

9359

I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. GABRYSZAK -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law, in relation to assault and reckless
endangerment by engaging in sexual conduct by persons who have
contracted HIV

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

1 Section 1. Section 120.10 of the penal law, subdivision 4 as amended
2 by chapter 791 of the laws of 1967 and the closing paragraph as amended
3 by chapter 646 of the laws of 1996, is amended to read as follows:
4 S 120.10 Assault in the first degree.
5 A person is guilty of assault in the first degree when:
6 1. With intent to cause serious physical injury to another person, he
7 OR SHE causes such injury to such person or to a third person by means
8 of a deadly weapon or a dangerous instrument; or
9 2. With intent to disfigure another person seriously and permanently,
10 or to destroy, amputate or disable permanently a member or organ of his
11 OR HER body, he OR SHE causes such injury to such person or to a third
12 person; or
13 3. Under circumstances evincing a depraved indifference to human life,
14 he OR SHE recklessly engages in conduct which creates a grave risk of
15 death to another person, and thereby causes serious physical injury to
16 another person; or
17 4. In the course of and in furtherance of the commission or attempted
18 commission of a felony or of immediate flight therefrom, he OR SHE, or
19 another participant if there be any, causes serious physical injury to a
20 person other than one of the participants[.]; OR
21 5. SUCH PERSON HAS ACTUAL NOTICE THAT HE OR SHE HAS TESTED POSITIVE
22 FOR HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND HAS IN FACT CONTRACTED HIV,
23 AND INTENTIONALLY OR, UNDER CIRCUMSTANCES EVINCING A DEPRAVED INDIFFER-
24 ENCE TO HUMAN LIFE RECKLESSLY, ENGAGES IN SEXUAL CONDUCT WITH ANOTHER
25 PERSON, AND SUCH CONDUCT IS INTENDED OR REASONABLY LIKELY TO TRANSMIT
26 HIV TO SUCH OTHER PERSON AND THEREBY TRANSMITS HIV TO SUCH OTHER PERSON.

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

LBD10169-02-9

1 IT IS AN AFFIRMATIVE DEFENSE THAT SUCH OTHER PERSON KNEW THAT THE
2 DEFENDANT HAD TESTED POSITIVE FOR HIV, KNEW SUCH EXPOSURE COULD RESULT,
3 AND CONSENTED TO SUCH SEXUAL CONDUCT. FOR PURPOSES OF THIS SUBDIVISION,
4 "SEXUAL CONDUCT" SHALL MEAN "SEXUAL INTERCOURSE", "ORAL SEXUAL CONDUCT",
5 OR "ANAL SEXUAL CONDUCT" AS THOSE TERMS ARE DEFINED IN SECTION 130.00 OF
6 THIS TITLE.

7 Assault in the first degree is a class B felony.

8 S 2. Section 120.25 of the penal law is amended to read as follows:

9 S 120.25 Reckless endangerment in the first degree.

10 A person is guilty of reckless endangerment in the first degree when[,
11 under]:

12 1. UNDER circumstances evincing a depraved indifference to human life,
13 he OR SHE recklessly engages in conduct which creates a grave risk of
14 death to another person[.]; OR

15 2. SUCH PERSON HAS ACTUAL NOTICE THAT HE OR SHE HAS TESTED POSITIVE
16 FOR HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND HAS IN FACT CONTRACTED HIV,
17 AND INTENTIONALLY OR, UNDER CIRCUMSTANCES EVINCING A DEPRAVED INDIFFER-
18 ENCE TO HUMAN LIFE RECKLESSLY, ENGAGES IN SEXUAL CONDUCT WITH ANOTHER
19 PERSON, AND SUCH CONDUCT IS INTENDED OR REASONABLY LIKELY TO TRANSMIT
20 HIV TO SUCH OTHER PERSON. IT IS AN AFFIRMATIVE DEFENSE THAT SUCH OTHER
21 PERSON KNEW THAT THE DEFENDANT HAD TESTED POSITIVE FOR HIV, KNEW SUCH
22 EXPOSURE COULD RESULT, AND CONSENTED TO SUCH SEXUAL CONDUCT. FOR
23 PURPOSES OF THIS SUBDIVISION, "SEXUAL CONDUCT" SHALL MEAN "SEXUAL INTER-
24 COURSE", "ORAL SEXUAL CONDUCT", OR "ANAL SEXUAL CONDUCT" AS THOSE TERMS
25 ARE DEFINED IN SECTION 130.00 OF THIS TITLE.

26 Reckless endangerment in the first degree is a class D felony.

27 S 3. This act shall take effect on the ninetieth day after it shall
28 have become a law.