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

4028

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. CAMARA, GUNTHER, REILLY, BARRON, CASTRO, AUBRY, BOYLAND -- Multi-Sponsored by -- M. of A. COOK, CORWIN, CROUCH, HOOPER, McDONOUGH, McKEVITT, MOLINARO, PHEFFER, RAIA, SAYWARD, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the public health law, the penal law, the executive law and the correction law, in relation to sex offenses facilitated by the use of drugs commonly referred to as "date rape drugs"

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

Section 1. Paragraph (b) of subdivision 4-b of section 2805-i of the public health law is amended by adding a new subparagraph 4 to read as follows:

(4) NO LATER THAN FOUR HOURS AFTER ARRIVING AT THE HOSPITAL, THE VICTIM SHALL, DURING THE EXAMINATION BY A SEXUAL ASSAULT FORENSIC EXAMINER, HAVE HIS OR HER BLOOD DRAWN AND TESTED FOR GAMMA HYDROXYBUTYRIC ACID (GHB), ROHYPNOL (FLUNITRAZEPAM) AND KETAMINE (KETAMINE HYDROCHLORIDE), COMMONLY KNOWN AS "DATE RAPE DRUGS". SUCH TESTED MATERIAL AND RESULTS SHALL BE COLLECTED AND MAINTAINED AS EVIDENCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

S 2. Section 130.90 of the penal law, as added by chapter 1 of the laws of 2000 and subdivisions 1 and 2 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 130.90 Facilitating a sex offense with a controlled substance IN THE FIRST DEGREE.

A person is guilty of facilitating a sex offense with a controlled substance IN THE FIRST DEGREE when he or she:

1. knowingly and unlawfully possesses [a] ONE OR MORE OF THE FOLLOWING controlled [substance or any preparation, compound, mixture or substance that requires a prescription to obtain] SUBSTANCES: GAMMA HYDROXYBUTYRIC ACID (GHB), ROHYPNOL (FLUNITRAZEPAM), OR KETAMINE (KETAMINE HYDROCHLORIDE), COMMONLY KNOWN AS "DATE RAPE DRUGS", and administers such substance [or preparation, compound, mixture or substance that requires a prescription to obtain] OR SUBSTANCES to another person without such

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

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person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and

2. commits or attempts to commit such conduct constituting a felony defined in this article.

Facilitating a sex offense with a controlled substance IN THE FIRST DEGREE is a class [D] C felony.

S 3. The penal law is amended by adding a new section 130.89 to read as follows:

S 130.89 FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE SECOND DEGREE.

A PERSON IS GUILTY OF FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE SECOND DEGREE WHEN HE OR SHE:

1. KNOWINGLY AND UNLAWFULLY POSSESSES A CONTROLLED SUBSTANCE OR ANY PREPARATION, COMPOUND, MIXTURE OR SUBSTANCE, OTHER THAN THOSE CONTROLLED SUBSTANCES LISTED IN SECTION 130.90 OF THIS ARTICLE, THAT REQUIRES A PRESCRIPTION TO OBTAIN AND ADMINISTERS SUCH SUBSTANCE OR PREPARATION, COMPOUND, MIXTURE OR SUBSTANCE THAT REQUIRES A PRESCRIPTION TO OBTAIN TO ANOTHER PERSON WITHOUT SUCH PERSON'S CONSENT AND WITH INTENT TO COMMIT AGAINST SUCH PERSON CONDUCT CONSTITUTING A FELONY DEFINED IN THIS ARTICLE; AND

2. COMMITS OR ATTEMPTS TO COMMIT SUCH CONDUCT CONSTITUTING A FELONY DEFINED IN THIS ARTICLE.

FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE SECOND DEGREE IS A CLASS D FELONY.

S 4. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 405 of the laws of 2010, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, 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, strangulation in the first degree as defined in section 121.13, FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.90, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, 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, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, 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, facilitating a sex offense with a controlled substance IN THE SECOND DEGREE as defined in section [130.90] 130.89, 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. Subdivision 2-f of section 70.25 of the penal law, as added by chapter 1 of the laws of 2000, is amended to read as follows:

2-f. Whenever a person is convicted of FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.89 OR facilitating a sex offense with a controlled substance IN THE FIRST DEGREE as defined in section 130.90 of this chapter, the sentence imposed by the court for such offense may be ordered to run consecutively to any sentence imposed upon conviction of an offense defined in article one hundred thirty of this chapter arising from the same criminal transaction.

S 6. Paragraph (d) 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:

(d) any of the following felonies, or an attempt thereof where such attempt is a felony offense:

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 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 IN THE SECOND DEGREE, AS DEFINED IN SECTION 130.89 OF THE PENAL LAW; facilitating a sex offense with a controlled substance IN THE FIRST DEGREE, 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 subdivisions (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, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, 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

S 7. Subparagraph (ii) 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:

(ii) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.53, 130.65-a, 130.89 and 130.90 of the penal law, or

S 8. This act shall take effect on the ninetieth day after it shall have become a law.