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

5311

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the correction law, the executive law, the criminal procedure law and the mental hygiene law, in relation to sex offenses and to repeal certain provisions of the penal law and the criminal procedure law relating thereto

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

Section 1. Subdivision 18 of section 10.00 of the penal law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

18. "Juvenile offender" means (1) a person thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of this chapter or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of [the penal law] THIS CHAPTER OR PREDATORY SEXUAL ASSAULT AS DEFINED IN SECTION 130.95 OF THIS CHAPTER; and

(2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); [subdivisions one and two of] section 130.35 (rape in the first degree); [subdivisions one and two of] section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 130.95 (PREDATORY SEXUAL ASSAULT); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or

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

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section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of [the penal law] THIS CHAPTER.

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

2. A person thirteen, fourteen or fifteen years of age is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible, AND FOR ACTS CONSTITUTING PREDATORY SEXUAL ASSAULT AS DEFINED IN SECTION 130.95 OF THIS CHAPTER or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of [the penal law] THIS CHAPTER, AND FOR ACTS CONSTITUTING PREDATORY SEXUAL ASSAULT AS DEFINED IN SECTION 130.95 OF THIS CHAPTER; and a person fourteen or fifteen years of age is criminally responsible for acts constituting the crimes defined in section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); [subdivisions one and two of] section 130.35 (rape in the first degree); [subdivisions one and two of] section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of [the penal law] THIS CHAPTER.

S 3. Subparagraph (i) of paragraph (a) of subdivision 3 of section 70.00 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(i) For a class A-I felony, such minimum period shall not be less than fifteen years nor more than twenty-five years; provided, however, that (A) where a sentence, other than a sentence of death or life imprisonment without parole, is imposed upon a defendant convicted of murder in the first degree as defined in section 125.27 of this chapter such minimum period shall be not less than twenty years nor more than twenty-five years, and, (B) where a sentence is imposed upon a defendant convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or convicted of aggravated murder as defined in section 125.26 of this chapter, the sentence shall be life imprisonment without parole, and, (C) where a sentence is imposed upon a defendant convicted of attempted murder in the first degree as defined in article one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a) of subdivision one and paragraph (b) of subdivision one of section 125.27 of this chapter or attempted aggravated murder as defined in article one hundred ten of this chapter and section 125.26 of this chapter such minimum period shall be not less than twenty years nor more than forty years, AND, (D) WHERE A SENTENCE IS IMPOSED UPON A DEFENDANT

CONVICTED OF RAPE OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.36 OF THIS CHAPTER, CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.51 OF THIS CHAPTER, AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.71 OF THIS CHAPTER, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.75 OF THIS CHAPTER, PREDATORY SEX ASSAULT AS DEFINED IN SECTION 130.95 OF THIS CHAPTER OR USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.03 OF THIS CHAPTER, SUCH MINIMUM PERIOD SHALL BE TWENTY-FIVE YEARS.

S 4. Paragraphs (a), (b) and (c) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 320 of the laws of 2006, paragraph (b) as separately amended by chapters 764 and 765 of the laws of 2005, paragraph (c) as amended by chapter 7 of the laws of 2007, are amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, [course of sexual conduct against a child in the first degree as defined in section 130.75;] assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 263.05, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.08, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.13, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, RAPE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.31, CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.46, SEXUAL ABUSE OF A CHILD AS DEFINED IN SECTION 130.63, aggravated sexual abuse in the second degree as defined in section 130.67, AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.69, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.80, assault on a peace officer, police officer,

fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.10, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.11, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.15, POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.16, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, RAPE OF A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 130.26, rape in the second degree as defined in section 130.30, CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 130.41, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, [course of sexual conduct against a child in the second degree as defined in section 130.80,] aggravated sexual abuse in the third degree as defined in section [130.66,] 130.65-A, AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 130.68, facilitating a sex offense with a controlled substance as defined in section 130.90, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.12, POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.17, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

S 5. Section 70.07 of the penal law, as added by chapter 1 of the laws of 2000, subdivisions 1, 2, 3 as amended and subdivision 5 as added by chapter 264 of the laws of 2003, paragraphs (a) and (b) of subdivision 4 as amended by chapter 107 of the laws of 2006, is amended to read as follows:

S 70.07 Sentence of imprisonment for second [child] sexual assault felony offender.

1. A person who stands convicted of a felony offense for a sexual assault [against a child], having been subjected to a predicate felony conviction for a sexual assault [against a child], must be sentenced in accordance with the provisions of subdivision four [or five] of this section.

2. A "sexual assault [against a child]" means a felony offense, other than persistent sexual abuse as defined in section 130.53 of this chapter, [(a)] the essential elements of which include the commission or attempted commission of sexual conduct, as defined in subdivision ten of section 130.00 OR SUBDIVISION THREE OF SECTION 263.00 of this chapter[, (b) committed or attempted to be committed against a child less than fifteen years old].

