

3415

2009-2010 Regular Sessions

I N S E N A T E

March 18, 2009

Introduced by Sens. YOUNG, ALESI, DeFRANCISCO, MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, the penal law and the family court act, in relation to providing juvenile offender status to persons thirteen, fourteen or fifteen years of age who have committed certain sex offenses

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

1 Section 1. Subdivision 42 of section 1.20 of the criminal procedure
2 law, as amended by chapter 7 of the laws of 2007, is amended to read as
3 follows:
4 42. "Juvenile offender" means (1) a person, thirteen years old who is
5 criminally responsible for acts constituting murder in the second degree
6 as defined in subdivisions one and two of section 125.25 of the penal
7 law[,]; SUBDIVISIONS ONE AND TWO OF SECTION 130.35 (RAPE IN THE FIRST
8 DEGREE); SUBDIVISIONS ONE AND TWO OF SECTION 130.50 (CRIMINAL SEXUAL ACT
9 IN THE FIRST DEGREE); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE
10 FIRST DEGREE); or such conduct as a sexually motivated felony, where
11 authorized pursuant to section 130.91 of the penal law; and (2) a person
12 fourteen or fifteen years old who is criminally responsible for acts
13 constituting the crimes defined in subdivisions one and two of section
14 125.25 (murder in the second degree) and in subdivision three of such
15 section provided that the underlying crime for the murder charge is one
16 for which such person is criminally responsible; section 135.25 (kidnap-
17 ping in the first degree); 150.20 (arson in the first degree); subdivi-
18 sions one and two of section 120.10 (assault in the first degree);
19 125.20 (manslaughter in the first degree); subdivisions one and two of
20 section 130.35 (rape in the first degree); subdivisions one and two of
21 section 130.50 (criminal sexual act in the first degree); SECTION 130.66
22 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRA-

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

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1 VATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexual
2 abuse in the first degree); 140.30 (burglary in the first degree);
3 subdivision one of section 140.25 (burglary in the second degree);
4 150.15 (arson in the second degree); 160.15 (robbery in the first
5 degree); subdivision two of section 160.10 (robbery in the second
6 degree) of the penal law; or section 265.03 of the penal law, where such
7 machine gun or such firearm is possessed on school grounds, as that
8 phrase is defined in subdivision fourteen of section 220.00 of the penal
9 law; or defined in the penal law as an attempt to commit murder in the
10 second degree or kidnapping in the first degree, or such conduct as a
11 sexually motivated felony, where authorized pursuant to section 130.91
12 of the penal law.

13 S 2. Subdivision (a) of section 190.71 of the criminal procedure law,
14 as amended by chapter 7 of the laws of 2007, is amended to read as
15 follows:

16 (a) Except as provided in subdivision six of section 200.20 of this
17 chapter, a grand jury may not indict (i) a person thirteen years of age
18 for any conduct or crime other than conduct constituting a crime defined
19 in subdivisions one and two of section 125.25 (murder in the second
20 degree); SUBDIVISIONS ONE AND TWO OF SECTION 130.35 (RAPE IN THE FIRST
21 DEGREE); SUBDIVISIONS ONE AND TWO OF SECTION 130.50 (CRIMINAL SEXUAL ACT
22 IN THE FIRST DEGREE); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE
23 FIRST DEGREE); or such conduct as a sexually motivated felony, where
24 authorized pursuant to section 130.91 of the penal law; (ii) a person
25 fourteen or fifteen years of age for any conduct or crime other than
26 conduct constituting a crime defined in subdivisions one and two of
27 section 125.25 (murder in the second degree) and in subdivision three of
28 such section provided that the underlying crime for the murder charge is
29 one for which such person is criminally responsible; 135.25 (kidnapping
30 in the first degree); 150.20 (arson in the first degree); subdivisions
31 one and two of section 120.10 (assault in the first degree); 125.20
32 (manslaughter in the first degree); subdivisions one and two of section
33 130.35 (rape in the first degree); subdivisions one and two of section
34 130.50 (criminal sexual act in the first degree); SECTION 130.66 (AGGRA-
35 VATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRAVATED
36 SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexual abuse in
37 the first degree); 140.30 (burglary in the first degree); subdivision
38 one of section 140.25 (burglary in the second degree); 150.15 (arson in
39 the second degree); 160.15 (robbery in the first degree); subdivision
40 two of section 160.10 (robbery in the second degree) of the penal law;
41 subdivision four of section 265.02 of the penal law, where such firearm
42 is possessed on school grounds, as that phrase is defined in subdivision
43 fourteen of section 220.00 of the penal law; or section 265.03 of the
44 penal law, where such machine gun or such firearm is possessed on school
45 grounds, as that phrase is defined in subdivision fourteen of section
46 220.00 of the penal law; or defined in the penal law as an attempt to
47 commit murder in the second degree or kidnapping in the first degree, or
48 such conduct as a sexually motivated felony, where authorized pursuant
49 to section 130.91 of the penal law.

