

# HOW WOULD RAPE IN NAZI GERMANY BE PROSECUTED TODAY: A LOOK INTO THE RAPE LAWS OF NEW JERSEY AND GERMANY

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## I. INTRODUCTION

Many atrocities were committed under the Nazi regime in Nazi Germany from 1933 to 1945. The rape of women was one of many atrocities committed by the Nazi's throughout World War II. Yet, little justice was brought to the many victims of rape during the war.<sup>1</sup> After all, it took until 1996 for rape to become an official war crime and for a sexual violence charge to be prosecuted as a crime against humanity.<sup>2</sup> Today, rape, commonly referred to as sexual assault, is defined in various ways across the world. This article will take a look into the New Jersey Statute on sexual assault and Germany's penal code on rape. By comparing and contrasting the differing definitions of rape, this article will draw conclusions on how rape in Nazi Germany would be prosecuted today, under New Jersey's statute and Germany's penal code.

## II. NEW JERSEY STATUTE §2C:14-2

In New Jersey, rape is referred to as sexual assault. New Jersey Statute §2C:14-2 (hereinafter "§2C:14-2"), defines the requirements for a person to be found guilty of aggravated sexual assault in the first degree and sexual assault in the second

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<sup>1</sup> Though Nazi Germany created and enforced the Nuremberg Laws, little was mentioned in regards to rape or sexual assault, except for the Nazi racial policies pertaining to sexual relations between Aryans and non-Aryans, homosexuals, and bestiality. United States Holocaust Memorial, *Nuremberg Laws*, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007902> (last visited Oct. 22, 2017).

<sup>2</sup> Rape officially became a war crime at the former Yugoslavia in 1996, when the International Criminal Tribunal "indicted eight Bosnian Serb military and police officers for their connection with the rape of Muslim women during the war in Bosnia". Facing History and Ourselves, *The Nanjing Atrocities: Crimes of War/Judgment, Memory, Legacy*, <https://www.facinghistory.org/nanjing-atrocities/judgment-memory-legacy/rape-weapon-war> (last visited Oct. 22, 2017).

degree.<sup>3</sup> Under §2C-14-2(a), an actor may be found guilty of aggravated sexual assault if he commits an act of sexual penetration<sup>4</sup> with another person under any one of the following seven circumstances:

- “(1) The victim is less than thirteen years old;
- (2) The victim is at least thirteen but less than sixteen 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...of robbery, kidnapping, homicide, aggravated assault of another, burglary, arson, or criminal escapes;
- (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 aided or abetted by one or more other persons and the actor uses physical force or coercion<sup>5</sup>;
- (6) The actor uses physical force or coercion and severe personal injury<sup>6</sup> is sustained by the victim;
- (7) The victim is one whom the actor knew or should have known was physically helpless<sup>7</sup> or incapacitated

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<sup>3</sup> Before §2C:14-2, New Jersey provides definitions for the terms used in the sexual assault statute under New Jersey Statute §2C:14-1 (hereinafter “§2C:14-1”). NJ CODE § 2C:14-1 (2012).

<sup>4</sup> Sexual intercourse includes vaginal intercourse, cunnilingus, fellatio, anal intercourse, or insertion of the hand, finger, or object into the anus or vagina either by the actor, or upon the actor’s instruction. § 2C:14-1(c).

<sup>5</sup> Under §2C:14-1(j), coercion includes, but is not limited to, inflicting bodily injury on anyone or committing any other offense, regardless of the immediacy of the threat, exposing any secret which would subject a person to hatred, contempt, ridicule or impair his credit or reputation, and performance of any other act that would not substantially benefit the actor, but is calculated to substantially harm another person with respect to his health, safety, business, career, reputation or personal relationship. NJ CODE § 2C:13-5 (2015).

<sup>6</sup> Severe personal injury encompasses severe bodily injury, disfigurement, incapacitating mental anguish or chronic pain. §2C:14-1(f).

intellectually or mentally incapacitated<sup>8</sup>, 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”.<sup>9</sup>

If convicted of aggravated sexual assault in the first degree, a person may face twenty-five years to life imprisonment, serving at least twenty-five years before being eligible for parole.<sup>10</sup> In addition to aggravated sexual assault in the first degree, §2C:14-2(b-c) also defines sexual assault in the second degree.<sup>11</sup>

Accordingly, an actor may be charged with sexual assault if he has sexual contact<sup>12</sup> with a victim who is less than thirteen years old and he is at least four years older.<sup>13</sup> Additionally, an actor may be charged with sexual assault if he commits an act of sexual penetration with another person under any of the following four 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 sixteen but less than eighteen 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 in any capacity over the victim; or

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<sup>7</sup> Physically helpless means that a person is unconscious, physically unable to flee, or physically unable to communicate his unwillingness to act. §2C:14-1(g).

