

4743

2013-2014 Regular Sessions

I N S E N A T E

April 22, 2013

Introduced by Sens. YOUNG, GOLDEN -- 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 the definition of the term
"sexual intercourse" as such term applies to sex offenses; and to
amend the penal law, the criminal procedure law, the agriculture and
markets law, the civil practice law and rules, the family court act,
the judiciary law and the correction law, in relation to establishing
the crimes of anal rape and oral rape to replace crimes involving
criminal sexual acts; and to repeal certain provisions of the penal
law relating thereto

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

1 Section 1. Subdivision 1 of section 130.00 of the penal law is amended
2 to read as follows:
3 1. "Sexual intercourse" has its ordinary meaning and [occurs upon any
4 penetration, however slight] MEANS CONDUCT BETWEEN PERSONS THAT CONSISTS
5 OF CONTACT BETWEEN THE PENIS AND THE VAGINA OR VULVA.
6 S 2. Section 130.40 of the penal law, as amended by chapter 264 of the
7 laws of 2003, is amended to read as follows:
8 S 130.40 [Criminal sexual act] ANAL RAPE in the third degree.
9 A person is guilty of [criminal sexual act] ANAL RAPE in the third
10 degree when:
11 1. He or she engages in [oral sexual conduct or] anal sexual conduct
12 with a person who is incapable of consent by reason of some factor other
13 than being less than seventeen years old;
14 2. Being twenty-one years old or more, he or she engages in [oral
15 sexual conduct or] anal sexual conduct with a person less than seventeen
16 years old; or
17 3. He or she engages in [oral sexual conduct or] anal sexual conduct
18 with another person without such person's consent where such lack of
19 consent is by reason of some factor other than incapacity to consent.

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

LBD09199-02-3

[Criminal sexual act] ANAL RAPE in the third degree is a class E felony.

S 3. Section 130.45 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 130.45 [Criminal sexual act] ANAL RAPE in the second degree.

A person is guilty of [criminal sexual act] ANAL RAPE in the second degree when:

1. being eighteen years old or more, he or she engages in [oral sexual conduct or] anal sexual conduct with another person less than fifteen years old; or

2. he or she engages in [oral sexual conduct or] anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of [criminal sexual act] ANAL RAPE in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

[Criminal sexual act] ANAL RAPE in the second degree is a class D felony.

S 4. Section 130.50 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 130.50 [Criminal sexual act] ANAL RAPE in the first degree.

A person is guilty of [criminal sexual act] ANAL RAPE in the first degree when he or she engages in [oral sexual conduct or] anal sexual conduct with another person:

1. By forcible compulsion; or

2. Who is incapable of consent by reason of being physically helpless; or

3. Who is less than eleven years old; or

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

[Criminal sexual act] ANAL RAPE in the first degree is a class B felony.

S 5. The penal law is amended by adding a new section 130.37 to read as follows:

S 130.37 ORAL RAPE IN THE THIRD DEGREE.

A PERSON IS GUILTY OF ORAL RAPE IN THE THIRD DEGREE WHEN:

1. HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT WITH A PERSON WHO IS INCAPABLE OF CONSENT BY REASON OF SOME FACTOR OTHER THAN BEING LESS THAN SEVENTEEN YEARS OLD;

2. BEING TWENTY-ONE YEARS OLD OR MORE, HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT WITH A PERSON LESS THAN SEVENTEEN YEARS OLD; OR

3. HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT WITH ANOTHER PERSON WITHOUT SUCH PERSON'S CONSENT WHERE SUCH LACK OF CONSENT IS BY REASON OF SOME FACTOR OTHER THAN INCAPACITY TO CONSENT.

ORAL RAPE IN THE THIRD DEGREE IS A CLASS E FELONY.

S 6. The penal law is amended by adding a new section 130.38 to read as follows:

S 130.38 ORAL RAPE IN THE SECOND DEGREE.

A PERSON IS GUILTY OF ORAL RAPE IN THE SECOND DEGREE WHEN:

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

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

1 IT SHALL BE AN AFFIRMATIVE DEFENSE TO THE CRIME OF ORAL RAPE IN THE
2 SECOND DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THAT THE
3 DEFENDANT WAS LESS THAN FOUR YEARS OLDER THAN THE VICTIM AT THE TIME OF
4 THE ACT.

