

5122

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. GIGLIO, QUINN, FINCH, ERRIGO, McDONOUGH, WALKER, KOLB -- Multi-Sponsored by -- M. of A. BACALLES, BURLING, BUTLER, CALHOUN, CROUCH, HAWLEY, McKEVITT, MILLER, MOLINARO, OAKS, TOWNSEND -- read once and referred 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

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

LBD05130-01-9

1 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRA-
2 VATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexual
3 abuse in the first degree); 140.30 (burglary in the first degree);
4 subdivision one of section 140.25 (burglary in the second degree);
5 150.15 (arson in the second degree); 160.15 (robbery in the first
6 degree); subdivision two of section 160.10 (robbery in the second
7 degree) of the penal law; or section 265.03 of the penal law, where such
8 machine gun or such firearm is possessed on school grounds, as that
9 phrase is defined in subdivision fourteen of section 220.00 of the penal
10 law; or defined in the penal law as an attempt to commit murder in the
11 second degree or kidnapping in the first degree, or such conduct as a
12 sexually motivated felony, where authorized pursuant to section 130.91
13 of the penal law.

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

17 (a) Except as provided in subdivision six of section 200.20 of this
18 chapter, a grand jury may not indict (i) a person thirteen years of age
19 for any conduct or crime other than conduct constituting a crime defined
20 in subdivisions one and two of section 125.25 (murder in the second
21 degree); SUBDIVISIONS ONE AND TWO OF SECTION 130.25 (RAPE IN THE FIRST
22 DEGREE); SUBDIVISIONS ONE AND TWO OF SECTION 130.50 (CRIMINAL SEXUAL ACT
23 IN THE FIRST DEGREE); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE
24 FIRST DEGREE); or such conduct as a sexually motivated felony, where
25 authorized pursuant to section 130.91 of the penal law; (ii) a person
26 fourteen or fifteen years of age for any conduct or crime other than
27 conduct constituting a crime defined in subdivisions one and two of
28 section 125.25 (murder in the second degree) and in subdivision three of
29 such section provided that the underlying crime for the murder charge is
30 one for which such person is criminally responsible; 135.25 (kidnapping
31 in the first degree); 150.20 (arson in the first degree); subdivisions
32 one and two of section 120.10 (assault in the first degree); 125.20
33 (manslaughter in the first degree); subdivisions one and two of section
34 130.35 (rape in the first degree); subdivisions one and two of section
35 130.50 (criminal sexual act in the first degree); SECTION 130.66 (AGGRA-
36 VATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRAVATED
37 SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexual abuse in
38 the first degree); 140.30 (burglary in the first degree); subdivision
39 one of section 140.25 (burglary in the second degree); 150.15 (arson in
40 the second degree); 160.15 (robbery in the first degree); subdivision
41 two of section 160.10 (robbery in the second degree) of the penal law;
42 subdivision four of section 265.02 of the penal law, where such firearm
43 is possessed on school grounds, as that phrase is defined in subdivision
44 fourteen of section 220.00 of the penal law; or section 265.03 of the
45 penal law, where such machine gun or such firearm is possessed on school
46 grounds, as that phrase is defined in subdivision fourteen of section
47 220.00 of the penal law; or defined in the penal law as an attempt to
48 commit murder in the second degree or kidnapping in the first degree, or
49 such conduct as a sexually motivated felony, where authorized pursuant
50 to section 130.91 of the penal law.

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

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

1 DEGREE); SUBDIVISIONS ONE AND TWO OF SECTION 130.50 (CRIMINAL SEXUAL ACT
2 IN THE FIRST DEGREE); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE
3 FIRST DEGREE); or such conduct as a sexually motivated felony, where
4 authorized pursuant to section 130.91 of the penal law; and

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

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

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

1 chapter; or defined in this chapter as an attempt to commit murder in
2 the second degree or kidnapping in the first degree, or for such conduct
3 as a sexually motivated felony, where authorized pursuant to section
4 130.91 of the penal law.

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

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

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