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

3915

2009-2010 Regular Sessions

I N A S S E M B L Y

January 29, 2009

Introduced by M. of A. KOON, ZEBROWSKI, SCHROEDER, EDDINGTON, MOLINARO -- Multi-Sponsored by -- M. of A. BOYLAND, COLTON, GUNTHER, HOOPER, JOHN, MAYERSOHN, REILLY, SWEENEY -- read once and referred to the Committee on Codes

AN ACT to amend the family court act, the penal law and the criminal procedure law, in relation to including certain sexual offenses against children to the list of designated felony acts

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

Section 1. Paragraph (ii) of subdivision 8 of section 301.2 of the family court act, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.75 (COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE); 130.80 (COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree) but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree) or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law;

S 2. Subdivision 1 of section 302.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

1. The family court has exclusive original jurisdiction over any proceeding to determine whether a person is a juvenile delinquent,

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

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EXCEPT THAT THE FAMILY COURT SHALL HAVE CONCURRENT ORIGINAL JURISDICTION WITH ALL COURTS OF CRIMINAL JURISDICTION OVER A JUVENILE DELINQUENCY PROCEEDING COMMENCED IN THE FAMILY COURT ALLEGING AN ACT OR ACTS SPECIFIED IN SUBDIVISION EIGHTEEN OF SECTION 10.00 OF THE PENAL LAW. NOTHING IN THIS SECTION SHALL PROHIBIT A COURT OF CRIMINAL JURISDICTION FROM TRANSFERRING A JUVENILE OFFENDER CASE TO THE FAMILY COURT PURSUANT TO THE CRIMINAL PROCEDURE LAW. PRIOR TO FILING A PETITION DESCRIBED IN SECTION 311.1 OF THIS PART ALLEGING AN ACT OR ACTS SPECIFIED IN SUBDIVISION EIGHTEEN OF SECTION 10.00 OF THE PENAL LAW, THE PRESENTMENT AGENCY SHALL OBTAIN A WRITTEN STATEMENT FROM THE DISTRICT ATTORNEY HAVING JURISDICTION OVER THE ACT OR ACTS INDICATING THAT THE DISTRICT ATTORNEY DOES NOT INTEND TO CHARGE THE RESPONDENT WITH THE ACT OR ACTS IN A COURT OF CRIMINAL JURISDICTION.

S 3. Paragraph 2 of subdivision 18 of section 10.00 of the penal law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.75 (COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE); 130.80 (COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.

S 4. Subdivision 42 of section 1.20 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

42. "Juvenile offender" means (1) a person, thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of the penal law, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; and (2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaught-

er in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.75 (COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE); 130.80 (COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law. IF THE DISTRICT ATTORNEY HAVING JURISDICTION OVER ANY OF THE ACTS SET FORTH IN THIS SUBDIVISION DECIDES NOT TO CHARGE THE DEFENDANT IN A COURT OF CRIMINAL JURISDICTION THEN THE DISTRICT ATTORNEY SHALL SO NOTIFY THE APPROPRIATE PRESENTMENT AGENCY IN WRITING PURSUANT TO SUBDIVISION ONE OF SECTION 302.1 OF THE FAMILY COURT ACT.

S 5. This act shall take effect immediately and shall apply to offenses committed on and after such date.