

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:

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

4 (4) NO LATER THAN FOUR HOURS AFTER ARRIVING AT THE HOSPITAL, THE
5 VICTIM SHALL, DURING THE EXAMINATION BY A SEXUAL ASSAULT FORENSIC EXAM-
6 INER, HAVE HIS OR HER BLOOD DRAWN AND TESTED FOR GAMMA HYDROXYBUTYRIC
7 ACID (GHB), ROHYPNOL (FLUNITRAZEPAM) AND KETAMINE (KETAMINE HYDROCHLO-
8 RIDE), COMMONLY KNOWN AS "DATE RAPE DRUGS". SUCH TESTED MATERIAL AND
9 RESULTS SHALL BE COLLECTED AND MAINTAINED AS EVIDENCE PURSUANT TO SUBDI-
10 VISION TWO OF THIS SECTION.

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

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

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

18 1. knowingly and unlawfully possesses [a] ONE OR MORE OF THE FOLLOWING
19 controlled [substance or any preparation, compound, mixture or substance
20 that requires a prescription to obtain] SUBSTANCES: GAMMA HYDROXYBUTYRIC
21 ACID (GHB), ROHYPNOL (FLUNITRAZEPAM), OR KETAMINE (KETAMINE HYDROCHLO-
22 RIDE), COMMONLY KNOWN AS "DATE RAPE DRUGS", and administers such
23 substance [or preparation, compound, mixture or substance that requires
24 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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1 person's consent and with intent to commit against such person conduct
2 constituting a felony defined in this article; and

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

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

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

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

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

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

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

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

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

28 (b) Class C violent felony offenses: an attempt to commit any of the
29 class B felonies set forth in paragraph (a) of this subdivision; aggra-
30 vated criminally negligent homicide as defined in section 125.11, aggra-
31 vated manslaughter in the second degree as defined in section 125.21,
32 aggravated sexual abuse in the second degree as defined in section
33 130.67, assault on a peace officer, police officer, fireman or emergency
34 medical services professional as defined in section 120.08, gang assault
35 in the second degree as defined in section 120.06, strangulation in the
36 first degree as defined in section 121.13, FACILITATING A SEX OFFENSE
37 WITH A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN SECTION
38 130.90, burglary in the second degree as defined in section 140.25,
39 robbery in the second degree as defined in section 160.10, criminal
40 possession of a weapon in the second degree as defined in section
41 265.03, criminal use of a firearm in the second degree as defined in
42 section 265.08, criminal sale of a firearm in the second degree as
43 defined in section 265.12, criminal sale of a firearm with the aid of a
44 minor as defined in section 265.14, soliciting or providing support for
45 an act of terrorism in the first degree as defined in section 490.15,
46 hindering prosecution of terrorism in the second degree as defined in
47 section 490.30, and criminal possession of a chemical weapon or biolog-
48 ical weapon in the third degree as defined in section 490.37.

49 (c) Class D violent felony offenses: an attempt to commit any of the
50 class C felonies set forth in paragraph (b); reckless assault of a child
51 as defined in section 120.02, assault in the second degree as defined in
52 section 120.05, menacing a police officer or peace officer as defined in
53 section 120.18, stalking in the first degree, as defined in subdivision
54 one of section 120.60, strangulation in the second degree as defined in
55 section 121.12, rape in the second degree as defined in section 130.30,
56 criminal sexual act in the second degree as defined in section 130.45,

1 sexual abuse in the first degree as defined in section 130.65, course of
2 sexual conduct against a child in the second degree as defined in
3 section 130.80, aggravated sexual abuse in the third degree as defined
4 in section 130.66, facilitating a sex offense with a controlled
5 substance IN THE SECOND DEGREE as defined in section [130.90] 130.89,
6 criminal possession of a weapon in the third degree as defined in subdi-
7 vision five, six, seven or eight of section 265.02, criminal sale of a
8 firearm in the third degree as defined in section 265.11, intimidating a
9 victim or witness in the second degree as defined in section 215.16,
10 soliciting or providing support for an act of terrorism in the second
11 degree as defined in section 490.10, and making a terroristic threat as
12 defined in section 490.20, falsely reporting an incident in the first
13 degree as defined in section 240.60, placing a false bomb or hazardous
14 substance in the first degree as defined in section 240.62, placing a
15 false bomb or hazardous substance in a sports stadium or arena, mass
16 transportation facility or enclosed shopping mall as defined in section
17 240.63, and aggravated unpermitted use of indoor pyrotechnics in the
18 first degree as defined in section 405.18.

19 S 5. Subdivision 2-f of section 70.25 of the penal law, as added by
20 chapter 1 of the laws of 2000, is amended to read as follows:

21 2-f. Whenever a person is convicted of FACILITATING A SEX OFFENSE WITH
22 A CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.89
23 OR facilitating a sex offense with a controlled substance IN THE FIRST
24 DEGREE as defined in section 130.90 of this chapter, the sentence
25 imposed by the court for such offense may be ordered to run consecutive-
26 ly to any sentence imposed upon conviction of an offense defined in
27 article one hundred thirty of this chapter arising from the same crimi-
28 nal transaction.

