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

794

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. McDONOUGH, MOLINARO, DUPREY, TOWNSEND, GIGLIO, HAWLEY, BALL, BURLING, ZEBROWSKI, RAIA, McKEVITT, FINCH -- Multi-Sponsored by -- M. of A. BARCLAY, CALHOUN, CONTE, CROUCH, GABRYSZAK, KOLB, QUINN, THIELE, TOWNS, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to providing that a full time elementary or secondary school student shall be incapable of consenting to sexual conduct with a school employee

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

Section 1. Section 130.00 of the penal law is amended by adding a new subdivision 14 to read as follows:

14. "SCHOOL EMPLOYEE" SHALL MEAN ANY PERSON DEFINED AS AN "EMPLOYEE" OR "VOLUNTEER" PURSUANT TO SUBDIVISIONS THREE AND FOUR OF SECTION ELEVEN HUNDRED TWENTY-FIVE OF THE EDUCATION LAW, OR ANY OTHER PUBLIC SERVANT ASSIGNED TO ANY DUTIES AT AN ELEMENTARY OR SECONDARY SCHOOL.

S 2. Paragraph (h) of subdivision 3 of section 130.05 of the penal law, as amended by chapter 264 of the laws of 2003, is amended and a new paragraph (i) is added to read as follows:

(h) a client or patient and the actor is a health care provider or mental health care provider charged with rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination[.]; OR

(I) A FULL TIME STUDENT AT AN ELEMENTARY OR SECONDARY SCHOOL, AND THE ACTOR:

(I) IS A SCHOOL EMPLOYEE, BEING EIGHTEEN YEARS OF AGE OR OLDER, AT THE SAME SCHOOL SUCH STUDENT ATTENDS;

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

LBD01524-01-9

(II) IS NOT MARRIED TO SUCH STUDENT;
(III) KNOWS OR REASONABLY SHOULD KNOW THAT SUCH PERSON IS A FULL TIME STUDENT AT SUCH SCHOOL; AND
(IV) HE OR SHE IS NOT A FULL TIME STUDENT AT THE SAME SCHOOL.
S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.