50 S 3. Subdivision 18 of section 10.00 of the penal law, as amended by
51 chapter 7 of the laws of 2007, is amended to read as follows:

52 18. "Juvenile offender" means (1) a person thirteen years old who is
53 criminally responsible for acts constituting murder in the second degree
54 as defined in subdivisions one and two of section 125.25 of this
55 chapter; SUBDIVISIONS ONE AND TWO OF SECTION 130.35 (RAPE IN THE FIRST
56 DEGREE); SUBDIVISIONS ONE AND TWO OF SECTION 130.50 (CRIMINAL SEXUAL ACT

1 IN THE FIRST DEGREE); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE
2 FIRST DEGREE); or such conduct as a sexually motivated felony, where
3 authorized pursuant to section 130.91 of the penal law; and
4 (2) a person fourteen or fifteen years old who is criminally responsi-
5 ble for acts constituting the crimes defined in subdivisions one and two
6 of section 125.25 (murder in the second degree) and in subdivision three
7 of such section provided that the underlying crime for the murder charge
8 is one for which such person is criminally responsible; section 135.25
9 (kidnapping in the first degree); 150.20 (arson in the first degree);
10 subdivisions one and two of section 120.10 (assault in the first
11 degree); 125.20 (manslaughter in the first degree); subdivisions one and
12 two of section 130.35 (rape in the first degree); subdivisions one and
13 two of section 130.50 (criminal sexual act in the first degree); SECTION
14 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67
15 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexu-
16 al abuse in the first degree); 140.30 (burglary in the first degree);
17 subdivision one of section 140.25 (burglary in the second degree);
18 150.15 (arson in the second degree); 160.15 (robbery in the first
19 degree); subdivision two of section 160.10 (robbery in the second
20 degree) of this chapter; or section 265.03 of this chapter, where such
21 machine gun or such firearm is possessed on school grounds, as that
22 phrase is defined in subdivision fourteen of section 220.00 of this
23 chapter; or defined in this chapter as an attempt to commit murder in
24 the second degree or kidnapping in the first degree, or such conduct as
25 a sexually motivated felony, where authorized pursuant to section 130.91
26 of the penal law.

27 S 4. Subdivision 2 of section 30.00 of the penal law, as amended by
28 chapter 7 of the laws of 2007, is amended to read as follows:

