

3412

2009-2010 Regular Sessions

I N S E N A T E

March 18, 2009

Introduced by Sens. YOUNG, ALESI, LARKIN, MORAHAN, PADAVAN -- read twice
and ordered printed, and when printed to be committed to the Committee
on Codes

AN ACT to amend the penal law, in relation to aggravated sexual
offenses; and to amend the criminal procedure law, in relation to
youthful offender status

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

1 Section 1. Paragraphs (a), (b) and (c) of subdivision 1 of section
2 70.02 of the penal law, paragraph (a) as amended by chapter 320 of the
3 laws of 2006, paragraph (b) as separately amended by chapters 764 and
4 765 of the laws of 2005 and paragraph (c) as amended by chapter 7 of the
5 laws of 2007, are amended to read as follows:
6 (a) Class B violent felony offenses: an attempt to commit the class
7 A-I felonies of murder in the second degree as defined in section
8 125.25, kidnapping in the first degree as defined in section 135.25, and
9 arson in the first degree as defined in section 150.20; manslaughter in
10 the first degree as defined in section 125.20, aggravated manslaughter
11 in the first degree as defined in section 125.22, rape in the first
12 degree as defined in section 130.35, criminal sexual act in the first
13 degree as defined in section 130.50, aggravated sexual abuse in the
14 [first] SECOND degree as defined in section 130.70, course of sexual
15 conduct against a child in the first degree as defined in section
16 130.75; assault in the first degree as defined in section 120.10,
17 kidnapping in the second degree as defined in section 135.20, burglary
18 in the first degree as defined in section 140.30, arson in the second
19 degree as defined in section 150.15, robbery in the first degree as
20 defined in section 160.15, incest in the first degree as defined in
21 section 255.27, criminal possession of a weapon in the first degree as
22 defined in section 265.04, criminal use of a firearm in the first degree
23 as defined in section 265.09, criminal sale of a firearm in the first

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

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1 degree as defined in section 265.13, aggravated assault upon a police
2 officer or a peace officer as defined in section 120.11, gang assault in
3 the first degree as defined in section 120.07, intimidating a victim or
4 witness in the first degree as defined in section 215.17, hindering
5 prosecution of terrorism in the first degree as defined in section
6 490.35, criminal possession of a chemical weapon or biological weapon in
7 the second degree as defined in section 490.40, and criminal use of a
8 chemical weapon or biological weapon in the third degree as defined in
9 section 490.47.

10 (b) Class C violent felony offenses: an attempt to commit any of the
11 class B felonies set forth in paragraph (a); aggravated criminally
12 negligent homicide as defined in section 125.11, aggravated manslaughter
13 in the second degree as defined in section 125.21, aggravated sexual
14 abuse in the [second] THIRD degree as defined in section 130.67, assault
15 on a peace officer, police officer, fireman or emergency medical
16 services professional as defined in section 120.08, gang assault in the
17 second degree as defined in section 120.06, burglary in the second
18 degree as defined in section 140.25, robbery in the second degree as
19 defined in section 160.10, criminal possession of a weapon in the second
20 degree as defined in section 265.03, criminal use of a firearm in the
21 second degree as defined in section 265.08, criminal sale of a firearm
22 in the second degree as defined in section 265.12, criminal sale of a
23 firearm with the aid of a minor as defined in section 265.14, soliciting
24 or providing support for an act of terrorism in the first degree as
25 defined in section 490.15, hindering prosecution of terrorism in the
26 second degree as defined in section 490.30, and criminal possession of a
27 chemical weapon or biological weapon in the third degree as defined in
28 section 490.37.

29 (c) Class D violent felony offenses: an attempt to commit any of the
30 class C felonies set forth in paragraph (b); reckless assault of a child
31 as defined in section 120.02, assault in the second degree as defined in
32 section 120.05, menacing a police officer or peace officer as defined in
33 section 120.18, stalking in the first degree, as defined in subdivision
34 one of section 120.60, rape in the second degree as defined in section
35 130.30, criminal sexual act in the second degree as defined in section
36 130.45, sexual abuse in the first degree as defined in section 130.65,
37 course of sexual conduct against a child in the second degree as defined
38 in section 130.80, aggravated sexual abuse in the [third] FOURTH degree
39 as defined in section 130.66, facilitating a sex offense with a
40 controlled substance as defined in section 130.90, criminal possession
41 of a weapon in the third degree as defined in subdivision five, six,
42 seven or eight of section 265.02, criminal sale of a firearm in the
43 third degree as defined in section 265.11, intimidating a victim or
44 witness in the second degree as defined in section 215.16, soliciting or
45 providing support for an act of terrorism in the second degree as
46 defined in section 490.10, and making a terroristic threat as defined in
47 section 490.20, falsely reporting an incident in the first degree as
48 defined in section 240.60, placing a false bomb or hazardous substance
49 in the first degree as defined in section 240.62, placing a false bomb
50 or hazardous substance in a sports stadium or arena, mass transportation
51 facility or enclosed shopping mall as defined in section 240.63, and
52 aggravated unpermitted use of indoor pyrotechnics in the first degree as
53 defined in section 405.18.

