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

5455

2011-2012 Regular Sessions

I N S E N A T E

May 24, 2011

Introduced by Sen. NOZZOLIO -- (at request of the Department of Corrections and Community Supervision) -- 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 sexual conduct between an employee and an inmate

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

Section 1. Paragraph (e) of subdivision 3 of section 130.05 of the penal law, as amended by section 127-q of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(e) committed to the care and custody OR SUPERVISION of the state department of corrections and community supervision or a hospital, as such term is defined in subdivision two of section four hundred of the correction law, and the actor is an employee[, not married to such person,] who knows or reasonably should know that such person is committed to the care and custody OR SUPERVISION of such department or hospital. For purposes of this paragraph, "employee" means (i) an employee of the state department of corrections and community supervision who, AS PART OF HIS OR HER EMPLOYMENT, performs [professional] duties[: (A)] in a state correctional facility [consisting of providing custody, medical or mental health services, counseling services, educational programs, or vocational training for inmates; or

(B) in a state correctional facility and who provides institutional parole services] IN WHICH THE VICTIM IS CONFINED AT THE TIME OF THE OFFENSE OR PERFORMS THE DUTIES OF SUPERVISING PERSONS RELEASED ON COMMUNITY SUPERVISION AND SUPERVISES THE VICTIM AT THE TIME OF THE OFFENSE; or

(ii) an employee of the office of mental health who, AS PART OF HIS OR HER EMPLOYMENT, performs [professional] duties in a state correctional facility or hospital, as such term is defined in subdivision two of

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

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section four hundred of the correction law[, consisting of providing custody, or medical or mental health services for such inmates]; or

(iii) a person, including a volunteer, providing direct services to inmates in [the] A state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the state department of [correctional services] CORRECTIONS AND COMMUNITY SUPERVISION or, in the case of a volunteer, a written agreement with such department, provided that the person received written notice concerning the provisions of this paragraph; or

S 2. Paragraph (g) of subdivision 3 of section 130.05 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

(g) committed to or placed with the office of children and family services and in residential care, and the actor is an employee[, not married to such person,] who knows or reasonably should know that such person is committed to or placed with such office of children and family services and in residential care. For purposes of this paragraph, "employee" means an employee of the office of children and family services or of a residential facility who, AS PART OF HIS OR HER EMPLOYMENT, performs duties [consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for persons committed to or placed with] IN A RESIDENTIAL FACILITY OPERATED BY the office of children and family services [and in residential care]; or

S 3. Subdivision 4 of section 130.10 of the penal law, as added by chapter 264 of the laws of 2003, is amended to read as follows:

4. In any prosecution under this article in which the victim's lack of consent is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled, [or] a client or patient and the actor is a health care provider, OR COMMITTED TO THE CARE AND CUSTODY OR SUPERVISION OF THE STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION OR A HOSPITAL AND THE ACTOR IS AN EMPLOYEE, OR COMMITTED TO OR PLACED WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AND IN RESIDENTIAL CARE AND THE ACTOR IS AN EMPLOYEE, it shall be a defense that the defendant was married to the victim as defined in subdivision four of section 130.00 of this article.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to offenses committed on or after such date.