

753

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

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Introduced by Sens. YOUNG, BONACIC, JOHNSON, MAZIARZ, RANZENHOFER --
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 aggravated sexual
offenses; and to amend the criminal procedure law, in relation to
youthful offender status

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

1 Section 1. Paragraphs (a), (b) and (c) of subdivision 1 of section
2 70.02 of the penal law, paragraph (a) as amended by chapter 320 of the
3 laws of 2006, and paragraphs (b) and (c) as amended by chapter 405 of
4 the laws of 2010, are amended to read as follows:
5 (a) Class B violent felony offenses: an attempt to commit the class
6 A-I felonies of murder in the second degree as defined in section
7 125.25, kidnapping in the first degree as defined in section 135.25, and
8 arson in the first degree as defined in section 150.20; manslaughter in
9 the first degree as defined in section 125.20, aggravated manslaughter
10 in the first degree as defined in section 125.22, rape in the first
11 degree as defined in section 130.35, criminal sexual act in the first
12 degree as defined in section 130.50, aggravated sexual abuse in the
13 [first] SECOND degree as defined in section 130.70, course of sexual
14 conduct against a child in the first degree as defined in section
15 130.75; assault in the first degree as defined in section 120.10,
16 kidnapping in the second degree as defined in section 135.20, burglary
17 in the first degree as defined in section 140.30, arson in the second
18 degree as defined in section 150.15, robbery in the first degree as
19 defined in section 160.15, incest in the first degree as defined in
20 section 255.27, criminal possession of a weapon in the first degree as
21 defined in section 265.04, criminal use of a firearm in the first degree
22 as defined in section 265.09, criminal sale of a firearm in the first

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

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1 degree as defined in section 265.13, aggravated assault upon a police
2 officer or a peace officer as defined in section 120.11, gang assault in
3 the first degree as defined in section 120.07, intimidating a victim or
4 witness in the first degree as defined in section 215.17, hindering
5 prosecution of terrorism in the first degree as defined in section
6 490.35, criminal possession of a chemical weapon or biological weapon in
7 the second degree as defined in section 490.40, and criminal use of a
8 chemical weapon or biological weapon in the third degree as defined in
9 section 490.47.

10 (b) Class C violent felony offenses: an attempt to commit any of the
11 class B felonies set forth in paragraph (a) of this subdivision; aggra-
12 vated criminally negligent homicide as defined in section 125.11, aggra-
13 vated manslaughter in the second degree as defined in section 125.21,
14 aggravated sexual abuse in the [second] THIRD degree as defined in
15 section 130.67, assault on a peace officer, police officer, fireman or
16 emergency medical services professional as defined in section 120.08,
17 gang assault in the second degree as defined in section 120.06, strangu-
18 lation in the first degree as defined in section 121.13, burglary in the
19 second degree as defined in section 140.25, robbery in the second degree
20 as defined in section 160.10, criminal possession of a weapon in the
21 second degree as defined in section 265.03, criminal use of a firearm in
22 the second degree as defined in section 265.08, criminal sale of a
23 firearm in the second degree as defined in section 265.12, criminal sale
24 of a firearm with the aid of a minor as defined in section 265.14,
25 soliciting or providing support for an act of terrorism in the first
26 degree as defined in section 490.15, hindering prosecution of terrorism
27 in the second degree as defined in section 490.30, and criminal
28 possession of a chemical weapon or biological weapon in the third degree
29 as defined in section 490.37.

