S T A T E O F N E W Y O R K

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Introduced by M. of A. PAULIN, JOHN, EDDINGTON, TITONE, ZEBROWSKI, GALEF, GABRYSZAK, JAFFEE, KOON, LANCMAN, MAISEL, P. RIVERA -- Multi-Sponsored by -- M. of A. BOYLAND, BRADLEY, CHRISTENSEN, DESTITO, GREENE, GUNTHER, HYER-SPENCER, LENTOL, PHEFFER, SEMINERIO, SWEENEY -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to expanding the definition of sex offenses and making technical corrections to such provisions

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

Section 1. Subdivision 3 of section 130.00 of the penal law, as amended by chapter 650 of the laws of 1984, is amended to read as follows:

3. "Sexual contact" means any touching of the sexual or other intimate parts of a person [not married to the actor] for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, AND THE TOUCHING OF THE VICTIM BY HIMSELF OR HERSELF AT THE DIRECTION OF THE ACTOR, whether directly or through clothing, AS WELL AS THE EMISSION OF EJACULATE, URINE OR FECES BY THE ACTOR UPON ANY PART OF THE VICTIM, CLOTHED OR UNCLOTHED.

S 2. Subdivision 9 of section 130.00 of the penal law, as amended by chapter 696 of the laws of 1981, is amended to read as follows:

9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis or [rectum] ANUS, is capable of causing physical injury.

S 3. Subdivision 11 of section 130.00 of the penal law, as added by chapter 122 of the laws of 1996, is amended to read as follows:

11. "Aggravated sexual contact" means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis or [rectum] ANUS of a child, thereby causing physical injury to such child.

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

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S 4. Section 130.60 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 130.60 Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and [when such other person is]:

1. WHEN SUCH OTHER PERSON IS:

(A) Incapable of consent by reason of some factor other than being less than seventeen years old; or

[2.] (B) Less than fourteen years old; OR

2. WHEN THE SEXUAL CONTACT CONSTITUTES THE EMISSION OF EJACULATE, URINE OR FECES BY THE ACTOR UPON ANY PART OF THE VICTIM, CLOTHED OR UNCLOTHED, AND SUCH CONTACT OCCURS WITHOUT THE CONSENT OF THE VICTIM.

Sexual abuse in the second degree is a class A misdemeanor.

S 5. Section 130.65-a of the penal law, as added by chapter 1 of the laws of 2000, is amended to read as follows:

S 130.65-a Aggravated sexual abuse in the fourth degree.

1. A person is guilty of aggravated sexual abuse in the fourth degree when:

(a) He or she inserts, OR CAUSES TO BE INSERTED, a foreign object in the vagina, urethra, penis or [rectum] ANUS of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or

(b) He or she inserts, OR CAUSES TO BE INSERTED, a finger in the vagina, urethra, penis or [rectum] ANUS of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the fourth degree is a class E felony.

S 6. Section 130.66 of the penal law, as added by chapter 181 of the laws of 1996, subdivision 2 as added and subdivision 3 as renumbered by chapter 1 of the laws of 2000, is amended to read as follows:

S 130.66 Aggravated sexual abuse in the third degree.

1. A person is guilty of aggravated sexual abuse in the third degree when he OR SHE inserts, OR CAUSES TO BE INSERTED, a foreign object in the vagina, urethra, penis or [rectum] ANUS of another person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts, OR CAUSES TO BE INSERTED, a foreign object in the vagina, urethra, penis or [rectum] ANUS of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the third degree is a class D felony.

S 7. Subdivision 1 of section 130.67 of the penal law, as added by chapter 450 of the laws of 1988, is amended to read as follows:

1. A person is guilty of aggravated sexual abuse in the second degree when he OR SHE inserts, OR CAUSES TO BE INSERTED, a finger in the vagina, urethra, penis, or [rectum] ANUS of another person causing physical injury to such person:

S 8. Subdivision 1 of section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, is amended to read as follows:

1. A person is guilty of aggravated sexual abuse in the first degree when he OR SHE inserts, OR CAUSES TO BE INSERTED, a foreign object in the vagina, urethra, penis or [rectum] ANUS of another person causing physical injury to such person:

S 9. This act shall take effect on the ninetieth day after it shall have become a law.