<sup>8</sup> A person can be considered mentally incapacitated when he is temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or any substance that is administered to him without his prior knowledge or consent that renders him incapable of appraising or controlling his conduct. §2C:14-1(i).

<sup>9</sup> NJ CODE §2C:14-2(a) (2014).

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Sexual contact is intentional touching by the victim or actor, either directly or through clothing, of the intimate parts, which include sexual organs, genital area, anal area, inner thigh, groin, buttock, or breast of a person, for the purpose of degrading or humiliating the victim or sexually arousing or gratifying the actor. §2C:14-1(d-e).

<sup>13</sup> §2C:14-2(b).

- (c) the actor is a resource family parent, a guardian, or stands in loco parentis within the household; or  
(4) the victim is at least thirteen but less than sixteen years old and the actor is at least four years older than the victim".<sup>14</sup>

If convicted of sexual assault in the second degree, the prosecutor is able to negotiate a plea agreement with the offender, which forces the offender to be imprisoned for a minimum of fifteen years.<sup>15</sup>

In sum, New Jersey creates a concise and specific sexual assault statute that is very protective of victims. Under §2C:14-2, New Jersey criminalizes offenders for engaging in sexual activity under various circumstances with various age groups, with people who have mental or physical disabilities, or with people who have mental or physical illnesses. In doing so, New Jersey is able to create only two sexual assault crimes with only two penalties for offenders, creating an all-inclusive sexual assault statute. After looking at how New Jersey charges offenders with aggravated sexual assault in the first degree and sexual assault in the second degree, lets take a look at how Germany charges offenders with rape.

### III. GERMAN CRIMINAL CODE

Alternatively, under Section 177 of Germany's *Strafgesetzbuch* (StGB) (Penal Code) (hereinafter "§177"), rape or sexual assault by use of force or threats is defined in three ways. A person may be found guilty of rape if they coerce another person by force, by threat of imminent danger to life or limb, or by exploiting a situation in which the victim is unprotected and at the mercy of the offender.<sup>16</sup>

Furthermore, §177 breaks down the various degrees of imprisonment that a person found guilty of rape will be sentenced to. If a person is found guilty of coercing another person by force, threat, or exploitation, the person may face at least one year of prison.<sup>17</sup> A person may face two years in especially serious cases where the offender performs sexual intercourse, sexual acts, or penetration of the body (rape), or more than one person commits

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<sup>14</sup> §2C:14-2(c).

<sup>15</sup> §2C:14-2(d).

<sup>16</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, subdivision 1-3, translation at [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>17</sup> Id.

the offense jointly.<sup>18</sup> Next, an offender may face three years of prison if the offender carries a weapon or another dangerous instrument, carries that instrument to prevent or overcome the resistance of another or places the victim in danger of serious injury.<sup>19</sup> Lastly, a person may face five years of prison if the offender uses a weapon or another dangerous instrument during the offense; or if during the offense, the offender seriously physically abuses the victim or places the victim in danger of death.<sup>20</sup>

Moreover, though §177 discusses rape and sexual assault by the use of force or threats, other sections discuss rape, but under different crimes such as Child Abuse (hereinafter “§176”), and Aggravated Child Abuse (hereinafter “§176(a)”), addressing sexual activity with people under the age of fourteen.<sup>21</sup> Likewise, under §176 offenders may face six months to ten years in prison when he engages in or allows others to engage in sexual activity with a victim under the age of fourteen. Any victim who is fourteen years old or younger is deemed to be a child.<sup>22</sup> Additionally, a person may face three months to five years in prison if they engage in sexual activity in the presence of a child, induce the child to engage in sexual activity, or present a child with pornographic illustrations, images, or audio recording.<sup>23</sup> After looking at §176, §176(a) helps to further define imprisonment sentences for sexual abusers.

