

4118

2011-2012 Regular Sessions

I N   S E N A T E

March 18, 2011

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Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to making certain sex offenses committed against a child or a mentally disabled person class A-I felonies for which a sentence of life imprisonment without parole shall be imposed; and to repeal certain provisions of such law relating to sex offenses committed against children or the mentally disabled

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

1     Section 1. Section 60.06 of the penal law, as amended by chapter 482  
2     of the laws of 2009, is amended to read as follows:  
3     S 60.06 Authorized disposition; murder in the first degree offenders;  
4             aggravated murder offenders; certain murder in the second  
5             degree offenders; CERTAIN SEX OFFENDERS; certain terrorism  
6             offenders; criminal possession of a chemical weapon or biolog-  
7             ical weapon offenders; criminal use of a chemical weapon or  
8             biological weapon offenders.  
9     When a defendant is convicted of murder in the first degree as defined  
10    in section 125.27 of this chapter, the court shall, in accordance with  
11    the provisions of section 400.27 of the criminal procedure law, sentence  
12    the defendant to death, to life imprisonment without parole in accord-  
13    ance with subdivision five of section 70.00 of this title, or to a term  
14    of imprisonment for a class A-I felony other than a sentence of life  
15    imprisonment without parole, in accordance with subdivisions one through  
16    three of section 70.00 of this title. When a person is convicted of  
17    murder in the second degree as defined in subdivision five of section  
18    125.25 of this chapter or of the crime of aggravated murder as defined  
19    in subdivision one of section 125.26 of this chapter, the court shall  
20    sentence the defendant to life imprisonment without parole in accordance  
21    with subdivision five of section 70.00 of this title. WHEN A DEFENDANT

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

LBD10289-03-1

1 IS CONVICTED OF AGGRAVATED RAPE AS DEFINED IN SECTION 130.36, AGGRAVATED  
2 CRIMINAL SEXUAL ACT AS DEFINED IN SECTION 130.51 OR COURSE OF SEXUAL  
3 CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.75  
4 OF THIS CHAPTER, THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRI-  
5 SONMENT WITHOUT PAROLE IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION  
6 70.00 OF THIS TITLE. When a defendant is convicted of the crime of  
7 terrorism as defined in section 490.25 of this chapter, and the speci-  
8 fied offense the defendant committed is a class A-I felony offense, or  
9 when a defendant is convicted of the crime of criminal possession of a  
10 chemical weapon or biological weapon in the first degree as defined in  
11 section 490.45 of this chapter, or when a defendant is convicted of the  
12 crime of criminal use of a chemical weapon or biological weapon in the  
13 first degree as defined in section 490.55 of this chapter, the court  
14 shall sentence the defendant to life imprisonment without parole in  
15 accordance with subdivision five of section 70.00 of this title;  
16 provided, however, that nothing in this section shall preclude or  
17 prevent a sentence of death when the defendant is also convicted of  
18 murder in the first degree as defined in section 125.27 of this chapter.  
19 When a defendant is convicted of aggravated murder as defined in subdi-  
20 vision two of section 125.26 of this chapter, the court shall sentence  
21 the defendant to life imprisonment without parole or to a term of impri-  
22 sonment for a class A-I felony other than a sentence of life imprison-  
23 ment without parole, in accordance with subdivisions one through three  
24 of section 70.00 of this title.

25 S 2. Subdivision 5 of section 70.00 of the penal law, as amended by  
26 chapter 482 of the laws of 2009, is amended to read as follows:

27 5. Life imprisonment without parole. Notwithstanding any other  
28 provision of law, a defendant sentenced to life imprisonment without  
29 parole shall not be or become eligible for parole or conditional  
30 release. For purposes of commitment and custody, other than parole and  
31 conditional release, such sentence shall be deemed to be an indetermi-  
32 nate sentence. A defendant may be sentenced to life imprisonment with-  
33 out parole upon conviction for the crime of murder in the first degree  
34 as defined in section 125.27 of this chapter and in accordance with the  
35 procedures provided by law for imposing a sentence for such crime. A  
36 defendant must be sentenced to life imprisonment without parole upon  
37 conviction for the crime of terrorism as defined in section 490.25 of  
38 this chapter, where the specified offense the defendant committed is a  
39 class A-I felony; the crime of criminal possession of a chemical weapon  
40 or biological weapon in the first degree as defined in section 490.45 of  
41 this chapter; or the crime of criminal use of a chemical weapon or  
42 biological weapon in the first degree as defined in section 490.55 of  
43 this chapter; provided, however, that nothing in this subdivision shall  
44 preclude or prevent a sentence of death when the defendant is also  
45 convicted of the crime of murder in the first degree as defined in  
46 section 125.27 of this chapter. A defendant must be sentenced to life  
47 imprisonment without parole upon conviction for the crime of murder in  
48 the second degree as defined in subdivision five of section 125.25 of  
49 this chapter or for the crime of aggravated murder as defined in subdi-  
50 vision one of section 125.26 of this chapter. A defendant may be  
51 sentenced to life imprisonment without parole upon conviction for the  
52 crime of aggravated murder as defined in subdivision two of section  
53 125.26 of this chapter. A DEFENDANT MUST BE SENTENCED TO LIFE IMPRISON-  
54 MENT WITHOUT PAROLE UPON CONVICTION OF THE CRIME OF AGGRAVATED RAPE AS  
55 DEFINED IN SECTION 130.36, OR AGGRAVATED CRIMINAL SEXUAL ACT AS DEFINED  
56 IN SECTION 130.75 OF THIS CHAPTER.