29 2. A person thirteen, fourteen or fifteen years of age is criminally
30 responsible for acts constituting murder in the second degree as defined
31 in subdivisions one and two of section 125.25 and in subdivision three
32 of such section provided that the underlying crime for the murder charge
33 is one for which such person is criminally responsible or for such
34 conduct as a sexually motivated felony, where authorized pursuant to
35 section 130.91 of the penal law; A PERSON THIRTEEN YEARS OF AGE IS
36 CRIMINALLY RESPONSIBLE FOR ACTS CONSTITUTING THE CRIMES DEFINED IN
37 SUBDIVISIONS ONE AND TWO OF SECTION 130.35 (RAPE IN THE FIRST DEGREE);
38 SUBDIVISIONS ONE AND TWO OF SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE
39 FIRST DEGREE); AND SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST
40 DEGREE); and a person fourteen or fifteen years of age is criminally
41 responsible for acts constituting the crimes defined in section 135.25
42 (kidnapping in the first degree); 150.20 (arson in the first degree);
43 subdivisions one and two of section 120.10 (assault in the first
44 degree); 125.20 (manslaughter in the first degree); subdivisions one and
45 two of section 130.35 (rape in the first degree); subdivisions one and
46 two of section 130.50 (criminal sexual act in the first degree); SECTION
47 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67
48 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexu-
49 al abuse in the first degree); 140.30 (burglary in the first degree);
50 subdivision one of section 140.25 (burglary in the second degree);
51 150.15 (arson in the second degree); 160.15 (robbery in the first
52 degree); subdivision two of section 160.10 (robbery in the second
53 degree) of this chapter; or section 265.03 of this chapter, where such
54 machine gun or such firearm is possessed on school grounds, as that
55 phrase is defined in subdivision fourteen of section 220.00 of this
56 chapter; or defined in this chapter as an attempt to commit murder in

1 the second degree or kidnapping in the first degree, or for such conduct
2 as a sexually motivated felony, where authorized pursuant to section
3 130.91 of the penal law.

4 S 5. Subdivision 8 of section 301.2 of the family court act, as
5 amended by chapter 7 of the laws of 2007, is amended to read as follows:

6 8. "Designated felony act" means an act which, if done by an adult,
7 would be a crime: (i) defined in sections 125.27 (murder in the first
8 degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the
9 first degree); or 150.20 (arson in the first degree) of the penal law
10 committed by a person thirteen, fourteen or fifteen years of age; or
11 such conduct committed as a sexually motivated felony, where authorized
12 pursuant to section 130.91 of the penal law; (ii) defined in sections
13 120.10 (assault in the first degree); 125.20 (manslaughter in the first
14 degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act
15 in the first degree); 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD
16 DEGREE); 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70
17 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the
18 second degree) but only where the abduction involved the use or threat
19 of use of deadly physical force; 150.15 (arson in the second degree) or
20 160.15 (robbery in the first degree) of the penal law committed by a
21 person thirteen, fourteen or fifteen years of age; or such conduct
22 committed as a sexually motivated felony, where authorized pursuant to
23 section 130.91 of the penal law; (iii) defined in the penal law as an
24 attempt to commit murder in the first or second degree or kidnapping in
25 the first degree committed by a person thirteen, fourteen or fifteen
26 years of age; or such conduct committed as a sexually motivated felony,
27 where authorized pursuant to section 130.91 of the penal law; (iv)
28 defined in section 140.30 (burglary in the first degree); subdivision
29 one of section 140.25 (burglary in the second degree); subdivision two
30 of section 160.10 (robbery in the second degree) of the penal law; or
31 section 265.03 of the penal law, where such machine gun or such firearm
32 is possessed on school grounds, as that phrase is defined in subdivision
33 fourteen of section 220.00 of the penal law committed by a person four-
34 teen or fifteen years of age; or such conduct committed as a sexually
35 motivated felony, where authorized pursuant to section 130.91 of the
36 penal law; (v) defined in section 120.05 (assault in the second degree)
37 or 160.10 (robbery in the second degree) of the penal law committed by a
38 person fourteen or fifteen years of age but only where there has been a
39 prior finding by a court that such person has previously committed an
40 act which, if committed by an adult, would be the crime of assault in
41 the second degree, robbery in the second degree or any designated felony
42 act specified in paragraph (i), (ii), or (iii) of this subdivision
43 regardless of the age of such person at the time of the commission of
44 the prior act; or (vi) other than a misdemeanor committed by a person at
45 least seven but less than sixteen years of age, but only where there has
46 been two prior findings by the court that such person has committed a
47 prior felony.

48 S 6. This act shall take effect on the first of November next succeed-
49 ing the date on which it shall have become a law.