Under §176(a)(1), a repeat offender, already convicted of a §176 offense within the last five years, may face one year of prison.<sup>24</sup> Also, under §176(a)(2), an offender may face at least two years of prison if he sexually abused a child under §176(1) or (2) and engages in sex or sexual acts with the child while being over eighteen, commits the act with another person, or during the offense, the child is placed in danger of serious injury or is physically or emotionally injured.<sup>25</sup>

In addition to criminalizing the sexual assault of victims under fourteen as “child abuse,” Germany also criminalizes the

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<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 176, § 176(a), *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

sexual activity of “minors,” which includes anyone under the age of sixteen, under causing minors to engage in sexual activity (hereinafter “§180”).<sup>26</sup> Section 180(1) criminalizes offenses where an offender encourages a person under sixteen to engage in sexual activity with or in the presence of someone besides the offender, which may result in a fine or up to three years in prison.<sup>27</sup> Section 180(2-3) criminalizes offenders who induce a person under eighteen, to engage in sexual activity.<sup>28</sup>

The last relevant section under Germany’s Criminal Code is abuse of persons who are incapable of resistance (hereinafter “§179”), which refers to people who have a mental illness, mental disability, or are physically incapable of resisting.<sup>29</sup> Under §179(1), whoever exploits another person who is incapable of resistance due to a mental illness, mental disability, addiction or is physically incapable, by engaging in sexual activity may face six months to ten years in prison.<sup>30</sup> Under §179(2), the same terms and penalty may apply, except that a third person is involved in the sexual activity.<sup>31</sup>

In sum, Germany does not specify the age or age range of a victim, disabilities, illnesses, or inability to resist under §177, which criminalizes rape. Yet, Germany does criminalize offenders for engaging in sexual activity under various circumstances with various age groups, with people who have mental or physical disabilities, or with people who have mental or physical illnesses. However, instead of charging most of these offenders with sexual assault, like New Jersey, Germany may charge offenders with rape, sexual assault by use of force or threats, child abuse, aggravated child abuse, abuse of persons who are incapable of resistance, or causing minors to engage in sexual activity. In doing

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<sup>26</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 180, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>27</sup> *Id.*

<sup>28</sup> Under §180(2), whoever induces a person under eighteen to engage in sexual activity with or in the presence of a third person for a financial reward or whoever encourages such acts may face a fine or up to five years in prison. *Id.* Also, under §180(3), whoever induces a person under eighteen who is entrusted to him for upbringing, education, care or who is his subordinate in an employment or a work relationship, and abuses the relationship to engage in sexual activity with the person may face a fine or up to five years in prison. *Id.*

<sup>29</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 179, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

so, Germany potentially blurs the lines for sexual activity that constitutes rape under New Jersey.

#### IV. RAPE IN NAZI GERMANY

To illustrate how rape during Nazi Germany would be prosecuted today under New Jersey's sexual assault statute and Germany's rape penal code, an account of sexual violence will be described and then applied to both statutes. The following account, as told by a German soldier, contains descriptions of sexual violence that may be difficult to read. For the purposes of this example, it will be assumed that the woman was eighteen, since her age is not known.

A German soldier recalls sitting and talking to eight fellow officers, when a "young lieutenant...said: 'oh, we caught this female...first we hit her in the tits with a stick and then we beat her rear end with a bare bayonet. Then we f\*cked her, and then we threw her outside and shot at her. When she was lying there on her back, we threw grenades at her. Every time one of them landed near her body, she screamed.' Disgusted, the German soldier remembers thinking how this lieutenant was telling the story to eight German officers who instead of being horrified, "all broke out laughing".<sup>32</sup> Unlike the other officers, the German soldier left in disgust.<sup>33</sup>

If New Jersey's §2C:14-2 was the governing statute at the time this incident took place in Nazi Germany, this woman would be a victim of sexual assault and the officers may be found guilty<sup>34</sup> of committing aggravated sexual assault under three provisions.<sup>35</sup>

First, the prosecution<sup>36</sup> of this case could argue that this incident is aggravated sexual assault under §2C:14-2(a)(3) because the officers committed an act of sexual penetration by having sex with the woman, and this was done during the commission of

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<sup>32</sup> Spiegel Online, *Nazi War Crimes as Described by German Soldiers, Part 4: 'We Threw Her Outside and Shot at Her'*, 2011, <http://www.spiegel.de/international/germany/rape-murder-and-genocide-nazi-war-crimes-as-described-by-german-soldiers-a-755385-4.html> (last visited Oct. 22, 2017).

<sup>33</sup> *Id.*

<sup>34</sup> The German officers involved would be found guilty of sexual assault once convicted.