1 S 3. Section 130.30 of the penal law is REPEALED.

2 S 4. Section 130.35 of the penal law, as amended by chapter 1 of the  
3 laws of 2000, is amended to read as follows:

4 S 130.35 Rape in the first degree.

5 A person is guilty of rape in the first degree when he or she engages  
6 in sexual intercourse with another person:

7 1. By forcible compulsion; or

8 2. Who is incapable of consent by reason of being physically help-  
9 less[; or

10 3. Who is less than eleven years old; or

11 4. Who is less than thirteen years old and the actor is eighteen years  
12 old or more].

13 Rape in the first degree is a class B felony.

14 S 5. The penal law is amended by adding a new section 130.36 to read  
15 as follows:

16 S 130.36 AGGRAVATED RAPE.

17 A PERSON IS GUILTY OF AGGRAVATED RAPE WHEN:

18 1. BEING EIGHTEEN YEARS OR MORE, HE OR SHE ENGAGES IN SEXUAL INTER-  
19 COURSE WITH ANOTHER PERSON LESS THAN FIFTEEN YEARS OLD; OR

20 2. HE OR SHE ENGAGES IN SEXUAL INTERCOURSE WITH ANOTHER PERSON WHO IS  
21 INCAPABLE OF CONSENT BY REASON OF BEING MENTALLY DISABLED OR MENTALLY  
22 INCAPACITATED; OR

23 3. HE OR SHE ENGAGES IN SEXUAL INTERCOURSE WITH ANOTHER PERSON WHO IS  
24 LESS THAN THIRTEEN YEARS OLD.

25 IT SHALL BE AN AFFIRMATIVE DEFENSE TO THE OFFENSE OF AGGRAVATED RAPE  
26 AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THAT THE DEFENDANT WAS  
27 LESS THAN FOUR YEARS OLDER THAN THE VICTIM AT THE TIME OF THE OFFENSE.

28 AGGRAVATED RAPE IS A CLASS A-I FELONY.

29 S 6. Section 130.45 of the penal law is REPEALED.

30 S 7. Section 130.50 of the penal law, as amended by chapter 264 of the  
31 laws of 2003, is amended to read as follows:

32 S 130.50 Criminal sexual act in the first degree.

33 A person is guilty of criminal sexual act in the first degree when he  
34 or she engages in oral sexual conduct or anal sexual conduct with another  
35 person:

36 1. By forcible compulsion; or

37 2. Who is incapable of consent by reason of being physically help-  
38 less[; or

39 3. Who is less than eleven years old; or

40 4. Who is less than thirteen years old and the actor is eighteen years  
41 old or more].

42 Criminal sexual act in the first degree is a class B felony.

43 S 8. The penal law is amended by adding a new section 130.51 to read  
44 as follows:

45 S 130.51 AGGRAVATED CRIMINAL SEXUAL ACT.

46 A PERSON IS GUILTY OF AGGRAVATED CRIMINAL SEXUAL ACT WHEN:

47 1. BEING EIGHTEEN YEARS OR MORE, HE OR SHE ENGAGES IN ORAL SEXUAL  
48 CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON LESS THAN FIFTEEN  
49 YEARS OLD; OR

50 2. HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT  
51 WITH ANOTHER PERSON WHO IS INCAPABLE OF CONSENT BY REASON OF BEING  
52 MENTALLY DISABLED OR MENTALLY INCAPACITATED; OR

53 3. HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT  
54 WITH ANOTHER PERSON WHO IS LESS THAN THIRTEEN YEARS OLD.

55 IT SHALL BE AN AFFIRMATIVE DEFENSE TO THE OFFENSE OF AGGRAVATED CRIMI-  
56 NAL SEXUAL ACT AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THAT THE

1 DEFENDANT WAS LESS THAN FOUR YEARS OLDER THAN THE VICTIM AT THE TIME OF  
2 THE OFFENSE.  
3 AGGRAVATED CRIMINAL SEXUAL ACT IS A CLASS A-I FELONY.  
4 S 9. The closing paragraph of section 130.75 of the penal law, as  
5 amended by chapter 1 of the laws of 2000, is amended to read as follows:  
6 Course of sexual conduct against a child in the first degree is a  
7 class [B] A-I felony.  
8 S 10. Section 130.96 of the penal law is REPEALED.  
9 S 11. This act shall take effect on the first of November next  
10 succeeding the date on which it shall have become a law and shall apply  
11 to offenses committed on or after such effective date.