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2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 3 of section 130.00 of the penal law, as
2 amended by chapter 650 of the laws of 1984, is amended to read as
3 follows:
4 3. "Sexual contact" means any touching of the sexual or other intimate
5 parts of a person [not married to the actor] for the purpose of gratify-
6 ing sexual desire of either party. It includes the touching of the actor
7 by the victim, as well as the touching of the victim by the actor, AND
8 THE TOUCHING OF THE VICTIM BY HIMSELF OR HERSELF AT THE DIRECTION OF THE
9 ACTOR, whether directly or through clothing, AS WELL AS THE EMISSION OF
10 EJACULATE, URINE OR FECES BY THE ACTOR UPON ANY PART OF THE VICTIM,
11 CLOTHED OR UNCLOTHED.
12 S 2. Subdivision 9 of section 130.00 of the penal law, as amended by
13 chapter 696 of the laws of 1981, is amended to read as follows:
14 9. "Foreign object" means any instrument or article which, when
15 inserted in the vagina, urethra, penis or [rectum] ANUS, is capable of
16 causing physical injury.
17 S 3. Subdivision 11 of section 130.00 of the penal law, as added by
18 chapter 122 of the laws of 1996, is amended to read as follows:
19 11. "Aggravated sexual contact" means inserting, other than for a
20 valid medical purpose, a foreign object in the vagina, urethra, penis or
21 [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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1 S 4. Section 130.60 of the penal law, as amended by chapter 1 of the
2 laws of 2000, is amended to read as follows:

3 S 130.60 Sexual abuse in the second degree.

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

7 1. WHEN SUCH OTHER PERSON IS:

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

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

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

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

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

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

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

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

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

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

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

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

34 S 130.66 Aggravated sexual abuse in the third degree.

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

38 (a) By forcible compulsion; or

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

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

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

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

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

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

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

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

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

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