30 (c) Class D violent felony offenses: an attempt to commit any of the
31 class C felonies set forth in paragraph (b); reckless assault of a child
32 as defined in section 120.02, assault in the second degree as defined in
33 section 120.05, menacing a police officer or peace officer as defined in
34 section 120.18, stalking in the first degree, as defined in subdivision
35 one of section 120.60, strangulation in the second degree as defined in
36 section 121.12, rape in the second degree as defined in section 130.30,
37 criminal sexual act in the second degree as defined in section 130.45,
38 sexual abuse in the first degree as defined in section 130.65, course of
39 sexual conduct against a child in the second degree as defined in
40 section 130.80, aggravated sexual abuse in the [third] FOURTH degree as
41 defined in section 130.66, facilitating a sex offense with a controlled
42 substance as defined in section 130.90, criminal possession of a weapon
43 in the third degree as defined in subdivision five, six, seven or eight
44 of section 265.02, criminal sale of a firearm in the third degree as
45 defined in section 265.11, intimidating a victim or witness in the
46 second degree as defined in section 215.16, soliciting or providing
47 support for an act of terrorism in the second degree as defined in
48 section 490.10, and making a terroristic threat as defined in section
49 490.20, falsely reporting an incident in the first degree as defined in
50 section 240.60, placing a false bomb or hazardous substance in the first
51 degree as defined in section 240.62, placing a false bomb or hazardous
52 substance in a sports stadium or arena, mass transportation facility or
53 enclosed shopping mall as defined in section 240.63, and aggravated
54 unpermitted use of indoor pyrotechnics in the first degree as defined in
55 section 405.18.

S 2. The penal law is amended by adding three new sections 130.36, 130.51 and 130.71 to read as follows:

S 130.36 AGGRAVATED RAPE.

A MALE IS GUILTY OF AGGRAVATED RAPE WHEN HE ENGAGES IN SEXUAL INTERCOURSE WITH A FEMALE BY FORCIBLE COMPULSION AND WHEN, IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE OR ANOTHER PARTICIPANT IN THE CRIME:

1. IS ARMED WITH A DEADLY WEAPON; OR

2. USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR

3. CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME; OR

4. DISPLAYS WHAT APPEARS TO BE A FIREARM.

AGGRAVATED RAPE IS A CLASS A-II FELONY.

S 130.51 AGGRAVATED CRIMINAL SEXUAL ACT.

A PERSON IS GUILTY OF AGGRAVATED CRIMINAL SEXUAL ACT WHEN HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON BY FORCIBLE COMPULSION AND WHEN, IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE, SHE OR ANOTHER PARTICIPANT IN THE CRIME:

1. IS ARMED WITH A DEADLY WEAPON; OR

2. USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR

3. CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME; OR

4. DISPLAYS WHAT APPEARS TO BE A FIREARM.

AGGRAVATED CRIMINAL SEXUAL ACT IS A CLASS A-II FELONY.

S 130.71 AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE.

1. A PERSON IS GUILTY OF AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE WHEN HE OR SHE INSERTS A FINGER OR FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS OR RECTUM OF ANOTHER PERSON BY FORCIBLE COMPULSION CAUSING PHYSICAL INJURY TO SUCH PERSON AND WHEN, IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE, SHE OR ANOTHER PARTICIPANT IN THE CRIME:

(A) IS ARMED WITH A DEADLY WEAPON; OR

(B) USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR

(C) CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME; OR

(D) DISPLAYS WHAT APPEARS TO BE A FIREARM.

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

AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE IS A CLASS A-II FELONY.

S 3. Section 130.65-a of the penal law, as added by chapter 1 of the laws of 2000, subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

S 130.65-a Aggravated sexual abuse in the [fourth] FIFTH degree.

1. A person is guilty of aggravated sexual abuse in the [fourth] FIFTH degree when:

(a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or

(b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

1 Aggravated sexual abuse in the [fourth] FIFTH degree is a class E
2 felony.

3 S 4. Section 130.66 of the penal law, as added by chapter 181 of the
4 laws of 1996, subdivisions 1 and 2 as amended by chapter 485 of the laws
5 of 2009, subdivision 3 as renumbered by chapter 1 of the laws of 2000,
6 is amended to read as follows:

7 S 130.66 Aggravated sexual abuse in the [third] FOURTH degree.

8 1. A person is guilty of aggravated sexual abuse in the [third] FOURTH
9 degree when he or she inserts a foreign object in the vagina, urethra,
10 penis, rectum or anus of another person:

11 (a) By forcible compulsion; or

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

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

15 2. A person is guilty of aggravated sexual abuse in the [third] FOURTH
16 degree when he or she inserts a foreign object in the vagina, urethra,
17 penis, rectum or anus of another person causing physical injury to such
18 person and such person is incapable of consent by reason of being
19 mentally disabled or mentally incapacitated.

