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

752

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. McDONOUGH, ALFANO, ERRIGO, BARRA, SALADINO, WALKER -- Multi-Sponsored by -- M. of A. BACALLES, BARCLAY, BURLING, CALHOUN, CONTE, CROUCH, FINCH, FITZPATRICK, GIGLIO, KOLB, MILLER, O'MARA, QUINN, RAIA, SAYWARD, SCOZZAFAVA, TEDISCO, THIELE, TOWNSEND -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the correction law, in relation to the new crime of gang sexual assault

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

Section 1. The penal law is amended by adding a new section 130.54 to read as follows:

S 130.54 GANG SEXUAL ASSAULT.

A PERSON IS GUILTY OF GANG SEXUAL ASSAULT WHEN:

1. AIDED BY TWO OR MORE PERSONS ACTUALLY PRESENT, HE OR SHE SUBJECTS ANOTHER PERSON TO SEXUAL CONTACT WITHOUT THE CONSENT OF THE OTHER PERSON; OR

2. WITH INTENT TO EXPOSE THE INTIMATE PARTS OF THE BODY OF ANOTHER PERSON, AND WHEN AIDED BY TWO OR MORE OTHER PERSONS ACTUALLY PRESENT, HE OR SHE REMOVES OR ATTEMPTS TO REMOVE AN ARTICLE OF CLOTHING FROM SUCH PERSON WITHOUT THE CONSENT OF SUCH PERSON.

GANG SEXUAL ASSAULT IS A CLASS E FELONY.

S 2. Paragraph (c) of subdivision 2 of section 130.05 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(c) Where the offense charged is sexual abuse [or], forcible touching, OR GANG SEXUAL ASSAULT, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or

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

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S 3. Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 405 of the laws of 2008, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.52, 130.54, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or

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