<sup>35</sup> §2C:14-2.

<sup>36</sup> If this crime occurred today and the woman or any German officers informed authorities of this incident, the prosecution may investigate and represent this case on behalf of the woman.

aggravated assault<sup>37</sup> on the woman, whereby the officers were hitting her with a stick and a bare bayonet while also shooting and throwing grenades at her.<sup>38 39</sup>

The prosecution could further argue that the officers committed an act of sexual penetration with the woman, and the officers were armed with a weapon, which they threatened to use.<sup>40</sup> Therefore, the officers may be found guilty of aggravated sexual assault because they had sex with the woman, and were holding a stick, bare bayonet, and grenades, which the woman would reasonably believe were weapons.<sup>41</sup>

Lastly, the prosecution could further argue that this incident is aggravated sexual assault under §2C:14-2(a)(7) because the officers sexually penetrated the woman and she was one whom the officers knew or should have known was physically helpless, thus rendering her temporarily or permanently incapable of understanding the nature of the officers conduct, including, but not limited to, being incapable of providing consent.<sup>42</sup> Therefore, the officers may be found guilty of aggravated sexual assault by having sex with the woman, knowing that the woman was physically helpless, by being outnumbered by the officers or being beaten with a stick, bayonet, being shot at, and having grenades thrown at her, which most likely contributed to her inability to consent.<sup>43</sup>

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<sup>37</sup> There are eleven ways a person may be found guilty of aggravated assault; here, the officers may be guilty of aggravated assault by causing or attempting to cause serious bodily injury to the woman purposely, knowingly, or under circumstances manifesting an extreme indifference to human life by using a deadly weapon. NJ CODE § 2C:12-1(b) (2013).

<sup>38</sup> §2C:14-2.

<sup>39</sup> Spiegel Online, *Nazi War Crimes as Described by German Soldiers, Part 4: 'We Threw Her Outside and Shot at Her'*, 2011, <http://www.spiegel.de/international/germany/rape-murder-and-genocide-nazi-war-crimes-as-described-by-german-soldiers-a-755385-4.html> (last visited Oct. 22, 2017).

<sup>40</sup> §2C:14-2.

<sup>41</sup> Spiegel Online, *Nazi War Crimes as Described by German Soldiers, Part 4: 'We Threw Her Outside and Shot at Her'*, 2011, <http://www.spiegel.de/international/germany/rape-murder-and-genocide-nazi-war-crimes-as-described-by-german-soldiers-a-755385-4.html> (last visited Oct. 22, 2017).

<sup>42</sup> §2C:14-2.

<sup>43</sup> Spiegel Online, *Nazi War Crimes as Described by German Soldiers, Part 4: 'We Threw Her Outside and Shot at Her'*, 2011, <http://www.spiegel.de/international/germany/rape-murder-and-genocide-nazi-war-crimes-as-described-by-german-soldiers-a-755385-4.html> (last visited Oct. 22, 2017).



Hence, the prosecution would have three arguments for how these officers committed aggravated sexual assault in the first degree against this woman. Thus, unlike the nonexistent punishment of rape in Nazi Germany, today, under New Jersey's statute, the officers may be sentenced to twenty-five years to life imprisonment, depending on the court's discretion.<sup>44</sup>

Conversely, if Germany's §177 was the governing statute at the time this incident took place in Nazi Germany, this woman may be a victim of rape and the officers may be guilty of rape under subsection (1) because the officers coerced the woman, by threat of imminent danger to life or limb, by exploiting a situation in which she was unprotected and at the mercy of the offender, and the woman had sex with the officers.<sup>45</sup> Therefore, the officers coerced the woman in two ways, by threats and by exploitation because first, they beat her with a stick, a bare bayonet, shot at her, and threw grenades at her, which all are threats and actual examples of imminent danger to her life and second, the woman was unprotected and thus at the mercy of the officers since they had weapons, used the weapons against her, and all had sex with her.<sup>46</sup>

Lastly, the officers may likely face at least five years in prison because the officers used a weapon or another dangerous instrument during the offense, the officers seriously physically abused the woman during the offense, and the officers placed the victim in danger of death.<sup>47</sup> This all can be illustrated by the officer's use of the stick, bare bayonet, gun shots, and grenades against the woman before and after the officers all had sex with her, putting her in danger of death.<sup>48</sup> Hence, the prosecution would

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<sup>44</sup> §2C:14-2.

