

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

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.

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

3 S 130.36 AGGRAVATED RAPE.

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

8 1. IS ARMED WITH A DEADLY WEAPON; OR

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

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

12 4. DISPLAYS WHAT APPEARS TO BE A FIREARM.

13 AGGRAVATED RAPE IS A CLASS A-II FELONY.

14 S 130.51 AGGRAVATED CRIMINAL SEXUAL ACT.

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

20 1. IS ARMED WITH A DEADLY WEAPON; OR

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

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

24 4. DISPLAYS WHAT APPEARS TO BE A FIREARM.

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

26 S 130.71 AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE.

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

33 (A) IS ARMED WITH A DEADLY WEAPON; OR

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

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

37 (D) DISPLAYS WHAT APPEARS TO BE A FIREARM.

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

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

41 S 3. Section 130.65-a of the penal law, as added by chapter 1 of the  
42 laws of 2000, subdivision 1 as amended by chapter 485 of the laws of  
43 2009, is amended to read as follows:

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

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

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

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

55 2. Conduct performed for a valid medical purpose does not violate the  
56 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.