5 ORAL RAPE IN THE SECOND DEGREE IS A CLASS D FELONY.

6 S 7. The penal law is amended by adding a new section 130.39 to read
7 as follows:

8 S 130.39 ORAL RAPE IN THE FIRST DEGREE.

9 A PERSON IS GUILTY OF ORAL RAPE IN THE FIRST DEGREE WHEN HE OR SHE
10 ENGAGES IN ORAL SEXUAL CONDUCT WITH ANOTHER PERSON:

11 1. BY FORCIBLE COMPULSION; OR

12 2. WHO IS INCAPABLE OF CONSENT BY REASON OF BEING PHYSICALLY HELPLESS;
13 OR

14 3. WHO IS LESS THAN ELEVEN YEARS OLD; OR

15 4. WHO IS LESS THAN THIRTEEN YEARS OLD AND THE ACTOR IS EIGHTEEN YEARS
16 OLD OR MORE.

17 ORAL RAPE IN THE FIRST DEGREE IS A CLASS B FELONY.

18 S 8. Paragraph 2 of subdivision 18 of section 10.00 of the penal law,
19 as amended by chapter 7 of the laws of 2007, is amended to read as
20 follows:

21 (2) a person fourteen or fifteen years old who is criminally responsi-
22 ble for acts constituting the crimes defined in subdivisions one and two
23 of section 125.25 (murder in the second degree) and in subdivision three
24 of such section provided that the underlying crime for the murder charge
25 is one for which such person is criminally responsible; section 135.25
26 (kidnapping in the first degree); 150.20 (arson in the first degree);
27 subdivisions one and two of section 120.10 (assault in the first
28 degree); 125.20 (manslaughter in the first degree); subdivisions one and
29 two of section 130.35 (rape in the first degree); subdivisions one and
30 two of section 130.50 ([criminal sexual act] ANAL RAPE in the first
31 degree); SUBDIVISIONS ONE AND TWO OF SECTION 130.39 (ORAL RAPE IN THE
32 FIRST DEGREE); 130.70 (aggravated sexual abuse in the first degree);
33 140.30 (burglary in the first degree); subdivision one of section 140.25
34 (burglary in the second degree); 150.15 (arson in the second degree);
35 160.15 (robbery in the first degree); subdivision two of section 160.10
36 (robbery in the second degree) of this chapter; or section 265.03 of
37 this chapter, where such machine gun or such firearm is possessed on
38 school grounds, as that phrase is defined in subdivision fourteen of
39 section 220.00 of this chapter; or defined in this chapter as an attempt
40 to commit murder in the second degree or kidnapping in the first degree,
41 or such conduct as a sexually motivated felony, where authorized pursu-
42 ant to section 130.91 of [the penal law] THIS CHAPTER.

43 S 9. Subdivision 2 of section 30.00 of the penal law, as amended by
44 chapter 7 of the laws of 2007, is amended to read as follows:

45 2. A person thirteen, fourteen or fifteen years of age is criminally
46 responsible for acts constituting murder in the second degree as defined
47 in subdivisions one and two of section 125.25 and in subdivision three
48 of such section provided that the underlying crime for the murder charge
49 is one for which such person is criminally responsible or for such
50 conduct as a sexually motivated felony, where authorized pursuant to
51 section 130.91 of [the penal law] THIS CHAPTER; and a person fourteen or
52 fifteen years of age is criminally responsible for acts constituting the
53 crimes defined in section 135.25 (kidnapping in the first degree);
54 150.20 (arson in the first degree); subdivisions one and two of section
55 120.10 (assault in the first degree); 125.20 (manslaughter in the first
56 degree); subdivisions one and two of section 130.35 (rape in the first

degree); subdivisions one and two of section 130.50 ([criminal sexual act] ANAL RAPE in the first degree); SUBDIVISIONS ONE AND TWO OF SECTION 130.39 (ORAL RAPE IN THE FIRST DEGREE); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of [the penal law] THIS CHAPTER.