3. For purposes of determining whether a person has been subjected to a predicate felony conviction under this section, the criteria set forth in paragraph (b) of subdivision one of section 70.06 shall apply provided however that for purposes of this subdivision, the terms "ten year" or "ten years", as provided in subparagraphs (iv) and (v) of paragraph (b) of subdivision one of such section 70.06, shall be "fifteen year" or "fifteen years". The provisions of section 400.19 of the criminal procedure law shall govern the procedures that must be followed to determine whether a person who stands convicted of a sexual assault [against a child] has been previously subjected to a predicate felony conviction for such a sexual assault and whether such offender was eighteen years of age or older at the time of the commission of the predicate felony.

4. Where the court has found pursuant to subdivision three of this section that a person who stands convicted of a felony offense [defined in article one hundred thirty of this chapter] for the commission or attempted commission of a sexual assault [against a child] has been subjected to a predicate felony conviction for a sexual assault [against a child], the court shall [sentence the defendant as follows:

(a) where the defendant stands convicted of such sexual assault against a child and such conviction is for a class A-II or class B felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall] impose an indeterminate sentence of imprisonment, the maximum term of which shall be life and the minimum period of which shall be [at least fifteen years and no more than] twenty-five years[;

(b) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class C felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least twelve years and must not exceed thirty years; provided however, that if the court determines that a longer sentence is warranted, the court shall set forth on the record the reasons for such determination and, in lieu of imposing such sentence of imprisonment, may impose an indeterminate sentence of imprisonment, the maximum term of which shall be life and the minimum period of which shall be at least fifteen years and no more than twenty-five years;

(c) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class B felony offense, and the predicate conviction for such sexual assault against a child is for a class D or class E felony offense, the court shall impose a determi-

nate sentence of imprisonment, the term of which must be at least twelve years and must not exceed thirty years;

(d) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class C felony offense, and the predicate conviction for such sexual assault against a child is for a class D or class E felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least ten years and must not exceed twenty-five years;

(e) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class D felony offense, and the predicate conviction for such sexual assault against a child is for a felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least five years and must not exceed fifteen years; and

(f) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class E felony offense, and the predicate conviction for such sexual assault against a child is for a felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least four years and must not exceed twelve years.

5. Notwithstanding subdivision four of this section, where the court has found pursuant to subdivision three of this section that a person: (a) stands convicted of a felony offense defined in article one hundred thirty of this chapter for the commission or attempted commission of a sexual assault against a child; and (b) has been subjected to a predicate felony conviction for sexual assault against a child as defined in subdivision two of this section; and (c) who was under the age of eighteen years at the time of the commission of such predicate felony offense, then the court may, in lieu of the sentence authorized by subdivision four of this section, sentence the defendant to a term of imprisonment in accordance with the sentence authorized for the instant felony offense pursuant to subdivision three of section 70.04 of this article. The court shall set forth on the record the reasons for such determination].

S 6. Subdivision 1 of section 110.05 of the penal law, as amended by chapter 93 of the laws of 2006, is amended to read as follows:

1. Class A-I felony when the crime attempted is the A-I felony of murder in the first degree, aggravated murder as defined in subdivision one of section 125.26 of this chapter, criminal possession of a controlled substance in the first degree, criminal sale of a controlled substance in the first degree, criminal possession of a chemical or biological weapon in the first degree [or], criminal use of a chemical or biological weapon in the first degree, RAPE OF A CHILD IN THE FIRST DEGREE, CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE FIRST DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE, AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE FIRST DEGREE, USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE OR PREDATORY SEXUAL ASSAULT;

S 7. Subdivision 5 of section 125.25 of the penal law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

5. Being eighteen years old or more, while in the course of committing [rape in the first, second or third degree, criminal sexual act in the first, second or third degree, sexual abuse in the first degree, aggravated sexual abuse in the first, second, third or fourth degree,] OR ATTEMPTING TO COMMIT RAPE OF A CHILD IN THE FIRST, SECOND OR THIRD DEGREE, CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE FIRST, SECOND OR THIRD DEGREE, SEXUAL ABUSE IN THE SECOND DEGREE, SEXUAL ABUSE OF A

CHILD, AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE FIRST OR SECOND DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST OR SECOND DEGREE, USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST OR SECOND DEGREE, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE, or incest in the first, second or third degree, against a person less than [fourteen] FIFTEEN years old, he or she [intentionally] causes the death of such person.

S 8. Subdivision 9 of section 130.00 of the penal law, as amended by chapter 696 of the laws of 1981, is amended to read as follows:

9. "Foreign object" means any instrument or article [which, when inserted in the vagina, urethra, penis or rectum, is capable of causing physical injury] OTHER THAN A BODY PART.

S 9. Subdivision 11 of section 130.00 of the penal law, as added by chapter 122 of the laws of 1996, is amended to read as follows:

11. "Aggravated sexual contact" means inserting, other than for a valid medical purpose, a FINGER OR foreign object in the vagina, urethra, penis or rectum of [a child, thereby causing physical injury to such child] ANOTHER PERSON.

