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

4755

2011-2012 Regular Sessions

I N  A S S E M B L Y

February 7, 2011

Introduced by M. of A. SIMOTAS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the correction law, in relation to sex offenses committed against children under 12 years of age and sex offenses committed by persons 21 years old or older against children under 14 years of age; to amend the correction law, in relation to requiring electronic monitoring of sex offenders convicted of such offenses against a child; to repeal subdivision 3 of section 130.35 of the penal law relating to rape of a child less than 11 years old; and to repeal subdivision 3 of section 130.50 of the penal law relating to a criminal sexual act with a child less than 11 years old

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

Section 1. Subparagraph (i) of paragraph (a) of subdivision 3 of section 70.00 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(i) For a class A-I felony, such minimum period shall not be less than fifteen years nor more than twenty-five years; provided, however, that (A) where a sentence, other than a sentence of death or life imprisonment without parole, is imposed upon a defendant convicted of murder in the first degree as defined in section 125.27 of this chapter such minimum period shall be not less than twenty years nor more than twenty-five years, and, (B) where a sentence is imposed upon a defendant convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or convicted of aggravated murder as defined in section 125.26 of this chapter, the sentence shall be life imprisonment without parole, and, (C) where a sentence is imposed upon a defendant convicted of attempted murder in the first degree as defined in article one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a) of subdivision one and paragraph (b) of subdivision one of section 125.27 of this chapter or attempted aggravated murder as defined

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

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in article one hundred ten of this chapter and section 125.26 of this chapter such minimum period shall be not less than twenty years nor more than forty years, AND, (D) WHERE A SENTENCE IS IMPOSED UPON A DEFENDANT CONVICTED OF RAPE OF A CHILD AS DEFINED IN SECTION 130.36, CRIMINAL SEXUAL ACT AGAINST A CHILD AS DEFINED IN SECTION 130.51, AGGRAVATED SEXUAL ABUSE OF A CHILD AS DEFINED IN SECTION 130.71 OR AGGRAVATED COURSE OF SEXUAL CONDUCT AGAINST A CHILD AS DEFINED IN SECTION 130.81 OF THIS CHAPTER SUCH MINIMUM PERIOD SHALL BE TWENTY YEARS.

S 2. Subdivision 5 of section 125.25 of the penal law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

5. Being eighteen years old or more, while in the course of committing rape in the first, second or third degree, criminal sexual act in the first, second or third degree, sexual abuse in the first degree, RAPE OF A CHILD, CRIMINAL SEXUAL ACT AGAINST A CHILD, AGGRAVATED SEXUAL ABUSE OF A CHILD, AGGRAVATED COURSE OF SEXUAL CONDUCT AGAINST A CHILD, aggravated sexual abuse in the first, second, third or fourth degree, or incest in the first, second or third degree, against a person less than fourteen years old, he or she intentionally causes the death of such person.

S 3. Subdivision 3 of section 130.35 of the penal law is REPEALED.

S 4. The penal law is amended by adding a new section 130.36 to read as follows:

S 130.36 RAPE OF A CHILD.

A PERSON IS GUILTY OF RAPE OF A CHILD WHEN:

1. HE OR SHE ENGAGES IN SEXUAL INTERCOURSE WITH ANOTHER PERSON WHO IS LESS THAN TWELVE YEARS OLD; OR

2. BEING TWENTY-ONE YEARS OLD OR MORE, HE OR SHE ENGAGES IN SEXUAL INTERCOURSE WITH ANOTHER PERSON LESS THAN FOURTEEN YEARS OLD.

RAPE OF A CHILD IS A CLASS A-I FELONY.

S 5. Subdivision 3 of section 130.50 of the penal law is REPEALED.

S 6. The penal law is amended by adding a new section 130.51 to read as follows:

S 130.51 CRIMINAL SEXUAL ACT AGAINST A CHILD.

A PERSON IS GUILTY OF CRIMINAL SEXUAL ACT AGAINST A CHILD WHEN:

1. HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON WHO IS LESS THAN TWELVE YEARS OLD; OR

2. BEING TWENTY-ONE YEARS OLD OR MORE, HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON WHO IS LESS THAN FOURTEEN YEARS OLD.

CRIMINAL SEXUAL ACT AGAINST A CHILD IS A CLASS A-I FELONY.

S 7. Subdivision 1 of section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, the opening paragraph as amended by chapter 485 of the laws of 2009, is amended to read as follows:

1. A person is guilty of aggravated sexual abuse in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless[; or

(c) When the other person is less than eleven years old].

S 8. The penal law is amended by adding a new section 130.71 to read as follows:

S 130.71 AGGRAVATED SEXUAL ABUSE OF A CHILD.

1. A PERSON IS GUILTY OF AGGRAVATED SEXUAL ABUSE OF A CHILD WHEN:

(A) HE OR SHE INSERTS A FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS, RECTUM OR ANUS OF ANOTHER PERSON CAUSING PHYSICAL INJURY TO SUCH PERSON WHEN SUCH OTHER PERSON IS LESS THAN TWELVE YEARS OLD; OR

(B) BEING TWENTY-ONE YEARS OLD OR MORE, HE OR SHE INSERTS A FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS, RECTUM OR ANUS OF ANOTHER PERSON CAUSING PHYSICAL INJURY TO SUCH PERSON WHEN SUCH OTHER PERSON IS LESS THAN FOURTEEN YEARS OLD.

2. CONDUCT PERFORMED FOR A VALID MEDICAL PURPOSE DOES NOT VIOLATE THE PROVISIONS OF THIS SECTION.

AGGRAVATED SEXUAL ABUSE OF A CHILD IS A CLASS A-I FELONY.