S 10. Paragraph (b) of subdivision 2 of section 35.15 of the penal law, as amended by chapter 511 of the laws of 2004, is amended to read as follows:

(b) He or she reasonably believes that such other person is committing or attempting to commit a kidnapping, forcible rape, forcible [criminal sexual act] ANAL RAPE, FORCIBLE ORAL RAPE or robbery; or

S 11. Paragraph (b) of subdivision 4 of section 35.30 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(b) Effect the arrest of a person who has committed murder, manslaughter in the first degree, robbery, forcible rape [or], forcible [criminal sexual act] ANAL RAPE OR FORCIBLE ORAL RAPE and who is in immediate flight therefrom.

S 12. Paragraph (a) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, [criminal sexual act] ANAL RAPE in the first degree as defined in section 130.50, ORAL RAPE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.39, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical

1 weapon or biological weapon in the third degree as defined in section
2 490.47.

3 S 13. Paragraph (c) of subdivision 1 of section 70.02 of the penal
4 law, as amended by chapter 405 of the laws of 2010, is amended to read
5 as follows:

6 (c) Class D violent felony offenses: an attempt to commit any of the
7 class C felonies set forth in paragraph (b); reckless assault of a child
8 as defined in section 120.02, assault in the second degree as defined in
9 section 120.05, menacing a police officer or peace officer as defined in
10 section 120.18, stalking in the first degree, as defined in subdivision
11 one of section 120.60, strangulation in the second degree as defined in
12 section 121.12, rape in the second degree as defined in section 130.30,
13 [criminal sexual act] ANAL RAPE in the second degree as defined in
14 section 130.45, ORAL RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION
15 130.38, sexual abuse in the first degree as defined in section 130.65,
16 course of sexual conduct against a child in the second degree as defined
17 in section 130.80, aggravated sexual abuse in the third degree as
18 defined in section 130.66, facilitating a sex offense with a controlled
19 substance as defined in section 130.90, criminal possession of a weapon
20 in the third degree as defined in subdivision five, six, seven or eight
21 of section 265.02, criminal sale of a firearm in the third degree as
22 defined in section 265.11, intimidating a victim or witness in the
23 second degree as defined in section 215.16, soliciting or providing
24 support for an act of terrorism in the second degree as defined in
25 section 490.10, and making a terroristic threat as defined in section
26 490.20, falsely reporting an incident in the first degree as defined in
27 section 240.60, placing a false bomb or hazardous substance in the first
28 degree as defined in section 240.62, placing a false bomb or hazardous
29 substance in a sports stadium or arena, mass transportation facility or
30 enclosed shopping mall as defined in section 240.63, and aggravated
31 unpermitted use of indoor pyrotechnics in the first degree as defined in
32 section 405.18.

33 S 14. Paragraph (c) of subdivision 1 of section 70.02 of the penal
34 law, as amended by chapter 1 of the laws of 2013, is amended to read as
35 follows:

36 (c) Class D violent felony offenses: an attempt to commit any of the
37 class C felonies set forth in paragraph (b); reckless assault of a child
38 as defined in section 120.02, assault in the second degree as defined in
39 section 120.05, menacing a police officer or peace officer as defined in
40 section 120.18, stalking in the first degree, as defined in subdivision
41 one of section 120.60, strangulation in the second degree as defined in
42 section 121.12, rape in the second degree as defined in section 130.30,
43 [criminal sexual act] ANAL RAPE in the second degree as defined in
44 section 130.45, ORAL RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION
45 130.38, sexual abuse in the first degree as defined in section 130.65,
46 course of sexual conduct against a child in the second degree as defined
47 in section 130.80, aggravated sexual abuse in the third degree as
48 defined in section 130.66, facilitating a sex offense with a controlled
49 substance as defined in section 130.90, criminal possession of a weapon
50 in the third degree as defined in subdivision five, six, seven, eight,
51 nine or ten of section 265.02, criminal sale of a firearm in the third
52 degree as defined in section 265.11, intimidating a victim or witness in
53 the second degree as defined in section 215.16, soliciting or providing
54 support for an act of terrorism in the second degree as defined in
55 section 490.10, and making a terroristic threat as defined in section
56 490.20, falsely reporting an incident in the first degree as defined in

1 section 240.60, placing a false bomb or hazardous substance in the first
2 degree as defined in section 240.62, placing a false bomb or hazardous
3 substance in a sports stadium or arena, mass transportation facility or
4 enclosed shopping mall as defined in section 240.63, and aggravated
5 unpermitted use of indoor pyrotechnics in the first degree as defined in
6 section 405.18.