20 3. Conduct performed for a valid medical purpose does not violate the
21 provisions of this section.

22 Aggravated sexual abuse in the [third] FOURTH degree is a class D
23 felony.

24 S 5. Section 130.67 of the penal law, as added by chapter 450 of the
25 laws of 1988, the opening paragraph of subdivision 1 as amended by chap-
26 ter 485 of the laws of 2009, is amended to read as follows:

27 S 130.67 Aggravated sexual abuse in the [second] THIRD degree.

28 1. A person is guilty of aggravated sexual abuse in the [second]
29 THIRD degree when he or she inserts a finger in the vagina, urethra,
30 penis, rectum or anus of another person causing physical injury to such
31 person:

32 (a) By forcible compulsion; or

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

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

36 2. Conduct performed for a valid medical purpose does not violate the
37 provisions of this section.

38 Aggravated sexual abuse in the [second] THIRD degree is a class C
39 felony.

40 S 6. Section 130.70 of the penal law, as amended by chapter 450 of the
41 laws of 1988, the opening paragraph of subdivision 1 as amended by chap-
42 ter 485 of the laws of 2009, is amended to read as follows:

43 S 130.70 Aggravated sexual abuse in the [first] SECOND degree.

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

48 (a) By forcible compulsion; or

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

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

52 2. Conduct performed for a valid medical purpose does not violate the
53 provisions of this section.

54 Aggravated sexual abuse in the [first] SECOND degree is a class B
55 felony.

1 S 7. Subdivisions 2 and 3 of section 720.10 of the criminal procedure
2 law, subdivision 2 as amended by chapter 416 of the laws of 1986, para-
3 graph (a) of subdivision 2 as amended by chapter 316 of the laws of 2006
4 and subdivision 3 as amended by chapter 264 of the laws of 2003, are
5 amended to read as follows:

6 2. "Eligible youth" means a youth who is eligible to be found a
7 youthful offender. Every youth is so eligible unless:

8 (a) the conviction to be replaced by a youthful offender finding is
9 for (i) a class A-I or class A-II felony, or (ii) an armed felony as
10 defined in subdivision forty-one of section 1.20, except as provided in
11 subdivision three, or (iii) rape in the first degree, criminal sexual
12 act in the first degree, or aggravated sexual abuse IN THE SECOND
13 DEGREE, except as provided in subdivision three, or

14 (b) such youth has previously been convicted and sentenced for a felo-
15 ny, or

16 (c) such youth has previously been adjudicated a youthful offender
17 following conviction of a felony or has been adjudicated on or after
18 September first, nineteen hundred seventy-eight a juvenile delinquent
19 who committed a designated felony act as defined in the family court
20 act.

21 3. Notwithstanding the provisions of subdivision two, a youth who has
22 been convicted of an armed felony offense or of rape in the first
23 degree, criminal sexual act in the first degree, or aggravated sexual
24 abuse IN THE SECOND DEGREE is an eligible youth if the court determines
25 that one or more of the following factors exist: (i) mitigating circum-
26 stances that bear directly upon the manner in which the crime was
27 committed; or (ii) where the defendant was not the sole participant in
28 the crime, the defendant's participation was relatively minor although
29 not so minor as to constitute a defense to the prosecution. Where the
30 court determines that the eligible youth is a youthful offender, the
31 court shall make a statement on the record of the reasons for its deter-
32 mination, a transcript of which shall be forwarded to the state division
33 of criminal justice services, to be kept in accordance with the
34 provisions of subdivision three of section eight hundred thirty-seven-a
35 of the executive law.

36 S 8. This act shall take effect on the first of November next succeed-
37 ing the date on which it shall have become a law.