S 10. 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 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] THIRD 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.

S 11. Subdivision 3 of section 130.10 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

3. In any prosecution for the crime of 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] THIRD degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55 in which incapacity to consent is based on the circumstances set forth in paragraph (h) of subdivision three of section 130.05 of this article it shall be an affirmative defense that the client or patient consented to such conduct charged after having been expressly advised by the health care or mental health care provider that such conduct was not performed for a valid medical purpose.

S 12. Section 130.25 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 130.25 Rape in the third degree.

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old; OR

2. [Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or

3.] He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

S 13. The penal law is amended by adding a new section 130.26 to read as follows:

S 130.26 RAPE OF A CHILD IN THE THIRD DEGREE.

A PERSON IS GUILTY OF RAPE OF A CHILD IN THE THIRD DEGREE WHEN, BEING TWENTY-ONE YEARS OF AGE OR MORE, HE OR SHE ENGAGES IN SEXUAL INTERCOURSE WITH ANOTHER PERSON LESS THAN SEVENTEEN YEARS OLD.

RAPE OF A CHILD IN THE THIRD DEGREE IS A CLASS D FELONY.

S 14. Section 130.30 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 130.30 Rape in the second degree.

A person is guilty of rape in the second degree when[:

1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or

2.] he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

[It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.]

Rape in the second degree is a class D felony.

S 15. The penal law is amended by adding a new section 130.31 to read as follows:

S 130.31 RAPE OF A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF RAPE OF A CHILD IN THE SECOND DEGREE WHEN, BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE ENGAGES IN SEXUAL INTERCOURSE WITH ANOTHER PERSON LESS THAN FIFTEEN YEARS OLD.

IT SHALL BE AN AFFIRMATIVE DEFENSE TO THE CRIME OF RAPE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN THIS SECTION THAT THE DEFENDANT WAS LESS THAN FOUR YEARS OLDER THAN THE VICTIM AT THE TIME OF THE ACT.

RAPE OF A CHILD IN THE SECOND DEGREE IS A CLASS C FELONY.

S 16. Section 130.35 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 130.35 Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or

2. Who is incapable of consent by reason of being physically helpless[; or

3. Who is less than eleven years old; or

4. Who is less than thirteen years old and the actor is eighteen years old or more].

Rape in the first degree is a class B felony.

S 17. The penal law is amended by adding a new section 130.36 to read as follows:

S 130.36 RAPE OF A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF RAPE OF A CHILD IN THE FIRST DEGREE WHEN:

1. HE OR SHE ENGAGES IN SEXUAL INTERCOURSE WITH ANOTHER PERSON WHO IS LESS THAN THIRTEEN YEARS OLD; OR

2. BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE ENGAGES IN SEXUAL INTERCOURSE WITH ANOTHER PERSON LESS THAN FOURTEEN YEARS OLD.

RAPE OF A CHILD IN THE FIRST DEGREE IS A CLASS A-I FELONY.

S 18. Section 130.40 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 130.40 Criminal sexual act in the third degree.

A person is guilty of criminal sexual act in the third degree when:

1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old;

2. [Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or

3.] He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony.

S 19. The penal law is amended by adding a new section 130.41 to read as follows:

S 130.41 CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE THIRD DEGREE.

A PERSON IS GUILTY OF CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE THIRD DEGREE WHEN, BEING TWENTY-ONE YEARS OF AGE OR MORE, HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON LESS THAN SEVENTEEN YEARS OLD.

CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE THIRD DEGREE IS A CLASS D FELONY.

S 20. Section 130.45 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 130.45 Criminal sexual act in the second degree.

A person is guilty of criminal sexual act in the second degree when[:

1. being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or

2.] he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

[It shall be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.]

Criminal sexual act in the second degree is a class D felony.

S 21. The penal law is amended by adding a new section 130.46 to read as follows:

S 130.46 CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE SECOND DEGREE WHEN, BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON LESS THAN FIFTEEN YEARS OLD.

IT SHALL BE AN AFFIRMATIVE DEFENSE TO THE CRIME OF CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN THIS SECTION THAT THE DEFENDANT WAS LESS THAN FOUR YEARS OLDER THAN THE VICTIM AT THE TIME OF THE ACT.

CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE SECOND DEGREE IS A CLASS C FELONY.

S 22. Section 130.50 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 130.50 Criminal sexual act in the first degree.