7 S 15. The opening paragraph of subdivision 3 of section 125.25 of the
8 penal law, as amended by chapter 264 of the laws of 2003, is amended to
9 read as follows:

10 Acting either alone or with one or more other persons, he commits or
11 attempts to commit robbery, burglary, kidnapping, arson, rape in the
12 first degree, [criminal sexual act] ANAL RAPE in the first degree, ORAL
13 RAPE IN THE FIRST DEGREE, sexual abuse in the first degree, aggravated
14 sexual abuse, escape in the first degree, or escape in the second
15 degree, and, in the course of and in furtherance of such crime or of
16 immediate flight therefrom, he, or another participant, if there be any,
17 causes the death of a person other than one of the participants; except
18 that in any prosecution under this subdivision, in which the defendant
19 was not the only participant in the underlying crime, it is an affirma-
20 tive defense that the defendant:

21 S 16. Subdivision 5 of section 125.25 of the penal law, as amended by
22 chapter 320 of the laws of 2006, is amended to read as follows:

23 5. Being eighteen years old or more, while in the course of committing
24 rape in the first, second or third degree, [criminal sexual act] ANAL
25 RAPE in the first, second or third degree, ORAL RAPE IN THE FIRST,
26 SECOND OR THIRD DEGREE, sexual abuse in the first degree, aggravated
27 sexual abuse in the first, second, third or fourth degree, or incest in
28 the first, second or third degree, against a person less than fourteen
29 years old, he or she intentionally causes the death of such person.

30 S 17. Subparagraph (vii) of paragraph (a) of subdivision 1 of section
31 125.27 of the penal law, as amended by chapter 264 of the laws of 2003,
32 is amended to read as follows:

33 (vii) the victim was killed while the defendant was in the course of
34 committing or attempting to commit and in furtherance of robbery,
35 burglary in the first degree or second degree, kidnapping in the first
36 degree, arson in the first degree or second degree, rape in the first
37 degree, [criminal sexual act] ANAL RAPE in the first degree, ORAL RAPE
38 IN THE FIRST DEGREE, sexual abuse in the first degree, aggravated sexual
39 abuse in the first degree or escape in the first degree, or in the
40 course of and furtherance of immediate flight after committing or
41 attempting to commit any such crime or in the course of and furtherance
42 of immediate flight after attempting to commit the crime of murder in
43 the second degree; provided however, the victim is not a participant in
44 one of the aforementioned crimes and, provided further that, unless the
45 defendant's criminal liability under this subparagraph is based upon the
46 defendant having commanded another person to cause the death of the
47 victim or intended victim pursuant to section 20.00 of this chapter,
48 this subparagraph shall not apply where the defendant's criminal liabil-
49 ity is based upon the conduct of another pursuant to section 20.00 of
50 this chapter; or

51 S 18. Paragraph (d) of subdivision 2 of section 130.05 of the penal
52 law, as amended by chapter 40 of the laws of 2004, is amended to read as
53 follows:

54 (d) Where the offense charged is rape in the third degree as defined
55 in subdivision three of section 130.25, [or criminal sexual act] ANAL
56 RAPE in the third degree as defined in subdivision three of section

1 130.40, OR ORAL RAPE IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION THREE
2 OF SECTION 130.37, in addition to forcible compulsion, circumstances
3 under which, at the time of the act of intercourse, oral sexual conduct
4 or anal sexual conduct, the victim clearly expressed that he or she did
5 not consent to engage in such act, and a reasonable person in the
6 actor's situation would have understood such person's words and acts as
7 an expression of lack of consent to such act under all the circum-
8 stances.