54 S 2. The penal law is amended by adding three new sections 130.36,
55 130.51 and 130.71 to read as follows:

56 S 130.36 AGGRAVATED RAPE.

1 A MALE IS GUILTY OF AGGRAVATED RAPE WHEN HE ENGAGES IN SEXUAL INTER-
2 COURSE WITH A FEMALE BY FORCIBLE COMPULSION AND WHEN, IN THE COURSE OF
3 THE COMMISSION OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE OR
4 ANOTHER PARTICIPANT IN THE CRIME:

- 5 1. IS ARMED WITH A DEADLY WEAPON; OR
- 6 2. USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR
- 7 3. CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN
8 THE CRIME; OR
- 9 4. DISPLAYS WHAT APPEARS TO BE A FIREARM.

10 AGGRAVATED RAPE IS A CLASS A-II FELONY.

11 S 130.51 AGGRAVATED CRIMINAL SEXUAL ACT.

12 A PERSON IS GUILTY OF AGGRAVATED CRIMINAL SEXUAL ACT WHEN HE OR SHE
13 ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER
14 PERSON BY FORCIBLE COMPULSION AND WHEN, IN THE COURSE OF THE COMMISSION
15 OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE, SHE OR ANOTHER
16 PARTICIPANT IN THE CRIME:

- 17 1. IS ARMED WITH A DEADLY WEAPON; OR
- 18 2. USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR
- 19 3. CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN
20 THE CRIME; OR
- 21 4. DISPLAYS WHAT APPEARS TO BE A FIREARM.

22 AGGRAVATED CRIMINAL SEXUAL ACT IS A CLASS A-II FELONY.

23 S 130.71 AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE.

24 1. A PERSON IS GUILTY OF AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE
25 WHEN HE OR SHE INSERTS A FINGER OR FOREIGN OBJECT IN THE VAGINA, URETH-
26 RA, PENIS OR RECTUM OF ANOTHER PERSON BY FORCIBLE COMPULSION CAUSING
27 PHYSICAL INJURY TO SUCH PERSON AND WHEN, IN THE COURSE OF THE COMMISSION
28 OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE, SHE OR ANOTHER
29 PARTICIPANT IN THE CRIME:

- 30 (A) IS ARMED WITH A DEADLY WEAPON; OR
- 31 (B) USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR
- 32 (C) CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN
33 THE CRIME; OR
- 34 (D) DISPLAYS WHAT APPEARS TO BE A FIREARM.

35 2. CONDUCT PERFORMED FOR A VALID MEDICAL PURPOSE DOES NOT VIOLATE THE
36 PROVISIONS OF THIS SECTION.

37 AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE IS A CLASS A-II FELONY.

38 S 3. Section 130.65-a of the penal law, as added by chapter 1 of the
39 laws of 2000, is amended to read as follows:

40 S 130.65-a Aggravated sexual abuse in the [fourth] FIFTH degree.

41 1. A person is guilty of aggravated sexual abuse in the [fourth] FIFTH
42 degree when:

43 (a) He or she inserts a foreign object in the vagina, urethra, penis
44 or rectum of another person and the other person is incapable of consent
45 by reason of some factor other than being less than seventeen years old;
46 or

47 (b) He or she inserts a finger in the vagina, urethra, penis or rectum
48 of another person causing physical injury to such person and such person
49 is incapable of consent by reason of some factor other than being less
50 than seventeen years old.

51 2. Conduct performed for a valid medical purpose does not violate the
52 provisions of this section.

53 Aggravated sexual abuse in the [fourth] FIFTH degree is a class E
54 felony.

1 S 4. Section 130.66 of the penal law, as added by chapter 181 of the
2 laws of 1996, subdivision 2 as added and subdivision 3 as renumbered by
3 chapter 1 of the laws of 2000, is amended to read as follows:

4 S 130.66 Aggravated sexual abuse in the [third] FOURTH degree.

5 1. A person is guilty of aggravated sexual abuse in the [third] FOURTH
6 degree when he inserts a foreign object in the vagina, urethra, penis or
7 rectum of another person:

8 (a) By forcible compulsion; or

9 (b) When the other person is incapable of consent by reason of being
10 physically helpless; or

11 (c) When the other person is less than eleven years old.