<sup>45</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, subdivision 1-3, translation at [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>46</sup> Spiegel Online, *Nazi War Crimes as Described by German Soldiers, Part 4: 'We Threw Her Outside and Shot at Her'*, 2011, <http://www.spiegel.de/international/germany/rape-murder-and-genocide-nazi-war-crimes-as-described-by-german-soldiers-a-755385-4.html> (last visited Oct. 22, 2017).

<sup>47</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, subdivision 4, translation at [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>48</sup> Spiegel Online, *Nazi War Crimes as Described by German Soldiers, Part 4: 'We Threw Her Outside and Shot at Her'*, 2011, <http://www.spiegel.de/international/germany/rape-murder-and-genocide-nazi-war-crimes-as-described-by-german-soldiers-a-755385-4.html> (last visited Oct. 22, 2017).

have two arguments for how these officers had committed rape against this woman and have three arguments for why these officers should be sentenced to at least five years in prison. Thus, unlike the nonexistent punishment of rape in Nazi Germany, today, under Germany's Penal Code, the officers may be sentenced to between five to ten years imprisonment, depending on the court's discretion.

#### V. COMPARING AND CONTRASTING NEW JERSEY SEXUAL ASSAULT AND GERMANY RAPE

It is important to note the key differences between the New Jersey statute and the German penal code when defining sexual assault. The first major difference is the labels the crime gets, which is dependent upon the victim's age. In New Jersey, it can be any person, at any age, and with any disability, who is subjected to penetration or any of the acts described above.<sup>49</sup> However, in Germany, the sexual assault of a person only by force, by threat of imminent danger to life or limb, or by exploiting a situation in which the victim is unprotected and at the mercy of the offender, is legally considered to be rape.<sup>50</sup>

Unlike New Jersey, in Germany, there are various codes that define what New Jersey would consider to be "sexual assault". For example, Germany defines "sexual activity with a person under fourteen years of age" to be child abuse under §176, and in some cases to be aggravated child abuse under §176(a), making it two separate crimes from §177, which defines rape.<sup>51</sup> Also, Germany defines another separate crime for "abuse of persons who are incapable of resistance," which is when a person engages in sexual activity with a victim who has a mental disability, mental illness, addiction, or is physically incapable to resist.<sup>52</sup> The last relevant code in Germany that relates to what New Jersey would consider to be sexual assault, defines the crime of "causing minors to engage in sexual activity," which pertains to people "under

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<sup>49</sup> §2C:14-2.

<sup>50</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, subdivision 1-3, translation at [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>51</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 176, §176(a), translation at [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>52</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 179, translation at [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

sixteen”.<sup>53</sup> Thus, once again, Germany creates a separate crime for when a person, in a specific age group, engages in sexual activity with someone.

Hence, New Jersey creates a clear, all-inclusive statute that convicts offenders of sexual assault for engaging in sexual activity under specific circumstances. Thus, New Jersey expands the definition of sexual assault under §2C:14-2. Yet, Germany creates a narrow, limited statute that only convicts offenders of rape when one of three factors has occurred. Instead of expanding §177 and criminalizing offenders who engage in sexual activity under various circumstances listed under other crimes, like §176, §176(a), §179, and §180, Germany creates at least five different crimes that all could be incorporated under §177. In doing so, Germany allows offenders to be charged with less serious crimes, like child abuse, than the crime of sexual assault, like in New Jersey.

The second major difference between New Jersey and German law is the lack of age being mentioned on the part of Germany. New Jersey has age specific categories for offenses of sexual assault; victims less than thirteen years old, victims between the ages of thirteen and fifteen years old, victims between the ages of thirteen and fifteen and the actor is four or more years older, and victims between the ages of sixteen and seventeen.<sup>54</sup> In contrast, Germany does not list any age of a victim or specify the age difference between the victim and the actor, for rape<sup>55</sup> to occur.<sup>56</sup>

The third major difference is the amount of imprisonment an offender is sentenced to serve for the crime of rape. New Jersey has two degrees of rape, aggravated sexual assault in the first

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<sup>53</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 180, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>54</sup> §2C:14-2.