A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person:

1. By forcible compulsion; or

2. Who is incapable of consent by reason of being physically helpless[; or

3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more].
Criminal sexual act in the first degree is a class B felony.
S 23. The penal law is amended by adding a new section 130.51 to read as follows:
S 130.51 CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE FIRST DEGREE.
A PERSON IS GUILTY OF CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE FIRST DEGREE WHEN:
1. HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON WHO IS LESS THAN THIRTEEN YEARS OLD; OR
2. BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON WHO IS LESS THAN FOURTEEN YEARS OLD.
CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE FIRST DEGREE IS A CLASS A-I FELONY.
S 24. Section 130.55 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:
S 130.55 Sexual abuse in the third degree.
A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.
Sexual abuse in the third degree is a class [B] A misdemeanor.
S 25. Section 130.60 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:
S 130.60 Sexual abuse in the second degree.
A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:
1. Incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Less than fourteen years old.
Sexual abuse in the second degree is a class [A misdemeanor] E FELONY.
S 26. The penal law is amended by adding a new section 130.63 to read as follows:
S 130.63 SEXUAL ABUSE OF A CHILD.
A PERSON IS GUILTY OF SEXUAL ABUSE OF A CHILD WHEN:
1. HE OR SHE SUBJECTS ANOTHER PERSON WHO IS LESS THAN THIRTEEN YEARS OLD TO SEXUAL CONTACT; OR
2. BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE SUBJECTS ANOTHER PERSON WHO IS LESS THAN FOURTEEN YEARS OLD TO SEXUAL CONTACT.
SEXUAL ABUSE OF A CHILD IS A CLASS C FELONY.
S 27. Section 130.65 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:
S 130.65 Sexual abuse in the first degree.
A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:
1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless[; or
3. When the other person is less than eleven years old].
Sexual abuse in the first degree is a class D felony.

S 28. Section 130.65-a of the penal law, as added by chapter 1 of the laws of 2000, is amended to read as follows:

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

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

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

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

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

Aggravated sexual abuse in the [fourth] THIRD degree is a class [E] D felony.

S 29. Section 130.66 of the penal law is REPEALED.

S 30. Subdivision 1 of section 130.67 of the penal law, as added by chapter 450 of the laws of 1988, is amended to read as follows:

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

(a) By forcible compulsion; or

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

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

S 31. The penal law is amended by adding a new section 130.68 to read as follows:

S 130.68 AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE THIRD DEGREE.

A PERSON IS GUILTY OF AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE THIRD DEGREE WHEN, BEING TWENTY-ONE YEARS OF AGE OR MORE, HE OR SHE INSERTS A FINGER OR FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS OR RECTUM OF ANOTHER PERSON WHEN SUCH OTHER PERSON IS LESS THEN SEVENTEEN YEARS OLD.

AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE THIRD DEGREE IS A CLASS D FELONY.

S 32. The penal law is amended by adding a new section 130.69 to read as follows:

S 130.69 AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE SECOND DEGREE.

1. A PERSON IS GUILTY OF AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE SECOND DEGREE WHEN, BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE INSERTS A FINGER OR FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS OR RECTUM OF ANOTHER PERSON WHEN SUCH OTHER PERSON IS LESS THAN FIFTEEN YEARS OLD.

2. IT SHALL BE AN AFFIRMATIVE DEFENSE TO THE CRIME OF AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE SECOND DEGREE THAT THE DEFENDANT WAS LESS THAN FOUR YEARS OLDER THAN THE VICTIM AT THE TIME OF THE ACT.

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

AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE SECOND DEGREE IS A CLASS C FELONY.

S 33. Section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, is amended to read as follows:

S 130.70 Aggravated sexual abuse in the first degree.

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

(a) By forcible compulsion; or
(b) When the other person is incapable of consent by reason of being physically helpless; or
(c) When the other person is [less than eleven years old] INCAPABLE OF CONSENT BY REASON OF BEING MENTALLY DISABLED OR MENTALLY INCAPACITATED.
2. Conduct performed for a valid medical purpose does not violate the provisions of this section.
Aggravated sexual abuse in the first degree is a class B felony.
S 34. The penal law is amended by adding a new section 130.71 to read as follows:
S 130.71 AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE FIRST DEGREE.
1. A PERSON IS GUILTY OF AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE FIRST DEGREE WHEN:
(A) HE OR SHE INSERTS A FINGER OR FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS OR RECTUM OF ANOTHER PERSON WHEN SUCH OTHER PERSON IS LESS THAN THIRTEEN YEARS OLD; OR
(B) BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE INSERTS A FINGER OR FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS OR RECTUM OF ANOTHER PERSON WHEN SUCH OTHER PERSON IS LESS THAN FOURTEEN YEARS OLD.
2. CONDUCT PERFORMED FOR A VALID MEDICAL PURPOSE DOES NOT VIOLATE THE PROVISIONS OF THIS SECTION.
AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE FIRST DEGREE IS A CLASS A-I FELONY.
S 35. Section 130.75 of the penal law, as amended by chapter 1 of the laws of 2000, paragraphs (a) and (b) of subdivision 1, as amended by chapter 264 of the laws of 2003, is amended to read as follows:
S 130.75 Course of sexual conduct against a child in the first degree.
1. A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration:
(a) he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than [eleven] THIRTEEN years old; or
(b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than [thirteen] FOURTEEN years old.
2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.
Course of sexual conduct against a child in the first degree is a class [B] A-I felony.
S 36. Section 130.80 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:
S 130.80 Course of sexual conduct against a child in the second degree.
1. A person is guilty of course of sexual conduct against a child in the second degree when, over a period of time not less than three months in duration:
(a) he or she engages in two or more acts of sexual conduct with a child less than [eleven] THIRTEEN years old; or
(b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct with a child less than [thirteen] FOURTEEN years old.