12 2. A person is guilty of aggravated sexual abuse in the [third] FOURTH
13 degree when he or she inserts a foreign object in the vagina, urethra,
14 penis or rectum of another person causing physical injury to such person
15 and such person is incapable of consent by reason of being mentally
16 disabled or mentally incapacitated.

17 3. Conduct performed for a valid medical purpose does not violate the
18 provisions of this section.

19 Aggravated sexual abuse in the [third] FOURTH degree is a class D
20 felony.

21 S 5. Section 130.67 of the penal law, as added by chapter 450 of the
22 laws of 1988, is amended to read as follows:

23 S 130.67 Aggravated sexual abuse in the [second] THIRD degree.

24 1. A person is guilty of aggravated sexual abuse in the [second] THIRD
25 degree when he inserts a finger in the vagina, urethra, penis, or rectum
26 of another person causing physical injury to such person:

27 (a) By forcible compulsion; or

28 (b) When the other person is incapable of consent by reason of being
29 physically helpless; or

30 (c) When the other person is less than eleven years old.

31 2. Conduct performed for a valid medical purpose does not violate the
32 provisions of this section.

33 Aggravated sexual abuse in the [second] THIRD degree is a class C
34 felony.

35 S 6. Section 130.70 of the penal law, as amended by chapter 450 of the
36 laws of 1988, is amended to read as follows:

37 S 130.70 Aggravated sexual abuse in the [first] SECOND degree.

38 1. A person is guilty of aggravated sexual abuse in the [first] SECOND
39 degree when he inserts a foreign object in the vagina, urethra, penis or
40 rectum of another person causing physical injury to such person:

41 (a) By forcible compulsion; or

42 (b) When the other person is incapable of consent by reason of being
43 physically helpless; or

44 (c) When the other person is less than eleven years old.

45 2. Conduct performed for a valid medical purpose does not violate the
46 provisions of this section.

47 Aggravated sexual abuse in the [first] SECOND degree is a class B
48 felony.

49 S 7. Subdivisions 2 and 3 of section 720.10 of the criminal procedure
50 law, subdivision 2 as amended by chapter 416 of the laws of 1986, para-
51 graph (a) of subdivision 2 as amended by chapter 316 of the laws of 2006
52 and subdivision 3 as amended by chapter 264 of the laws of 2003, are
53 amended to read as follows:

54 2. "Eligible youth" means a youth who is eligible to be found a
55 youthful offender. Every youth is so eligible unless:

1 (a) the conviction to be replaced by a youthful offender finding is
2 for (i) a class A-I or class A-II felony, or (ii) an armed felony as
3 defined in subdivision forty-one of section 1.20, except as provided in
4 subdivision three, or (iii) rape in the first degree, criminal sexual
5 act in the first degree, or aggravated sexual abuse IN THE SECOND
6 DEGREE, except as provided in subdivision three, or

7 (b) such youth has previously been convicted and sentenced for a felo-
8 ny, or

9 (c) such youth has previously been adjudicated a youthful offender
10 following conviction of a felony or has been adjudicated on or after
11 September first, nineteen hundred seventy-eight a juvenile delinquent
12 who committed a designated felony act as defined in the family court
13 act.

14 3. Notwithstanding the provisions of subdivision two, a youth who has
15 been convicted of an armed felony offense or of rape in the first
16 degree, criminal sexual act in the first degree, or aggravated sexual
17 abuse IN THE SECOND DEGREE is an eligible youth if the court determines
18 that one or more of the following factors exist: (i) mitigating circum-
19 stances that bear directly upon the manner in which the crime was
20 committed; or (ii) where the defendant was not the sole participant in
21 the crime, the defendant's participation was relatively minor although
22 not so minor as to constitute a defense to the prosecution. Where the
23 court determines that the eligible youth is a youthful offender, the
24 court shall make a statement on the record of the reasons for its deter-
25 mination, a transcript of which shall be forwarded to the state division
26 of criminal justice services, to be kept in accordance with the
27 provisions of subdivision three of section eight hundred thirty-seven-a
28 of the executive law.

29 S 8. This act shall take effect on the first of November next succeed-
30 ing the date on which it shall have become a law.