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

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I N A S S E M B L Y

(PREFILED)

January 4, 2012

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

AN ACT to amend the penal law, the criminal procedure law and the correction law, in relation to establishing the crime of serial sexual assault as a class B felony

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

Section 1. The penal law is amended by adding a new section 130.81 to read as follows:

S 130.81 SERIAL SEXUAL ASSAULT.

1. A PERSON IS GUILTY OF SERIAL SEXUAL ASSAULT WHEN HE OR SHE ENGAGES IN THREE OR MORE ACTS OF SEXUAL ASSAULT INVOLVING TWO OR MORE VICTIMS.

2. FOR THE PURPOSES OF THIS SECTION, SEXUAL ASSAULT IS DEFINED AS AN ACT OR ACTS WHICH WOULD CONSTITUTE A SEXUAL OFFENSE PURSUANT TO SECTIONS 130.30, 130.35, 130.45, 130.50, 130.67, 130.70, AND 130.75 OF THIS ARTICLE, OR AN ATTEMPT TO COMMIT ANY THEREOF.

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

SERIAL SEXUAL ASSAULT IS A CLASS B FELONY.

S 2. Subdivision 3 of section 30.10 of the criminal procedure law is amended by adding a new paragraph (h) to read as follows:

(H) FOR A PROSECUTION FOR SERIAL SEXUAL ASSAULT AS DEFINED IN SECTION 130.81 OF THE PENAL LAW, THE PERIOD OF LIMITATION SHALL NOT BEGIN TO RUN UNTIL THE COMMISSION OF THE MOST RECENT ACT OF SEXUAL ASSAULT; PROVIDED, HOWEVER, THAT NOTHING IN THIS PARAGRAPH SHALL BE DEEMED TO SHORTEN OR OTHERWISE LESSEN THE PERIOD, DEFINED IN ANY OTHER APPLICABLE LAW, IN WHICH A PROSECUTION FOR A FELONY DESIGNATED IN THIS PARAGRAPH MAY BE COMMENCED.

S 3. Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 405 of the laws of 2008, is amended to read as follows:

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

LBD13702-01-2

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 130.81, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or

S 4. Paragraph b of subdivision 5 of section 120.40 of the penal law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

b. a crime defined in section 130.20, 130.25, 130.30, 130.40, 130.45, 130.55, 130.60, 130.70, 130.81, 255.25, 255.26 or 255.27;

S 5. 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[;], SERIAL SEXUAL ASSAULT AS DEFINED IN SECTION 130.81, assault in the first degree as defined in section 120.10, 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 6. The opening paragraph of subdivision 3 of section 125.25 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, criminal sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse, SERIAL SEXUAL ASSAULT, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prose-

cution under this subdivision, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

S 7. Subparagraph (vii) of paragraph (a) of subdivision 1 of section 125.27 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(vii) the victim was killed while the defendant was in the course of committing or attempting to commit and in furtherance of robbery, burglary in the first degree or second degree, kidnapping in the first degree, arson in the first degree or second degree, rape in the first degree, criminal sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse in the first degree, SERIAL SEXUAL ASSAULT or escape in the first degree, or in the course of and furtherance of immediate flight after committing or attempting to commit any such crime or in the course of and furtherance of immediate flight after attempting to commit the crime of murder in the second degree; provided however, the victim is not a participant in one of the aforementioned crimes and, provided further that, unless the defendant's criminal liability under this subparagraph is based upon the defendant having commanded another person to cause the death of the victim or intended victim pursuant to section 20.00 of this chapter, this subparagraph shall not apply where the defendant's criminal liability is based upon the conduct of another pursuant to section 20.00 of this chapter; or

S 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.