2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Course of sexual conduct against a child in the second degree is a class [D] C felony.

S 37. Subdivision 3 of section 130.95 of the penal law, as added by chapter 107 of the laws of 2006, is amended to read as follows:

3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this chapter or use of a child in a sexual performance IN THE SECOND DEGREE as defined in section 263.05 of this chapter.

S 38. Subdivisions 1 and 2 of section 263.00 of the penal law, as amended by chapter 1 of the laws of 2000, are amended to read as follows:

1. "Sexual performance" means any performance or part thereof which, for purposes of section 263.03, 263.13 OR 263.16 of this article, includes sexual conduct by a child less than [sixteen] THIRTEEN years of age or, for purposes of section 263.05 [or], 263.15 OR 263.17 of this article, includes sexual conduct by a child less than seventeen years of age.

2. "Obscene sexual performance" means any performance which, for purposes of section 263.08 OR 263.11 of this article, includes sexual conduct by a child less than [sixteen] THIRTEEN years of age or, for purposes of section 263.10 OR 263.12 of this article, includes sexual conduct by a child less than seventeen years of age, in any material which is obscene, as such term is defined in section 235.00 of this chapter.

S 39. The penal law is amended by adding a new section 263.03 to read as follows:

S 263.03 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE.

A PERSON IS GUILTY OF THE USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE IF KNOWING THE CHARACTER AND CONTENT THEREOF HE OR SHE EMPLOYS, AUTHORIZES OR INDUCES A CHILD LESS THAN THIRTEEN YEARS OF AGE TO ENGAGE IN A SEXUAL PERFORMANCE OR BEING A PARENT, LEGAL GUARDIAN OR CUSTODIAN OF SUCH CHILD, HE OR SHE CONSENTS TO THE PARTICIPATION BY SUCH CHILD IN A SEXUAL PERFORMANCE.

USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE IS A CLASS A-I FELONY.

S 40. Section 263.05 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 263.05 Use of a child in a sexual performance IN THE SECOND DEGREE.

A person is guilty of the use of a child in a sexual performance IN THE SECOND DEGREE if knowing the character and content thereof he OR SHE employs, authorizes or induces a child less than seventeen years of age to engage in a sexual performance or being a parent, legal guardian or custodian of such child, he OR SHE consents to the participation by such child in a sexual performance.

Use of a child in a sexual performance IN THE SECOND DEGREE is a class [C] B felony.

S 41. The penal law is amended by adding a new section 263.08 to read as follows:

S 263.08 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES ANY OBSCENE PERFORMANCE

WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN THIRTEEN YEARS OF AGE.

PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A CLASS B FELONY.

S 42. Section 263.10 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 263.10 Promoting an obscene sexual performance by a child IN THE SECOND DEGREE.

A person is guilty of promoting an obscene sexual performance by a child IN THE SECOND DEGREE when, knowing the character and content thereof, he OR SHE produces, directs or promotes any obscene performance which includes sexual conduct by a child less than seventeen years of age.

Promoting an obscene sexual performance by a child IN THE SECOND DEGREE is a class [D] C felony.

S 43. Section 263.11 of the penal law, as added by chapter 11 of the laws of 1996, is amended to read as follows:

S 263.11 Possessing an obscene sexual performance by a child IN THE FIRST DEGREE.

A person is guilty of possessing an obscene sexual performance by a child IN THE FIRST DEGREE when, knowing the character and content thereof, he OR SHE knowingly has in his OR HER possession or control any obscene performance which includes sexual conduct by a child less than [sixteen] THIRTEEN years of age.

Possessing an obscene sexual performance by a child IN THE FIRST DEGREE is a class [E] C felony.

S 44. The penal law is amended by adding a new section 263.12 to read as follows:

S 263.12 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ANY OBSCENE SEXUAL PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN SEVENTEEN YEARS OF AGE.

POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 45. The penal law is amended by adding a new section 263.13 to read as follows:

S 263.13 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES ANY PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN THIRTEEN YEARS OF AGE.

PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A CLASS B FELONY.

S 46. Section 263.15 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 263.15 Promoting a sexual performance by a child IN THE SECOND DEGREE.

A person is guilty of promoting a sexual performance by a child IN THE SECOND DEGREE when, knowing the character and content thereof, he OR SHE produces, directs or promotes any performance which includes sexual conduct by a child less than seventeen years of age.

Promoting a sexual performance by a child IN THE SECOND DEGREE is a class [D] C felony.

