023) (relating to selling or distributing obscenities to persons under eighteen years of age); N.J. STAT. ANN. § 2C:39-9.2 (West 2023) (relating to the sale of handcuffs to persons under eighteen years of age); N.J. STAT. ANN. § 2C:40-21 (West 2023) (relating to minors under the age of eighteen engaging in body piercing or tattoos without parental consent); N.J. STAT. ANN. § 3B:1-2 (West 2023) (defining minor as “an individual who is under [eighteen] years of age” for purposes of intestacy); N.J. STAT. ANN. § 9:6-8.21c (West 2023) (defining abused or neglected child as a child less than [eighteen] years of age); and N.J. STAT. ANN. § 9:6-8.23 (West 2023) (mandating that minors be represented a law guardian in abuse or neglect proceedings).

⁴¹ *Id.* N.J. STAT. ANN. § 2C:24-4(b) (West 2023).

⁴² *Id.* n.7 (noting that the Legislature amended N.J.S. 2C:24-4(b) and defined a child as any person under eighteen years of age). L. 2013, c. 51, § 13.

⁴³ *Id.* Compare the language in N.J. STAT. ANN. § 2C:25-19 limiting the use of the definition of “emancipated minor” to the Prevention of Domestic Violence Act with the Court’s discussion of the language found in N.J.S. 2C:24-4. *Id.* at *5.

⁴⁴ *Farkas*, 2022 WL 803466 at *6.

a minor.⁴⁵

Conflicting Definitions in Title 2C

The term minor is defined twice, inconsistently, in the Code of Criminal Justice. In the Human Trafficking statute, N.J.S. 2C:13-10(e), the term minor is defined as “a person who is under the age of 18 years of age.” A second definition of the term minor is found in New Jersey’s Act concerning firearms.⁴⁶ For the purpose of licensing and other provisions relating to firearms, the Act defines the term “minor” as “a person under the age of 16.”⁴⁷

Pending Bills

There are no bills pending that seek to amend the language of N.J.S. 2C:7-2(b)(2).

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding the use of the term “minor” in N.J.S. 2C:7-(2), to determine whether the statute would benefit from modification.

⁴⁵ *Id.* at *6, 8. The Court also vacated the trial court’s order denying the defendant’s motion to withdraw his guilty plea and remanded the matter for further proceedings. *Id.* at *8. The Court also ordered that the remand court “ensure defendant’s judgment of conviction accurately reflect the crimes for which he was convicted, and the sentences imposed.” *Id.*

⁴⁶ L.1991, c. 397, § 1, eff. Jan. 17, 1992.

⁴⁷ N.J. STAT. ANN. § 2C:58-15(c).

For Reference

2C:13-10. Legislative findings and declarations; human trafficking victims; advertising commercial sexual abuse of a minor as a crime; level of offense; definitions; defenses; proof

a. The Legislature finds and declares that:

* * *

(4) The advertising of these escort services includes minors who are being sold for sex, which constitutes sex trafficking and commercial sexual abuse of minors;

* * *

(8) Sex trafficking of minors should be eliminated in conformity with federal laws prohibiting the sexual exploitation of children.

* * *

e. For the purposes of this section:

* * *

“Minor” means a person who is under 18 years of age.

* * * *

Credits: L.2013, c. 51, § 12, eff. July 1, 2013.

N.J.S. 2C:58-15. Access by minors to loaded firearm; disorderly persons offense; exceptions

a. A person who knows or reasonably should know that a minor is likely to gain access to a loaded firearm at a premises under the person's control commits a disorderly persons offense if a minor gains access to the firearm, unless the person:

(1) Stores the firearm in a securely locked box or container;

(2) Stores the firearm in a location which a reasonable person would believe to be secure;

or

(3) Secures the firearm with a trigger lock.

b. This section shall not apply:

(1) To activities authorized by section 14 of P.L.1979, c. 179, (C.2C:58-6.1), concerning the lawful use of a firearm by a minor; or

(2) Under circumstances where a minor obtained a firearm as a result of an unlawful entry by any person.

c. As used in this act, “minor” means a person under the age of 16.

Credits: L.1991, c. 397, § 1, eff. Jan. 17, 1992.