<sup>55</sup> Though Germany’s rape code does not specify the age of a victim as an element for rape, there are other German crimes, that New Jersey would criminalize under sexual assault, that do specify age. These two crimes state that a person may be guilty of child abuse for engaging in sexual activity with a victim under fourteen or for causing minors to engage in sexual activity if found encouraging a victim under sixteen to engage in sexual activity. STRAFGESETZBUCH [STGB] [PENAL CODE], § 176, §180 *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>56</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

degree and sexual assault in the second degree. In New Jersey, a person found guilty of aggravated sexual assault could be sentenced between twenty-five years to life imprisonment and a person found guilty of sexual assault could be sentenced to at least fifteen years imprisonment.<sup>57</sup> Yet, in Germany, a person found guilty of rape could be sentenced anywhere between six months to ten years.<sup>58</sup> Therefore, offenders found guilty of rape in Germany face much shorter imprisonment sentences than offenders found guilty of sexual assault in New Jersey.

The fourth major difference is the amount of imprisonment the German officers would receive, from the sexual assault example mentioned above, if the crime was applied today in New Jersey or Germany. In New Jersey, the officers most likely would be sentenced to twenty-five years to life imprisonment.<sup>59</sup> However, in Germany, the officers most likely would only be sentenced to at least five years of imprisonment.<sup>60</sup> Thus, the officers would face considerably less imprisonment if charged with rape in Germany, than if they were charged with aggravated sexual assault in New Jersey.

In contrast, Germany has one crime of rape, but lists four varying imprisonment sentences for the offender. Therefore, unlike New Jersey, which defines rape into two separate crimes with each having its own imprisonment sentences, Germany offers three definitions of rape and provides how much imprisonment an offender should get depending on various factors. Germany defines the imprisonment sentences on a range from “less serious cases” to “especially serious cases,” with imprisonment ranging from six months to ten years.<sup>61</sup>

After looking at the many differences between the New Jersey sexual assault statute and Germany’s rape statute, it is important to look at the similarities as well. Due to the many differences between the two statutes, there are few similarities. The first similarity is that both New Jersey and Germany

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<sup>57</sup> §2C:14-2.

<sup>58</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>59</sup> §2C:14-2.

<sup>60</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>61</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

criminalize sexual assault by force. Under §177, Germany criminalizes “sexual coercion carried out by force,” which is similar to New Jersey’s criminalization of “an act of sexual penetration...[when] the actor uses physical force or coercion”.<sup>62</sup> The second similarity is that both New Jersey and Germany criminalize sexual assault by a threat. Under §177, Germany criminalizes “sexual coercion carried out by threat of imminent danger to life or limb”.<sup>63</sup> This element is relatively similar to New Jersey’s criminalization of sexual assault when “[an] actor is armed with a weapon...and threatens by word or gesture to use the weapon,” despite the statute not clearly stating that there is a threat of imminent danger.<sup>64</sup>

The last similarity is that both New Jersey and Germany criminalize sexual assault when a victim is unprotected, helpless, and incapacitated in some way. Germany criminalizes “sexual coercion carried out by exploiting a situation in which the victim is unprotected and at the mercy of the offender”.<sup>65</sup> Similarly, New Jersey criminalizes sexual assault when a victim is “physically helpless or incapacitated, intellectually or mentally incapacitated, or had a mental disease or defect”.<sup>66</sup> Hence, there are many differences between New Jersey’s sexual assault statute and Germany’s rape code, but there are also some similarities as well. At first glance, the commonalities may be difficult to see, but the connections can be drawn between both New Jersey and Germany, despite being in different geographic locations.

## VI. CONCLUSION

Overall, New Jersey has two degrees of sexual assault, which are aggravated sexual assault in the first degree and sexual assault in the second degree.<sup>67</sup> Unlike New Jersey, Germany has

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<sup>62</sup> §2C:14-2(c)(1).

<sup>63</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>64</sup> §2C:14-2(a)(4).

<sup>65</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 177, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>66</sup> §2C:14-2(a)(7). Germany’s criminalization of “abuse of persons who are incapable of resistance” is also similar to §2C:14-2(a)(7). STRAFGESETZBUCH [STGB] [PENAL CODE], § 179, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>67</sup> § 2C:14-2.

five<sup>68</sup> separate crimes pertaining to sexual assault, but only criminalizes one of them as rape.<sup>69</sup>

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<sup>68</sup> This includes child abuse, aggravated child abuse, sexual assault by use of force or threats, (rape), abuse of people who are incapable of resistance, and causing minors to engage in sexual activity. STRAFGESETZBUCH [STGB] [PENAL CODE], § 176-180, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).

<sup>69</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 176-180, *translation at* [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1538](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1538) (Ger.).