S 47. Section 263.16 of the penal law, as added by chapter 11 of the laws of 1996, is amended to read as follows:

S 263.16 Possessing a sexual performance by a child IN THE FIRST DEGREE.

A person is guilty of possessing a sexual performance by a child IN THE FIRST DEGREE when, knowing the character and content thereof, he OR SHE knowingly has in his OR HER possession or control any performance which includes sexual conduct by a child less than [sixteen] THIRTEEN years of age.

Possessing a sexual performance by a child IN THE FIRST DEGREE is a class [E] C felony.

S 48. The penal law is amended by adding a new section 263.17 to read as follows:

S 263.17 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ANY PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN SEVENTEEN YEARS OF AGE.

POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 49. Subdivision 1 of section 263.20 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

1. Under this article, it shall be an affirmative defense that the defendant in good faith reasonably believed the person appearing in the performance was, for purposes of section [263.11 or 263.16 of this article, sixteen years of age or over or, for purposes of section] 263.05, 263.10 [or], 263.12, 263.15 OR 263.17 of this article, seventeen years of age or over.

S 50. 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] SECTION 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 [and], 255.27 [or article two hundred sixty-three of the penal law], 263.05, 263.08, 263.10, 263.11, 263.12, 263.13, 263.15, 263.16 OR 263.17 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 51. Subparagraph (i) of paragraph (a) of subdivision 3 of section 168-a of the correction law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.26, 130.31, 130.35, 130.36, 130.41, 130.46, 130.50, 130.51, 130.63, 130.65, [130.66,] 130.67, 130.68, 130.69, 130.70, 130.71, 130.75, 130.80, 130.95 [and], 130.96 AND 263.03 of the penal law, or

S 52. Section 168-l of the correction law is amended by adding a new subdivision 6-a to read as follows:

6-A. APPLYING THESE GUIDELINES, THE BOARD SHALL WITHIN SIXTY CALENDAR DAYS PRIOR TO THE PAROLE BOARD'S CONSIDERATION OF A SEX OFFENDER FOR

POSSIBLE RELEASE TO PAROLE SUPERVISION PURSUANT TO SUBDIVISION TWO OF SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW MAKE A RECOMMENDATION WHICH SHALL BE CONFIDENTIAL AND SHALL NOT BE AVAILABLE FOR PUBLIC INSPECTION, TO THE PAROLE BOARD AS TO WHETHER SUCH SEX OFFENDER WARRANTS THE DESIGNATION OF SEXUAL PREDATOR, SEXUALLY VIOLENT OFFENDER, OR PREDICATE SEX OFFENDER AS DEFINED IN SUBDIVISION SEVEN OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THIS ARTICLE. IN ADDITION, THE GUIDELINES SHALL BE APPLIED BY THE BOARD TO MAKE A RECOMMENDATION TO THE PAROLE BOARD WHICH SHALL BE CONFIDENTIAL AND SHALL NOT BE AVAILABLE FOR PUBLIC INSPECTION, PROVIDING FOR ONE OF THE THREE LEVELS OF NOTIFICATION PROVIDED FOR UNDER SUBDIVISION SIX OF THIS SECTION DEPENDING UPON THE DEGREE OF THE RISK OF RE-OFFENSE BY THE SEX OFFENDER.

S 53. Subdivision 1 of section 259-a of the executive law, as amended by section 11 of part D of chapter 56 of the laws of 2008, is amended to read as follows:

1. The division shall cause to be obtained and filed as soon as practicable, information as complete as may be obtainable with regard to each inmate who is received in an institution under the jurisdiction of the state department of correctional services. Such information shall include a complete statement of the crime for which the inmate has been sentenced, the circumstances of such crime, all presentence memoranda, the nature of the sentence, any orders of protection or temporary orders of protection issued against the inmate at the time of sentencing, the court in which he OR SHE was sentenced, the name of the judge and district attorney and copies of such probation reports as may have been made, RECOMMENDATIONS FROM THE BOARD OF EXAMINERS OF SEX OFFENDERS AS AUTHORIZED BY SUBDIVISION SIX-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THE CORRECTION LAW as well as reports as to the inmate's social, physical, mental and psychiatric condition and history.

S 54. Subparagraph (A) of paragraph (c) of subdivision 2 of section 259-i of the executive law, as amended by section 12 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

