

4382

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 3, 2009

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Introduced by M. of A. MARKEY -- Multi-Sponsored by -- M. of A. MILLMAN  
-- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing the penalties  
for the rape or sexual assault of a child

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

1     Section 1. Paragraph (a) of subdivision 3 of section 70.02 of the  
2     penal law, as amended by chapter 765 of the laws of 2005, is amended to  
3     read as follows:  
4     (a) For a class B felony, the term must be at least five years and  
5     must not exceed twenty-five years, provided, however, that the term must  
6     be:     (i) at least ten years and must not exceed thirty years where the  
7     sentence is for the crime of aggravated assault upon a police officer or  
8     peace officer as defined in section 120.11 of this chapter; [and] (ii)  
9     at least ten years and must not exceed thirty years where the sentence  
10    is for the crime of aggravated manslaughter in the first degree as  
11    defined in section 125.22 of this chapter; AND (III) AT LEAST TWELVE AND  
12    ONE-HALF YEARS AND MUST NOT EXCEED TWENTY-FIVE YEARS WHERE THE SENTENCE  
13    IS FOR THE CRIME OF RAPE IN THE FIRST DEGREE AS DEFINED IN SECTION  
14    130.35 OF THIS CHAPTER WHERE THE VICTIM WAS A CHILD FIVE YEARS OF AGE OR  
15    LESS;  
16    S 2. Subdivisions 1, 2, 3 and 4 of section 70.07 of the penal law,  
17    subdivisions 1, 2 and 3 as amended by chapter 264 of the laws of 2003,  
18    subdivision 4 as added by chapter 1 of the laws of 2000 and paragraphs  
19    (a) and (b) of subdivision 4 as amended by chapter 107 of the laws of  
20    2006, are amended and a new subdivision 2-a is added to read as follows:  
21    1. A person who stands convicted of a felony offense for a sexual  
22    assault against a child OR FOR A SEXUAL ASSAULT AGAINST A CHILD FIVE  
23    YEARS OF AGE OR LESS, having been subjected to a predicate felony  
24    conviction for a sexual assault against a child OR FOR A SEXUAL ASSAULT

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

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1 AGAINST A CHILD FIVE YEARS OF AGE OR LESS, must be sentenced in accord-  
2 ance with the provisions of subdivision four or five of this section.

3 2. A "sexual assault against a child" means a felony offense, other  
4 than persistent sexual abuse as defined in section 130.53 of this chap-  
5 ter, (a) the essential elements of which include the commission or  
6 attempted commission of sexual conduct, as defined in subdivision ten of  
7 section 130.00 of this chapter, (b) committed or attempted to be commit-  
8 ted against a child less than fifteen years old.

9 2-A. A "SEXUAL ASSAULT AGAINST A CHILD FIVE YEARS OF AGE OR LESS"  
10 MEANS A FELONY OFFENSE, OTHER THAN PERSISTENT SEXUAL ABUSE AS DEFINED IN  
11 SECTION 130.53 OF THIS CHAPTER, (A) THE ESSENTIAL ELEMENTS OF WHICH  
12 INCLUDE THE COMMISSION OR ATTEMPTED COMMISSION OF SEXUAL CONDUCT, AS  
13 DEFINED IN SUBDIVISION TEN OF SECTION 130.00 OF THIS CHAPTER, (B)  
14 COMMITTED OR ATTEMPTED TO BE COMMITTED AGAINST A CHILD FIVE YEARS OF AGE  
15 OR LESS.

16 3. For purposes of determining whether a person has been subjected to  
17 a predicate felony conviction under this section, the criteria set forth  
18 in paragraph (b) of subdivision one of section 70.06 shall apply  
19 provided however that for purposes of this subdivision, the terms "ten  
20 year" or "ten years", as provided in subparagraphs (iv) and (v) of para-  
21 graph (b) of subdivision one of such section 70.06, shall be "fifteen  
22 year" or "fifteen years". The provisions of section 400.19 of the crimi-  
23 nal procedure law shall govern the procedures that must be followed to  
24 determine whether a person who stands convicted of a sexual assault  
25 against a child OR A SEXUAL ASSAULT AGAINST A CHILD FIVE YEARS OF AGE OR  
26 LESS has been previously subjected to a predicate felony conviction for  
27 such a sexual assault and whether such offender was eighteen years of  
28 age or older at the time of the commission of the predicate felony.

