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

3682

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to gang sexual assault

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

Section 1. The penal law is amended by adding two new sections 130.54 and 130.54-a to read as follows:

S 130.54 GANG SEXUAL ASSAULT IN THE SECOND DEGREE.

A PERSON IS GUILTY OF GANG SEXUAL ASSAULT IN THE SECOND DEGREE WHEN, AIDED BY TWO OR MORE PERSONS ACTUALLY PRESENT, HE OR SHE:

1. SUBJECTS ANOTHER PERSON TO SEXUAL CONDUCT WITHOUT THE CONSENT OF THAT PERSON; OR

2. REMOVES AN ARTICLE OF CLOTHING FROM ANOTHER PERSON WITH THE INTENT TO EXPOSE THE INTIMATE BODY PARTS OF SUCH PERSON WITHOUT THE CONSENT OF SUCH PERSON.

GANG SEXUAL ASSAULT IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 130.54-A GANG SEXUAL ASSAULT IN THE FIRST DEGREE.

A PERSON IS GUILTY OF GANG SEXUAL ASSAULT IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF GANG SEXUAL ASSAULT IN THE SECOND DEGREE:

1. BY FORCIBLE COMPULSION; OR

2. AND THE PERSON IS INCAPABLE OF CONSENT BY REASON OTHER THAN BEING LESS THAN SEVENTEEN YEARS OLD; OR

3. AND THE PERSON IS LESS THAN FOURTEEN YEARS OLD.

GANG SEXUAL ASSAULT IN THE FIRST DEGREE IS A CLASS E FELONY.

S 2. Paragraph (c) of subdivision 2 of section 130.05 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(c) Where the offense charged is sexual abuse, GANG SEXUAL ASSAULT IN THE FIRST OR SECOND DEGREE, or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the

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

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victim does not expressly or impliedly acquiesce in the actor's conduct; or

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.