(A) Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interpersonal relationships with staff and inmates; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the inmate; (iv) any deportation order issued by the federal government against the inmate while in the custody of the department of correctional services and any recommendation regarding deportation made by the commissioner of the department of correctional services pursuant to section one hundred forty-seven of the correction law; (v) ANY RECOMMENDATION PROVIDED TO THE BOARD FROM THE BOARD OF EXAMINERS OF SEX OFFENDERS AS AUTHORIZED BY SUBDIVISION SIX-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THE CORRECTION LAW; (VI) any statement made to the board by the crime victim or the victim's representative, where the

crime victim is deceased or is mentally or physically incapacitated; and [(vi)] (VII) the length of the determinate sentence to which the inmate would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the penal law for a felony defined in article two hundred twenty or article two hundred twenty-one of the penal law. The board shall provide toll free telephone access for crime victims. In the case of an oral statement made in accordance with subdivision one of section 440.50 of the criminal procedure law, the parole board member shall present a written report of the statement to the parole board. A crime victim's representative shall mean the crime victim's closest surviving relative, the committee or guardian of such person, or the legal representative of any such person. Such statement submitted by the victim or victim's representative may include information concerning threatening or intimidating conduct toward the victim, the victim's representative, or the victim's family, made by the person sentenced and occurring after the sentencing. Such information may include, but need not be limited to, the threatening or intimidating conduct of any other person who or which is directed by the person sentenced. Notwithstanding the provisions of this section, in making the parole release decision for persons whose minimum period of imprisonment was not fixed pursuant to the provisions of subdivision one of this section, in addition to the factors listed in this paragraph the board shall consider the factors listed in paragraph (a) of subdivision one of this section.

S 55. The closing paragraph of subdivision 7 of section 995 of the executive law, as amended by chapter 2 of the laws of 2006, is amended to read as follows:

aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the [fourth] THIRD degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivi-

sions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent [materials] MATERIAL to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent [materials] MATERIAL to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance IN THE SECOND DEGREE, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child IN THE SECOND DEGREE, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child IN THE FIRST DEGREE, as defined in section 263.11 of the penal law; promoting a sexual performance by a child IN THE SECOND DEGREE, as defined in section 263.15 of the penal law; possessing a sexual performance by a child IN THE FIRST DEGREE, as defined in section 263.16 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or (e) a felony defined in the penal law or an attempt thereof where such attempt is a felony; or (f) any of the following misdemeanors: assault in the third degree as defined in section 120.00 of the penal law; attempted aggravated assault upon a person less than eleven years old, as defined in section 110.00 and section 120.12 of the penal law; attempted menacing in the first degree, as defined in section 110.00 and section 120.13 of the penal law; menacing in the second degree as defined in section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; reckless endangerment in the second degree as defined in section 120.20 of the penal law; stalking in the fourth degree as defined in section 120.45 of the penal law; stalking in the third degree as defined in section 120.50 of the penal law; attempted stalking in the second degree, as defined in section 110.00 and section 120.55 of the penal law; forcible touching as defined in section 130.52 of the penal law regardless of the age of the victim; sexual abuse in the third degree as defined in section 130.55 of the penal law regardless of the age of the victim; unlawful imprisonment in the second degree as defined in section

135.05 of the penal law regardless of the age of the victim; attempted unlawful imprisonment in the first degree, as defined in section 110.00 and section 135.10 of the penal law regardless of the age of the victim; criminal trespass in the second degree as defined in section 140.15 of the penal law; possession of burglar's tools as defined in section 140.35 of the penal law; petit larceny as defined in section 155.25 of the penal law; endangering the welfare of a child as defined in section 260.10 of the penal law; endangering the welfare of an incompetent or physically disabled person as defined in section 260.25.

S 56. Subdivision 42 of section 1.20 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

42. "Juvenile offender" means (1) a person, thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of the penal law, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law OR PREDATORY SEXUAL ASSAULT AS DEFINED IN SECTION 130.95 OF THE PENAL LAW; and (2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); [subdivisions one and two of] section 130.35 (rape in the first degree); [subdivisions one and two of] section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 130.95 (PREDATORY SEXUAL ASSAULT); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.

S 57. Section 200.62 of the criminal procedure law is REPEALED.

S 58. Section 400.19 of the criminal procedure law, as added by chapter 1 of the laws of 2000, subdivisions 2, 4 and 6 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 400.19 Procedure for determining whether defendant is a second [child] sexual assault felony offender.

1. Applicability. The provisions of this section govern the procedure that must be followed in any case where it appears that a defendant who stands convicted of a felony offense for a sexual assault [upon a child] as defined in section 70.07 of the penal law has previously been convicted of a predicate felony for a sexual assault [upon a child].

2. Statement to be filed. When information available to the people prior to [the trial of] SENTENCING FOR a felony offense for a sexual assault [against a child] indicates that the defendant may have previously been subjected to a predicate felony conviction for a sexual assault [against a child], a statement [may] MUST be filed by the prosecutor [at any time before trial commences] BEFORE SENTENCE IS IMPOSED setting forth the date and place of each alleged predicate felony

conviction for a sexual assault [against a child] and a statement whether the defendant was eighteen years of age or older at the time of the commission of the predicate felony. Where the provisions of subparagraph (v) of paragraph (b) of subdivision one of section 70.06 of the penal law apply, such statement also shall set forth the date of commencement and the date of termination as well as the place of imprisonment for each period of incarceration to be used for tolling of the ten year limitation set forth in subparagraph (iv) of paragraph (b) of such subdivision AND SUBDIVISION THREE OF SECTION 70.07 OF THE PENAL LAW.

