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

5172

2011-2012 Regular Sessions

I N A S S E M B L Y

February 14, 2011

Introduced by M. of A. PAULIN, LANCMAN, ZEBROWSKI, TITONE, P. RIVERA, GABRYSZAK, GALEF, JAFFEE, MAISEL -- Multi-Sponsored by -- M. of A. BOYLAND, DESTITO, GUNTHER, LENTOL, PHEFFER, SWEENEY -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to expanding the definition of sex offenses and making technical corrections to such provisions

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

Section 1. Subdivision 3 of section 130.00 of the penal law, as amended by chapter 193 of the laws of 2010, is amended to read as follows:

3. "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor AND THE TOUCHING OF THE VICTIM BY HIMSELF OR HERSELF AT THE DIRECTION OF THE ACTOR, whether directly or through clothing, as well as the emission of ejaculate, URINE OR FECES by the actor upon any part of the victim, clothed or unclothed.

S 2. Section 130.60 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 130.60 Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and [when such other person is]:

1. WHEN SUCH OTHER PERSON IS:

(A) Incapable of consent by reason of some factor other than being less than seventeen years old; or

[2.] (B) Less than fourteen years old; OR

2. WHEN THE SEXUAL CONTACT CONSTITUTES THE EMISSION OF EJACULATE, URINE OR FECES BY THE ACTOR UPON ANY PART OF THE VICTIM, CLOTHED OR UNCLOTHED, AND SUCH CONTACT OCCURS WITHOUT THE CONSENT OF THE VICTIM.

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

LBD00920-03-1

Sexual abuse in the second degree is a class A misdemeanor.

S 3. Section 130.65-a of the penal law, as added by chapter 1 of the laws of 2000 and 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 degree.

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

(a) He or she inserts, OR CAUSES TO BE INSERTED, 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, OR CAUSES TO BE INSERTED, 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.

Aggravated sexual abuse in the fourth degree is a class E felony.

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

S 130.66 Aggravated sexual abuse in the third degree.

1. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts, OR CAUSES TO BE INSERTED, a foreign object in the vagina, urethra, penis, rectum or anus of another 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.

2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts, OR CAUSES TO BE INSERTED, a foreign object 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 being mentally disabled or mentally incapacitated.

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

Aggravated sexual abuse in the third degree is a class D felony.

S 5. The opening paragraph of subdivision 1 of section 130.67 of the penal law, as amended by chapter 485 of the laws of 2009, is amended to read as follows:

A person is guilty of aggravated sexual abuse in the second degree when he or she inserts, OR CAUSES TO BE INSERTED, a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

S 6. The opening paragraph of subdivision 1 of section 130.70 of the penal law, as amended by chapter 485 of the laws of 2009, is amended to read as follows:

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

S 7. Subdivision 2 of section 260.31 of the penal law, as amended by chapter 193 of the laws of 2010, is amended to read as follows:

2. "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either

party. It includes the touching of the actor by the victim, AND THE TOUCHING OF THE VICTIM BY HIMSELF OR HERSELF AT THE DIRECTION OF THE ACTOR, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate, URINE OR FECES by the actor upon any part of the victim, clothed or unclothed.

S 8. This act shall take effect on the ninetieth day after it shall have become a law.