

1703

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 11, 2011

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Introduced by M. of A. GIGLIO, FINCH, McDONOUGH, KOLB -- Multi-Sponsored  
by -- M. of A. BURLING, BUTLER, CALHOUN, CROUCH, HAWLEY, McKEVITT,  
J. MILLER, MOLINARO, OAKS -- read once and referred to the Committee  
on Codes

AN ACT to amend the criminal procedure law, the penal law and the family  
court act, in relation to providing juvenile offender status to  
persons thirteen, fourteen or fifteen years of age who have committed  
certain sex offenses

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

1     Section 1. Subdivision 42 of section 1.20 of the criminal procedure  
2 law, as amended by chapter 7 of the laws of 2007, is amended to read as  
3 follows:  
4     42. "Juvenile offender" means (1) a person, thirteen years old who is  
5 criminally responsible for acts constituting murder in the second degree  
6 as defined in subdivisions one and two of section 125.25 of the penal  
7 law[,]; SUBDIVISIONS ONE AND TWO OF SECTION 130.35 (RAPE IN THE FIRST  
8 DEGREE); SUBDIVISIONS ONE AND TWO OF SECTION 130.50 (CRIMINAL SEXUAL ACT  
9 IN THE FIRST DEGREE); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE  
10 FIRST DEGREE); or such conduct as a sexually motivated felony, where  
11 authorized pursuant to section 130.91 of the penal law; and (2) a person  
12 fourteen or fifteen years old who is criminally responsible for acts  
13 constituting the crimes defined in subdivisions one and two of section  
14 125.25 (murder in the second degree) and in subdivision three of such  
15 section provided that the underlying crime for the murder charge is one  
16 for which such person is criminally responsible; section 135.25 (kidnap-  
17 ping in the first degree); 150.20 (arson in the first degree); subdivi-  
18 sions one and two of section 120.10 (assault in the first degree);  
19 125.20 (manslaughter in the first degree); subdivisions one and two of  
20 section 130.35 (rape in the first degree); subdivisions one and two of  
21 section 130.50 (criminal sexual act in the first degree); SECTION 130.66

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

LBD02700-01-1

1 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRA-  
2 VATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexual  
3 abuse in the first degree); 140.30 (burglary in the first degree);  
4 subdivision one of section 140.25 (burglary in the second degree);  
5 150.15 (arson in the second degree); 160.15 (robbery in the first  
6 degree); subdivision two of section 160.10 (robbery in the second  
7 degree) of the penal law; or section 265.03 of the penal law, where such  
8 machine gun or such firearm is possessed on school grounds, as that  
9 phrase is defined in subdivision fourteen of section 220.00 of the penal  
10 law; or defined in the penal law as an attempt to commit murder in the  
11 second degree or kidnapping in the first degree, or such conduct as a  
12 sexually motivated felony, where authorized pursuant to section 130.91  
13 of the penal law.

14 S 2. Subdivision (a) of section 190.71 of the criminal procedure law,  
15 as amended by chapter 7 of the laws of 2007, is amended to read as  
16 follows:

17 (a) Except as provided in subdivision six of section 200.20 of this  
18 chapter, a grand jury may not indict (i) a person thirteen years of age  
19 for any conduct or crime other than conduct constituting a crime defined  
20 in subdivisions one and two of section 125.25 (murder in the second  
21 degree); SUBDIVISIONS ONE AND TWO OF SECTION 130.35 (RAPE IN THE FIRST  
22 DEGREE); SUBDIVISIONS ONE AND TWO OF SECTION 130.50 (CRIMINAL SEXUAL ACT  
23 IN THE FIRST DEGREE); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE  
24 FIRST DEGREE); or such conduct as a sexually motivated felony, where  
25 authorized pursuant to section 130.91 of the penal law; (ii) a person  
26 fourteen or fifteen years of age for any conduct or crime other than  
27 conduct constituting a crime defined in subdivisions one and two of  
28 section 125.25 (murder in the second degree) and in subdivision three of  
29 such section provided that the underlying crime for the murder charge is  
30 one for which such person is criminally responsible; 135.25 (kidnapping  
31 in the first degree); 150.20 (arson in the first degree); subdivisions  
32 one and two of section 120.10 (assault in the first degree); 125.20  
33 (manslaughter in the first degree); subdivisions one and two of section  
34 130.35 (rape in the first degree); subdivisions one and two of section  
35 130.50 (criminal sexual act in the first degree); SECTION 130.66 (AGGRA-  
36 VATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRAVATED  
37 SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexual abuse in  
38 the first degree); 140.30 (burglary in the first degree); subdivision  
39 one of section 140.25 (burglary in the second degree); 150.15 (arson in  
40 the second degree); 160.15 (robbery in the first degree); subdivision  
41 two of section 160.10 (robbery in the second degree) of the penal law;  
42 subdivision four of section 265.02 of the penal law, where such firearm  
43 is possessed on school grounds, as that phrase is defined in subdivision  
44 fourteen of section 220.00 of the penal law; or section 265.03 of the  
45 penal law, where such machine gun or such firearm is possessed on school  
46 grounds, as that phrase is defined in subdivision fourteen of section  
47 220.00 of the penal law; or defined in the penal law as an attempt to  
48 commit murder in the second degree or kidnapping in the first degree, or  
49 such conduct as a sexually motivated felony, where authorized pursuant  
50 to section 130.91 of the penal law.

51 S 3. Subdivision 18 of section 10.00 of the penal law, as amended by  
52 chapter 7 of the laws of 2007, is amended to read as follows:

53 18. "Juvenile offender" means (1) a person thirteen years old who is  
54 criminally responsible for acts constituting murder in the second degree  
55 as defined in subdivisions one and two of section 125.25 of this  
56 chapter; 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); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 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); SECTION 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND 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 such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.

S 4. 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 or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; A PERSON THIRTEEN YEARS OF AGE IS CRIMINALLY RESPONSIBLE FOR ACTS CONSTITUTING THE CRIMES DEFINED IN 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); AND SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); 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); SECTION 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND 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.

S 5. Subdivision 8 of section 301.2 of the family court act, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

8. "Designated felony act" means an act which, if done by an adult, would be a crime: (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree) but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree) or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second 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 committed by a person fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen or fifteen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in paragraph (i), (ii), or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor committed by a person at least seven but less than sixteen years of age, but only where there has been two prior findings by the court that such person has committed a prior felony.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.