S 9. Subdivision 1 of section 130.75 of the penal law, as amended by chapter 1 of the laws of 2000, paragraphs (a) and (b) as amended by chapter 264 of the laws of 2003, is amended to read as follows:

1. A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration[:

(a) he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than eleven years old; or

(b)], he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old.

S 10. The penal law is amended by adding a new section 130.81 to read as follows:

S 130.81 AGGRAVATED COURSE OF SEXUAL CONDUCT AGAINST A CHILD.

1. A PERSON IS GUILTY OF AGGRAVATED COURSE OF SEXUAL CONDUCT AGAINST A CHILD WHEN, OVER A PERIOD OF TIME NOT LESS THAN THREE MONTHS IN DURATION:

(A) HE OR SHE ENGAGES IN TWO OR MORE ACTS OF SEXUAL CONDUCT, WHICH INCLUDES AT LEAST ONE ACT OF SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT OR AGGRAVATED SEXUAL CONTACT, WITH A CHILD LESS THAN TWELVE YEARS OLD; OR

(B) HE OR SHE, BEING TWENTY-ONE YEARS OLD OR MORE, ENGAGES IN TWO OR MORE ACTS OF SEXUAL CONDUCT, WHICH INCLUDES AT LEAST ONE ACT OF SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT OR AGGRAVATED SEXUAL CONTACT, WITH A CHILD LESS THAN FOURTEEN YEARS OLD.

2. A PERSON MAY NOT BE SUBSEQUENTLY PROSECUTED FOR ANY OTHER SEXUAL OFFENSE INVOLVING THE SAME VICTIM UNLESS THE OTHER CHARGED OFFENSE OCCURRED OUTSIDE THE TIME PERIOD CHARGED UNDER THIS SECTION.

AGGRAVATED COURSE OF SEXUAL CONDUCT AGAINST A CHILD IS A CLASS A-I FELONY.

S 11. Subparagraph (i) 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:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.35, 130.36, 130.50, 130.51, 130.65, 130.66, 130.67, 130.70, 130.71, 130.75, 130.80, 130.81, 130.95 and 130.96 of the penal law, or

S 12. Section 168-w of the correction law, as relettered by chapter 604 of the laws of 2005, is relettered 168-x and a new section 168-w is added to read as follows:

S 168-W. ELECTRONIC MONITORING OF CERTAIN SEX OFFENDERS. 1. ANY SEX OFFENDER HAVING BEEN CONVICTED OF RAPE OF A CHILD AS DEFINED IN SECTION 130.36, CRIMINAL SEXUAL ACT AGAINST A CHILD AS DEFINED IN SECTION 130.51, AGGRAVATED SEXUAL ABUSE OF A CHILD AS DEFINED IN SECTION 130.71 OR AGGRAVATED COURSE OF SEXUAL CONDUCT AGAINST A CHILD AS DEFINED IN

SECTION 130.81 OF THE PENAL LAW SHALL BE PLACED ON ELECTRONIC MONITORING FOR LIFE.

2. THE DIVISION SHALL ESTABLISH A SYSTEM OF ACTIVE ELECTRONIC MONITORING THAT IDENTIFIES THE LOCATION OF A SEX OFFENDER REQUIRED TO BE MONITORED PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND THAT CAN PRODUCE, UPON REQUEST, REPORTS OR RECORDS OF THE SEX OFFENDER'S PRESENCE NEAR OR WITHIN A CRIME SCENE OR PROHIBITED AREA OR THE SEX OFFENDER'S DEPARTURE FROM SPECIFIED GEOGRAPHIC LIMITATIONS.

3. THE DIVISION SHALL ALSO PROMULGATE REGULATIONS IMPLEMENTING THE IMPOSITION AND COLLECTION OF FEES RELATED TO ELECTRONIC MONITORING PURSUANT TO THIS SECTION. SUCH REGULATIONS SHALL UTILIZE A MEANS TEST BASED ON TWO HUNDRED PERCENT OF THE FEDERAL POVERTY GUIDELINES PROMULGATED ANNUALLY BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES AND IF THE SEX OFFENDER FALLS BELOW SUCH PERCENTAGE THEN NO FEE SHALL BE CHARGED, AND EARNINGS ABOVE SUCH PERCENTAGE SHALL BE CONSIDERED ON A SLIDING SCALE. SUCH REGULATIONS SHALL ALSO PROVIDE THAT THE DIVISION OF PAROLE CONSIDER ANY ADDITIONAL TEST OR INDICIA THAT DEMONSTRATES THE INABILITY OF THE SEX OFFENDER TO PAY SUCH FEES. EMPLOYEES OF THE DIVISION OF PAROLE SHALL BE PROHIBITED FROM COLLECTING ELECTRONIC MONITORING RELATED FEES.

4. ANY SEX OFFENDER REQUIRED TO BE ELECTRONICALLY MONITORED PURSUANT TO THE PROVISIONS OF THIS SECTION WHO VIOLATES SUCH REQUIREMENT SHALL BE GUILTY OF A CLASS E FELONY UPON CONVICTION FOR THE FIRST OFFENSE, AND UPON CONVICTION FOR A SECOND OR SUBSEQUENT OFFENSE SHALL BE GUILTY OF A CLASS D FELONY. ANY SUCH VIOLATION MAY ALSO BE THE BASIS FOR REVOCATION OF PAROLE PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW.

S 13. This act shall take effect immediately and shall apply to offenses committed on or after such effective date; furthermore all offenses committed prior to such effective date shall be governed by the provisions of law in effect immediately before such date.