9 S 19. Paragraph (h) of subdivision 3 of section 130.05 of the penal
10 law, as amended by section 2 of part G of chapter 501 of the laws of
11 2012, is amended to read as follows:

12 (h) a client or patient and the actor is a health care provider or
13 mental health care provider charged with rape in the third degree as
14 defined in section 130.25, [criminal sexual act] ANAL RAPE in the third
15 degree as defined in section 130.40, ORAL RAPE IN THE THIRD DEGREE AS
16 DEFINED IN SECTION 130.37, aggravated sexual abuse in the fourth degree
17 as defined in section 130.65-a, or sexual abuse in the third degree as
18 defined in section 130.55, and the act of sexual conduct occurs during a
19 treatment session, consultation, interview, or examination; or

20 S 20. Subdivision 3 of section 130.10 of the penal law, as amended by
21 chapter 264 of the laws of 2003, is amended to read as follows:

22 3. In any prosecution for the crime of rape in the third degree as
23 defined in section 130.25, [criminal sexual act] ANAL RAPE in the third
24 degree as defined in section 130.40, ORAL RAPE IN THE THIRD DEGREE AS
25 DEFINED IN SECTION 130.37, aggravated sexual abuse in the fourth degree
26 as defined in section 130.65-a, or sexual abuse in the third degree as
27 defined in section 130.55 in which incapacity to consent is based on the
28 circumstances set forth in paragraph (h) of subdivision three of section
29 130.05 of this article it shall be an affirmative defense that the
30 client or patient consented to such conduct charged after having been
31 expressly advised by the health care or mental health care provider that
32 such conduct was not performed for a valid medical purpose.

33 S 21. The opening paragraph and subdivision 2 of section 130.95 of the
34 penal law, as added by chapter 107 of the laws of 2006, are amended to
35 read as follows:

36 A person is guilty of predatory sexual assault when he or she commits
37 the crime of rape in the first degree, [criminal sexual act] ANAL RAPE
38 in the first degree, ORAL RAPE IN THE FIRST DEGREE, aggravated sexual
39 abuse in the first degree, or course of sexual conduct against a child
40 in the first degree, as defined in this article, and when:

41 2. He or she has engaged in conduct constituting the crime of rape in
42 the first degree, [criminal sexual act] ANAL RAPE in the first degree,
43 ORAL RAPE IN THE FIRST DEGREE, aggravated sexual abuse in the first
44 degree, or course of sexual conduct against a child in the first degree,
45 as defined in this article, against one or more additional persons; or

46 S 22. The opening paragraph of section 130.96 of the penal law, as
47 added by chapter 107 of the laws of 2006, is amended to read as follows:

48 A person is guilty of predatory sexual assault against a child when,
49 being eighteen years old or more, he or she commits the crime of rape in
50 the first degree, [criminal sexual act] ANAL RAPE in the first degree,
51 ORAL RAPE IN THE FIRST DEGREE, aggravated sexual abuse in the first
52 degree, or course of sexual conduct against a child in the first degree,
53 as defined in this article, and the victim is less than thirteen years
54 old.

55 S 23. Subdivision 1 of section 235.00 of the penal law, as amended by
56 chapter 264 of the laws of 2003, is amended to read as follows:

1 1. "Obscene." Any material or performance is "obscene" if (a) the
2 average person, applying contemporary community standards, would find
3 that considered as a whole, its predominant appeal is to the prurient
4 interest in sex, and (b) it depicts or describes in a patently offensive
5 manner, actual or simulated: sexual intercourse, [criminal sexual act]
6 ANAL RAPE, ORAL RAPE, sexual bestiality, masturbation, sadism, maso-
7 chism, excretion or lewd exhibition of the genitals, and (c) considered
8 as a whole, it lacks serious literary, artistic, political, and scien-
9 tific value. Predominant appeal shall be judged with reference to ordi-
10 nary adults unless it appears from the character of the material or the
11 circumstances of its dissemination to be designed for children or other
12 specially susceptible audience.