3. Preliminary examination. The defendant must be given a copy of such statement and the court must ask him OR HER whether he OR SHE wishes to controvert any allegation made therein. If the defendant wishes to controvert any allegation in the statement, he OR SHE must specify the particular allegation or allegations he OR SHE wishes to controvert. Uncontroverted allegations in the statement shall be deemed to have been admitted by the defendant.

4. Cases where further hearing is not required. Where the uncontroverted allegations in the statement are sufficient to support a finding that the defendant has been subjected to a predicate felony conviction for a sexual assault [upon a child] and that the defendant was [18] EIGHTEEN years of age or older at the time of the commission of the predicate felony, the court must enter such finding and when imposing sentence must sentence the defendant in accordance with the provisions of section 70.07 of the penal law.

5. Cases where further hearing is required. Where the defendant controverts an allegation in the statement, the court must proceed to hold a hearing.

6. Manner of conducting hearing. (a) A hearing pursuant to this section must be before the court without jury. The burden of proof is upon the people and a finding that the defendant has been subjected to a predicate felony conviction for a sexual assault [against a child] as defined in subdivision two of section 70.07 of the penal law and that the defendant was [18] EIGHTEEN years of age or older at the time of the commission of the predicate felony must be based upon proof beyond a reasonable doubt by evidence admissible under the rules applicable to a trial of the issue of guilt.

(b) [Regardless of whether the age of the victim is an element of the alleged predicate felony offense, where the defendant controverts an allegation that the victim of an alleged sexual assault upon a child was less than fifteen years old, the people may prove that the child was less than fifteen years old by any evidence admissible under the rules applicable to a trial of the issue of guilt. For purposes of determining whether a child was less than fifteen years old, the people shall not be required to prove that the defendant knew the child was less than fifteen years old at the time of the alleged sexual assault.

(c)] A previous conviction in this or any other jurisdiction which was obtained in violation of the rights of the defendant under the applicable provisions of the constitution of the United States must not be counted in determining whether the defendant has been subjected to a predicate felony conviction for a sexual assault [upon a child]. The defendant may, at any time during the course of the hearing hereunder, controvert an allegation with respect to such conviction in the statement on the grounds that the conviction was unconstitutionally obtained. Failure to challenge the previous conviction in the manner provided herein constitutes a waiver on the part of the defendant of any allega-

tion of unconstitutionality unless good cause be shown for such failure to make timely challenge.

[(d)] (C) At the conclusion of the hearing the court must make a finding as to whether or not the defendant has been subjected to a predicate felony conviction for a sexual assault [against a child] as defined in subdivision two of section 70.07 of the penal law and whether the defendant was [18] EIGHTEEN years of age or older at the time of the commission of the predicate felony.

7. Subsequent use of predicate felony conviction finding. Where a finding has been entered pursuant to this section, such finding shall be binding in any future proceeding in which the issue may arise.

S 59. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, RAPE OF A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 130.26 OF THE PENAL LAW, RAPE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.31 OF THE PENAL LAW, RAPE OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.36 OF THE PENAL LAW, criminal sexual act in the third degree as defined in section 130.40 of the penal law, CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 130.41 OF THE PENAL LAW, criminal sexual act in the second degree as defined in section 130.45 of the penal law, CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.46 OF THE PENAL LAW, criminal sexual act in the first degree as defined in section 130.50 of the penal law, CRIMINAL SEXUAL ACT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.51 OF THE PENAL LAW, SEXUAL ABUSE OF A CHILD AS DEFINED IN SECTION 130.63 OF THE PENAL LAW, sexual abuse in the first degree as defined in section 130.65 of the penal law, AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE AS DEFINED IN SECTION 130.65-A OF THE PENAL LAW, AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.67 OF THE PENAL LAW, AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 130.68 OF THE PENAL LAW, AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.69 OF THE PENAL LAW, AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.70 OF THE PENAL LAW, AGGRAVATED SEXUAL ABUSE OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.71 OF THE PENAL LAW, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.75 OF THE PENAL LAW, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.80 OF THE PENAL LAW, PREDATORY SEXUAL ASSAULT AS DEFINED IN SECTION 130.95 OF THE PENAL LAW, unlawful imprisonment in

the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section

178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, residential mortgage fraud in the fourth degree as defined in section 187.10 of the penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, ANY OFFENSE DESCRIBED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, sex trafficking as defined in section 230.34 of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

S 60. Subdivision (f) of section 10.03 of the mental hygiene law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(f) "Designated felony" means any felony offense defined by any of the following provisions of the penal law: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance IN THE SECOND DEGREE as

defined in section 263.05, promoting an obscene sexual performance by a child IN THE SECOND DEGREE as defined in section 263.10, promoting a sexual performance by a child IN THE SECOND DEGREE as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

S 61. This act shall take effect on the ninetieth day after it shall have become a law.