29 S 6. Paragraph (d) of subdivision 7 of section 995 of the executive
30 law, as amended by chapter 2 of the laws of 2006, is amended to read as
31 follows:

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

34 aggravated assault upon a person less than eleven years old, as
35 defined in section 120.12 of the penal law; menacing in the first
36 degree, as defined in section 120.13 of the penal law; reckless endan-
37 germent in the first degree, as defined in section 120.25 of the penal
38 law; stalking in the second degree, as defined in section 120.55 of the
39 penal law; criminally negligent homicide, as defined in section 125.10
40 of the penal law; vehicular manslaughter in the second degree, as
41 defined in section 125.12 of the penal law; vehicular manslaughter in
42 the first degree, as defined in section 125.13 of the penal law;
43 persistent sexual abuse, as defined in section 130.53 of the penal law;
44 aggravated sexual abuse in the fourth degree, as defined in section
45 130.65-a of the penal law; female genital mutilation, as defined in
46 section 130.85 of the penal law; FACILITATING A SEX OFFENSE WITH A
47 CONTROLLED SUBSTANCE IN THE SECOND DEGREE, AS DEFINED IN SECTION 130.89
48 OF THE PENAL LAW; facilitating a sex offense with a controlled substance
49 IN THE FIRST DEGREE, as defined in section 130.90 of the penal law;
50 unlawful imprisonment in the first degree, as defined in section 135.10
51 of the penal law; custodial interference in the first degree, as defined
52 in section 135.50 of the penal law; criminal trespass in the first
53 degree, as defined in section 140.17 of the penal law; criminal tamper-
54 ing in the first degree, as defined in section 145.20 of the penal law;
55 tampering with a consumer product in the first degree, as defined in
56 section 145.45 of the penal law; robbery in the third degree as defined

1 in section 160.05 of the penal law; identity theft in the second degree,
2 as defined in section 190.79 of the penal law; identity theft in the
3 first degree, as defined in section 190.80 of the penal law; promoting
4 prison contraband in the first degree, as defined in section 205.25 of
5 the penal law; tampering with a witness in the third degree, as defined
6 in section 215.11 of the penal law; tampering with a witness in the
7 second degree, as defined in section 215.12 of the penal law; tampering
8 with a witness in the first degree, as defined in section 215.13 of the
9 penal law; criminal contempt in the first degree, as defined in subdivi-
10 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
11 criminal contempt, as defined in section 215.52 of the penal law; bail
12 jumping in the second degree, as defined in section 215.56 of the penal
13 law; bail jumping in the first degree, as defined in section 215.57 of
14 the penal law; patronizing a prostitute in the second degree, as defined
15 in section 230.05 of the penal law; patronizing a prostitute in the
16 first degree, as defined in section 230.06 of the penal law; promoting
17 prostitution in the second degree, as defined in section 230.30 of the
18 penal law; promoting prostitution in the first degree, as defined in
19 section 230.32 of the penal law; compelling prostitution, as defined in
20 section 230.33 of the penal law; disseminating indecent [materials]
21 MATERIAL to minors in the second degree, as defined in section 235.21 of
22 the penal law; disseminating indecent [materials] MATERIAL to minors in
23 the first degree, as defined in section 235.22 of the penal law; riot in
24 the first degree, as defined in section 240.06 of the penal law; crimi-
25 nal anarchy, as defined in section 240.15 of the penal law; aggravated
26 harassment of an employee by an inmate, as defined in section 240.32 of
27 the penal law; unlawful surveillance in the second degree, as defined in
28 section 250.45 of the penal law; unlawful surveillance in the first
29 degree, as defined in section 250.50 of the penal law; endangering the
30 welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY
31 DISABLED PERSON in the second degree, as defined in section 260.32 of
32 the penal law; endangering the welfare of a vulnerable elderly person,
33 OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the first degree, as
34 defined in section 260.34 of the penal law; use of a child in a sexual
35 performance, as defined in section 263.05 of the penal law; promoting an
36 obscene sexual performance by a child, as defined in section 263.10 of
37 the penal law; possessing an obscene sexual performance by a child, as
38 defined in section 263.11 of the penal law; promoting a sexual perform-
39 ance by a child, as defined in section 263.15 of the penal law; possess-
40 ing a sexual performance by a child, as defined in section 263.16 of the
41 penal law; criminal possession of a weapon in the third degree, as
42 defined in section 265.02 of the penal law; criminal sale of a firearm
43 in the third degree, as defined in section 265.11 of the penal law;
44 criminal sale of a firearm to a minor, as defined in section 265.16 of
45 the penal law; unlawful wearing of a body vest, as defined in section
46 270.20 of the penal law; hate crimes as defined in section 485.05 of the
47 penal law; and crime of terrorism, as defined in section 490.25 of the
48 penal law; or

49 S 7. Subparagraph (ii) of paragraph (a) of subdivision 3 of section
50 168-a of the correction law, as amended by chapter 107 of the laws of
51 2006, is amended to read as follows:

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

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