29 4. Where the court has found pursuant to subdivision three of this  
30 section that a person who stands convicted of a felony offense defined  
31 in article one hundred thirty of this chapter for the commission or  
32 attempted commission of a sexual assault against a child has been  
33 subjected to a predicate felony conviction for a sexual assault against  
34 a child, the court shall sentence the defendant as follows:

35 (a) where the defendant stands convicted of such sexual assault  
36 against a child and such conviction is for a class A-II or class B felo-  
37 ny offense, and the predicate conviction for such sexual assault against  
38 a child is for a class A-II, class B or class C felony offense, the  
39 court shall impose an indeterminate sentence of imprisonment, the maxi-  
40 mum term of which shall be life and the minimum period of which shall be  
41 at least fifteen years and no more than twenty-five years;

42 (A-1) WHERE THE DEFENDANT STANDS CONVICTED OF SUCH SEXUAL ASSAULT  
43 AGAINST A CHILD FIVE YEARS OF AGE OR LESS, AND THE PREDICATE CONVICTION  
44 FOR SUCH SEXUAL ASSAULT AGAINST A CHILD FIVE YEARS OF AGE OR LESS IS A  
45 CLASS B OR CLASS C FELONY OFFENSE, THE COURT SHALL IMPOSE AN INDETERMI-  
46 NATE SENTENCE OF IMPRISONMENT, THE MAXIMUM OF WHICH SHALL BE LIFE AND  
47 THE MINIMUM OF WHICH SHALL BE AT LEAST THIRTY YEARS;

48 (b) where the defendant stands convicted of such sexual assault  
49 against a child and the conviction is for a class C felony offense, and  
50 the predicate conviction for such sexual assault against a child is for  
51 a class A-II, class B or class C felony offense, the court shall impose  
52 a determinate sentence of imprisonment, the term of which must be at  
53 least twelve years and must not exceed thirty years; provided however,  
54 that if the court determines that a longer sentence is warranted, the  
55 court shall set forth on the record the reasons for such determination  
56 and, in lieu of imposing such sentence of imprisonment, may impose an

1 indeterminate sentence of imprisonment, the maximum term of which shall  
2 be life and the minimum period of which shall be at least fifteen years  
3 and no more than twenty-five years;

4 (c) where the defendant stands convicted of such sexual assault  
5 against a child and the conviction is for a class B felony offense, and  
6 the predicate conviction for such sexual assault against a child is for  
7 a class D or class E felony offense, the court shall impose a determi-  
8 nate sentence of imprisonment, the term of which must be at least twelve  
9 years and must not exceed thirty years;

10 (d) where the defendant stands convicted of such sexual assault  
11 against a child and the conviction is for a class C felony offense, and  
12 the predicate conviction for such sexual assault against a child is for  
13 a class D or class E felony offense, the court shall impose a determi-  
14 nate sentence of imprisonment, the term of which must be at least ten  
15 years and must not exceed twenty-five years;

16 (e) where the defendant stands convicted of such sexual assault  
17 against a child and the conviction is for a class D felony offense, and  
18 the predicate conviction for such sexual assault against a child is for  
19 a felony offense, the court shall impose a determinate sentence of  
20 imprisonment, the term of which must be at least five years and must not  
21 exceed fifteen years; and

22 (f) where the defendant stands convicted of such sexual assault  
23 against a child and the conviction is for a class E felony offense, and  
24 the predicate conviction for such sexual assault against a child is for  
25 a felony offense, the court shall impose a determinate sentence of  
26 imprisonment, the term of which must be at least four years and must not  
27 exceed twelve years.

28 S 3. This act shall take effect on the first of November next succeed-  
29 ing the date on which it shall have become a law.