

1541--A

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

Introduced by Sens. SKELOS, AVELLA, JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to sexual assault against a child by a person in a position of trust

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraphs (b) and (d) of subdivision 1 of section 70.02 of
2 the penal law, paragraph (b) as amended by chapter 148 of the laws of
3 2011 and paragraph (d) as amended by chapter 7 of the laws of 2007, are
4 amended to read as follows:
5 (b) Class C violent felony offenses: an attempt to commit any of the
6 class B felonies set forth in paragraph (a) of this subdivision; aggra-
7 vated criminally negligent homicide as defined in section 125.11, aggra-
8 vated manslaughter in the second degree as defined in section 125.21,
9 aggravated sexual abuse in the second degree as defined in section
10 130.67, SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF
11 TRUST IN THE FIRST DEGREE AS DEFINED IN SECTION 130.97, assault on a
12 peace officer, police officer, fireman or emergency medical services
13 professional as defined in section 120.08, assault on a judge as defined
14 in section 120.09, gang assault in the second degree as defined in
15 section 120.06, strangulation in the first degree as defined in section
16 121.13, burglary in the second degree as defined in section 140.25,
17 robbery in the second degree as defined in section 160.10, criminal
18 possession of a weapon in the second degree as defined in section
19 265.03, criminal use of a firearm in the second degree as defined in
20 section 265.08, criminal sale of a firearm in the second degree as
21 defined in section 265.12, criminal sale of a firearm with the aid of a
22 minor as defined in section 265.14, soliciting or providing support for

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 an act of terrorism in the first degree as defined in section 490.15,
2 hindering prosecution of terrorism in the second degree as defined in
3 section 490.30, and criminal possession of a chemical weapon or biolog-
4 ical weapon in the third degree as defined in section 490.37.

5 (d) Class E violent felony offenses: an attempt to commit any of the
6 felonies of criminal possession of a weapon in the third degree as
7 defined in subdivision five, six, seven or eight of section 265.02 as a
8 lesser included offense of that section as defined in section 220.20 of
9 the criminal procedure law, persistent sexual abuse as defined in
10 section 130.53, aggravated sexual abuse in the fourth degree as defined
11 in section 130.65-a, falsely reporting an incident in the second degree
12 as defined in section 240.55 [and], placing a false bomb or hazardous
13 substance in the second degree as defined in section 240.61, AND SEXUAL
14 ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE SECOND
15 DEGREE AS DEFINED IN SECTION 130.98.

16 S 2. Section 130.00 of the penal law is amended by adding a new subdi-
17 vision 14 to read as follows:

18 14. "PERSON IN A POSITION OF TRUST" MEANS ANY PERSON WHO IS CHARGED
19 WITH ANY DUTY OR RESPONSIBILITY FOR THE HEALTH, EDUCATION, WELFARE OR
20 SUPERVISION OF A CHILD, EITHER INDEPENDENTLY OR THROUGH ANOTHER PERSON,
21 NO MATTER HOW BRIEF.

22 S 3. The penal law is amended by adding three new sections 130.97,
23 130.98 and 130.99 to read as follows:

24 S 130.97 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF
25 TRUST IN THE FIRST DEGREE.

26 A PERSON IS GUILTY OF SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A
27 POSITION OF TRUST IN THE FIRST DEGREE WHEN HE OR SHE SUBJECTS A CHILD
28 LESS THAN ELEVEN YEARS OLD TO SEXUAL CONTACT AND WHEN SUCH PERSON IS A
29 PERSON IN A POSITION OF TRUST WITH RESPECT TO SUCH CHILD.

30 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN
31 THE FIRST DEGREE IS A CLASS C FELONY.

32 S 130.98 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF
33 TRUST IN THE SECOND DEGREE.

34 A PERSON IS GUILTY OF SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A
35 POSITION OF TRUST IN THE SECOND DEGREE WHEN HE OR SHE SUBJECTS A CHILD
36 LESS THAN FOURTEEN YEARS OLD TO SEXUAL CONTACT AND WHEN SUCH PERSON IS A
37 PERSON IN A POSITION OF TRUST WITH RESPECT TO SUCH CHILD.

38 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN
39 THE SECOND DEGREE IS A CLASS E FELONY.

40 S 130.99 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF
41 TRUST IN THE THIRD DEGREE.

42 A PERSON IS GUILTY OF SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A
43 POSITION OF TRUST IN THE THIRD DEGREE WHEN HE OR SHE SUBJECTS A CHILD
44 LESS THAN EIGHTEEN YEARS OLD TO SEXUAL CONTACT AND WHEN SUCH PERSON IS A
45 PERSON IN A POSITION OF TRUST WITH RESPECT TO SUCH CHILD.

46 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN
47 THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

48 S 4. This act shall take effect on the first of November next succeed-
49 ing the date on which it shall have become a law.