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

3674

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. KOON, MAYERSOHN, DIAZ, CLARK, HEASTIE, PHEFFER, JOHN, P. RIVERA, ALFANO, GUNTHER, SCHROEDER -- Multi-Sponsored by -- M. of A. ABBATE, BARRA, CYMBROWITZ, GALEF, HIKIND, LUPARDO, MORELLE, PERRY, SWEENEY, WEISENBERG, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to sexual assault against a child by a person in a position of trust

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

Section 1. Paragraphs (b) and (d) of subdivision 1 of section 70.02 of the penal law, subdivision (b) as separately amended by chapters 764 and 765 of the laws of 2005, subdivision (d) as amended by chapter 7 of the laws of 2007, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE FIRST DEGREE AS DEFINED IN SECTION 130.97, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in

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

LBD02253-01-9

section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight of section 265.02 as a lesser included offense of that section as defined in section 220.20 of the criminal procedure law, persistent sexual abuse as defined in section 130.53, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, falsely reporting an incident in the second degree as defined in section 240.55 [and], placing a false bomb or hazardous substance in the second degree as defined in section 240.61, AND SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE SECOND DEGREE AS DEFINED IN SECTION 130.98.

S 2. Section 130.00 of the penal law is amended by adding a new subdivision 14 to read as follows:

14. "PERSON IN A POSITION OF TRUST" MEANS ANY PERSON WHO IS CHARGED WITH ANY DUTY OR RESPONSIBILITY FOR THE HEALTH, EDUCATION, WELFARE OR SUPERVISION OF A CHILD, EITHER INDEPENDENTLY OR THROUGH ANOTHER PERSON, NO MATTER HOW BRIEF.

S 3. The penal law is amended by adding three new sections 130.97, 130.98 and 130.99 to read as follows:

S 130.97 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE FIRST DEGREE.

A PERSON IS GUILTY OF SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE FIRST DEGREE WHEN HE OR SHE SUBJECTS A CHILD LESS THAN ELEVEN YEARS OLD TO SEXUAL CONTACT AND WHEN SUCH PERSON IS A PERSON IN A POSITION OF TRUST WITH RESPECT TO SUCH CHILD.

SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE FIRST DEGREE IS A CLASS C FELONY.

S 130.98 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE SECOND DEGREE.

A PERSON IS GUILTY OF SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE SECOND DEGREE WHEN HE OR SHE SUBJECTS A CHILD LESS THAN FOURTEEN YEARS OLD TO SEXUAL CONTACT AND WHEN SUCH PERSON IS A PERSON IN A POSITION OF TRUST WITH RESPECT TO SUCH CHILD.

SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE SECOND DEGREE IS A CLASS E FELONY.

S 130.99 SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE THIRD DEGREE.

A PERSON IS GUILTY OF SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE THIRD DEGREE WHEN HE OR SHE SUBJECTS A CHILD LESS THAN EIGHTEEN YEARS OLD TO SEXUAL CONTACT AND WHEN SUCH PERSON IS A PERSON IN A POSITION OF TRUST WITH RESPECT TO SUCH CHILD.

SEXUAL ASSAULT AGAINST A CHILD BY A PERSON IN A POSITION OF TRUST IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.