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

2991

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

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

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

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

Section 1. Section 120.10 of the penal law, subdivision 4 as amended by chapter 791 of the laws of 1967 and the closing paragraph as amended by chapter 646 of the laws of 1996, is amended to read as follows:

S 120.10 Assault in the first degree.

A person is guilty of assault in the first degree when:

1. With intent to cause serious physical injury to another person, he OR SHE causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or

2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his OR HER body, he OR SHE causes such injury to such person or to a third person; or

3. Under circumstances evincing a depraved indifference to human life, he OR SHE recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person; or

4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he OR SHE, or another participant if there be any, causes serious physical injury to a person other than one of the participants[.]; OR

5. SUCH PERSON HAS ACTUAL NOTICE THAT HE OR SHE HAS TESTED POSITIVE FOR HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND HAS IN FACT CONTRACTED HIV, AND INTENTIONALLY OR, UNDER CIRCUMSTANCES EVINCING A DEPRAVED INDIFFERENCE TO HUMAN LIFE RECKLESSLY, ENGAGES IN SEXUAL CONDUCT WITH ANOTHER

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

LBD07720-01-1

PERSON, AND SUCH CONDUCT IS INTENDED OR REASONABLY LIKELY TO TRANSMIT HIV TO SUCH OTHER PERSON AND THEREBY TRANSMITS HIV TO SUCH OTHER PERSON. IT IS AN AFFIRMATIVE DEFENSE THAT SUCH OTHER PERSON KNEW THAT THE DEFENDANT HAD TESTED POSITIVE FOR HIV, KNEW SUCH EXPOSURE COULD RESULT, AND CONSENTED TO SUCH SEXUAL CONDUCT. FOR PURPOSES OF THIS SUBDIVISION, "SEXUAL CONDUCT" SHALL MEAN "SEXUAL INTERCOURSE", "ORAL SEXUAL CONDUCT", OR "ANAL SEXUAL CONDUCT" AS THOSE TERMS ARE DEFINED IN SECTION 130.00 OF THIS TITLE.

Assault in the first degree is a class B felony.

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

S 120.25 Reckless endangerment in the first degree.

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

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

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

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

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