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

4034

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. GABRYSZAK, GUNTHER, JAFFEE, PAULIN, ROSENTHAL, SPANO -- Multi-Sponsored by -- M. of A. BARCLAY, BRENNAN, BURLING, CROUCH, KELLNER, MARKEY, PHEFFER, RAIA, SWEENEY, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law, the executive law, the family court act, the general business law, the labor law and the social services law, in relation to strangulation

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

Section 1. Subdivision 13 of section 10.00 of the penal law, as amended by chapter 791 of the laws of 1967, is amended to read as follows:

13. "Dangerous instrument" means: (I) any instrument, article or substance, including a "vehicle" as that term is defined in this section, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury; OR (II) HANDS OR OTHER OBJECTS WHEN USED TO IMPEDE NORMAL BREATHING OR CIRCULATION OF BLOOD BY APPLYING PRESSURE ON THE THROAT OR NECK OR OBSTRUCTING THE NOSE OR MOUTH.

S 2. 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; 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

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

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first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); SECTION 121.13 (STRANGULATION IN THE FIRST DEGREE); SECTION 121.12 (STRANGULATION IN THE SECOND 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 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 3. Subdivision (a) of section 190.71 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(a) Except as provided in subdivision six of section 200.20 of this chapter, a grand jury may not indict (i) a person thirteen years of age for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree) or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) a person fourteen or fifteen years of age for any conduct or crime other than conduct constituting a crime 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; 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); SECTION 121.13 (STRANGULATION IN THE FIRST DEGREE); SUBDIVISION 121.12 (STRANGULATION IN THE SECOND 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 the penal law; subdivision four of section 265.02 of the penal law, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 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 4. Paragraph (a) of subdivision 7 of section 995 of the executive law, as separately amended by chapters 2 and 320 of the laws of 2006, is amended to read as follows:

(a) sections 120.05, 120.10, and 120.11, relating to assault; SECTIONS 121.12 AND 121.13, RELATING TO STRANGULATION; sections 125.15 through

125.27 relating to homicide; sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to escape and other offenses, where the offender has been convicted within the previous five years of one of the other felonies specified in this subdivision; or sections 255.25, 255.26 and 255.27, relating to incest, a violent felony offense as defined in subdivision one of section 70.02 of the penal law, attempted murder in the first degree, as defined in section 110.00 and section 125.27 of the penal law, kidnapping in the first degree, as defined in section 135.25 of the penal law, arson in the first degree, as defined in section 150.20 of the penal law, burglary in the third degree, as defined in section 140.20 of the penal law, attempted burglary in the third degree, as defined in section 110.00 and section 140.20 of the penal law, a felony defined in article four hundred ninety of the penal law relating to terrorism or any attempt to commit an offense defined in such article relating to terrorism which is a felony; or

S 5. Subdivision (b) of section 117 of the family court act, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(b) For every juvenile delinquency proceeding under article three involving an allegation of an act committed by a person 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); 121.13 (STRANGULATION IN THE FIRST DEGREE); 121.12 (STRANGULATION IN THE SECOND DEGREE); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act 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 clause (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 act which, if committed by an adult would be a felony:

(i) There is hereby established in the family court in the city of New York at least one "designated felony act part." Such part or parts shall be held separate from all other proceedings of the court, and shall have jurisdiction over all proceedings involving such an allegation. All such proceedings shall be originated in or be transferred to this part from other parts as they are made known to the court.

(ii) Outside the city of New York, all proceedings involving such an allegation shall have a hearing preference over every other proceeding in the court, except proceedings under article ten.

S 6. 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); 121.13 (STRANGULATION IN THE FIRST DEGREE); 121.12 (STRANGULATION IN THE SECOND DEGREE); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.70 (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 7. Subparagraph 4 of paragraph (c) of subdivision 2 of section 352.2 of the family court act, as added by chapter 7 of the laws of 1999, is amended to read as follows:

(4) the parent of such respondent has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 [or], aggravated assault upon a person less than eleven years old as defined in section 120.12 OR STRANGULATION AS DEFINED IN SECTIONS 121.12 AND 121.13 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the respondent or another child of the parent;

S 8. Subparagraph (iv) of paragraph (b) of subdivision 2 of section 754 of the family court act, as added by chapter 7 of the laws of 1999, is amended to read as follows:

(iv) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 [or], aggravated assault upon a person less than eleven years old as defined in section 120.12 OR STRANGULATION AS DEFINED IN SECTIONS 121.12 AND 121.13 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

S 9. Paragraph 4 of subdivision (b) of section 1039-b of the family court act, as added by chapter 7 of the laws of 1999, is amended to read as follows:

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 [or], aggravated assault upon a person less than eleven years old as defined in section 120.12 OR STRANGULATION AS DEFINED IN SECTIONS 121.12 AND 121.13 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

S 10. Clause 4 of subparagraph (A) of paragraph (i) of subdivision (b) of section 1052 of the family court act, as amended by chapter 7 of the laws of 1999, is amended to read as follows:

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 [or], aggravated assault upon a person less than eleven years old as defined in section 120.12 OR STRANGULATION AS DEFINED IN SECTIONS 121.12 AND 121.13 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

S 11. Paragraph f of subdivision 1 of section 410 of the general business law, as added by chapter 509 of the laws of 1992, is amended to read as follows:

f. Conviction of any of the following crimes subsequent to the issuance of a license pursuant to this article: fraud pursuant to sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying business records pursuant to section 175.10; grand larceny pursuant to article [155] ONE HUNDRED FIFTY-FIVE; bribery pursuant to sections 180.03, 180.08, 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50; perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to sections 120.05, 120.10, 120.11, 120.12; STRANGULATION PURSUANT TO SECTIONS 121.12 AND 121.13; robbery pursuant to article [160] ONE HUNDRED SIXTY; homicide pursuant to sections 125.25

and 125.27; manslaughter pursuant to sections 125.15 and 125.20; kidnapping and unlawful imprisonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons possession pursuant to sections 265.02, 265.03 and 265.04; criminal use of a weapon pursuant to sections 265.08 and 265.09; criminal sale of a weapon pursuant to sections 265.11 and 265.12; and sex offenses pursuant to article [130] ONE HUNDRED THIRTY of the penal law. Provided, however, that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such: (i) a conviction for which an executive pardon has been issued pursuant to the executive law; (ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or (iii) a conviction the records of which have been expunged or sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and (iv) a conviction for which other evidence of successful rehabilitation to remove the disability has been issued.

S 12. Clause (v) of subparagraph 2 of paragraph b of subdivision 3 of section 220-b of the labor law, as amended by chapter 7 of the laws of 2008, is amended to read as follows:

(v) 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, STRANGULATION AS DEFINED IN SECTIONS 121.12 AND 121.13 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 and murder in the second degree as defined in section 125.25 of the penal law, provided that the victim was an employee of such person or corporation and further provided that such offense arose from actions or matters related to the protection of the health or safety of employees at a work site;

S 13. Paragraph 2 of 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:

(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); 121.13 (STRANGULATION IN THE FIRST DEGREE); 121.12 (STRANGULATION IN THE SECOND 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 such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.

S 14. 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; 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); 121.13 (STRANGULATION IN THE FIRST DEGREE); 121.12 (STRANGULATION IN THE SECOND 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.

S 15. Paragraph (a) of subdivision 2 of section 60.07 of the penal law, as added by chapter 148 of the laws of 2000, is amended to read as follows:

(a) the term "specified offense" shall mean an attempt to commit murder in the second degree as defined in section 125.25 of this chapter, gang assault in the first degree as defined in section 120.07 of this chapter, gang assault in the second degree as defined in section 120.06 of this chapter, assault in the first degree as defined in section 120.10 of this chapter, STRANGULATION AS DEFINED IN SECTIONS 121.12 AND 121.13 OF THIS CHAPTER, manslaughter in the first degree as defined in section 125.20 of this chapter, manslaughter in the second degree as defined in section 125.15 of this chapter, robbery in the first degree as defined in section 160.15 of this chapter, robbery in the second degree as defined in section 160.10 of this chapter, or the attempted commission of any of the following offenses: gang assault in the first degree as defined in section 120.07, assault in the first degree as defined in section 120.10, manslaughter in the first degree as defined in section 125.20 or robbery in the first degree as defined in section 160.15;

S 16. Paragraph (a) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 320 of the laws of 2006, is 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, STRANGULATION AS DEFINED IN IN SECTIONS 121.12 AND 121.13 OF THIS CHAPTER, 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, 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.

S 17. Subparagraph 4 of paragraph (b) of subdivision 3 of section 358-a of the social services law, as added by chapter 7 of the laws of 1999, is amended to read as follows:

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 [or], aggravated assault upon a person less than eleven years old as defined in section 120.12 OR STRANGULATION AS DEFINED IN SECTIONS 121.12 AND 121.13 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

S 18. Clause (C) of subparagraph (iii) of paragraph (a) of subdivision 8 of section 384-b of the social services law, as added by chapter 7 of the laws of 1999, is amended to read as follows:

(C) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 [or], aggravated assault upon a person less than eleven years old as defined in section 120.12 OR STRANGULATION AS DEFINED IN SECTIONS 121.12 AND 121.13 of the penal law, and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or

S 19. This act shall take effect on the ninetieth day after it shall have become a law.