13 S 24. Subdivision 7 of section 235.00 of the penal law is REPEALED.

14 S 25. Subdivision 2 of section 240.75 of the penal law, as added by
15 section 2 of part D of chapter 491 of the laws of 2012, is amended to
16 read as follows:

17 2. A "specified offense" is an offense defined in section 120.00
18 (assault in the third degree); section 120.05 (assault in the second
19 degree); section 120.10 (assault in the first degree); section 120.13
20 (menacing in the first degree); section 120.14 (menacing in the second
21 degree); section 120.15 (menacing in the third degree); section 120.20
22 (reckless endangerment in the second degree); section 120.25 (reckless
23 endangerment in the first degree); section 120.45 (stalking in the
24 fourth degree); section 120.50 (stalking in the third degree); section
25 120.55 (stalking in the second degree); section 120.60 (stalking in the
26 first degree); section 121.11 (criminal obstruction of breathing or
27 blood circulation); section 121.12 (strangulation in the second degree);
28 section 121.13 (strangulation in the first degree); subdivision one of
29 section 125.15 (manslaughter in the second degree); subdivision one, two
30 or four of section 125.20 (manslaughter in the first degree); section
31 125.25 (murder in the second degree); section 130.20 (sexual miscon-
32 duct); section 130.30 (rape in the second degree); section 130.35 (rape
33 in the first degree); section 130.40 ([criminal sexual act] ANAL RAPE in
34 the third degree); SECTION 130.37 (ORAL RAPE IN THE THIRD DEGREE);
35 section 130.45 ([criminal sexual act] ANAL RAPE in the second degree);
36 SECTION 130.38 (ORAL RAPE IN THE SECOND DEGREE); section 130.50 ([crimi-
37 nal sexual act] ANAL RAPE in the first degree); SECTION 130.39 (ORAL
38 RAPE IN THE FIRST DEGREE); section 130.52 (forcible touching); section
39 130.53 (persistent sexual abuse); section 130.55 (sexual abuse in the
40 third degree); section 130.60 (sexual abuse in the second degree);
41 section 130.65 (sexual abuse in the first degree); section 130.66
42 (aggravated sexual abuse in the third degree); section 130.67 (aggra-
43 vated sexual abuse in the second degree); section 130.70 (aggravated
44 sexual abuse in the first degree); section 130.91 (sexually motivated
45 felony); section 130.95 (predatory sexual assault); section 130.96
46 (predatory sexual assault against a child); section 135.05 (unlawful
47 imprisonment in the second degree); section 135.10 (unlawful imprison-
48 ment in the first degree); section 135.60 (coercion in the second
49 degree); section 135.65 (coercion in the first degree); section 140.20
50 (burglary in the third degree); section 140.25 (burglary in the second
51 degree); section 140.30 (burglary in the first degree); section 145.00
52 (criminal mischief in the fourth degree); section 145.05 (criminal
53 mischief in the third degree); section 145.10 (criminal mischief in the
54 second degree); section 145.12 (criminal mischief in the first degree);
55 section 145.14 (criminal tampering in the third degree); section 215.50
56 (criminal contempt in the second degree); section 215.51 (criminal

contempt in the first degree); section 215.52 (aggravated criminal contempt); section 240.25 (harassment in the first degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); aggravated family offense as defined in this section or any attempt or conspiracy to commit any of the foregoing offenses where the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of the criminal procedure law.

S 26. The opening paragraph of section 255.26 of the penal law, as added by chapter 320 of the laws of 2006, is amended to read as follows:

A person is guilty of incest in the second degree when he or she commits the crime of rape in the second degree, as defined in section 130.30 of this part, [or criminal sexual act] ANAL RAPE in the second degree, as defined in section 130.45 of this part, OR ORAL RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.38 OF THIS PART, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

S 27. The opening paragraph of section 255.27 of the penal law, as added by chapter 320 of the laws of 2006, is amended to read as follows:

A person is guilty of incest in the first degree when he or she commits the crime of rape in the first degree, as defined in subdivision three or four of section 130.35 of this part, [or criminal sexual act] ANAL RAPE in the first degree, as defined in subdivision three or four of section 130.50 of this part, OR ORAL RAPE IN THE FIRST DEGREE, AS DEFINED IN SUBDIVISION THREE OR FOUR OF SECTION 130.39 OF THIS PART, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or half blood, uncle, aunt, nephew or niece.

S 28. Paragraph (a) of subdivision 17 of section 265.00 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(a) any of the following offenses defined in the former penal law as in force and effect immediately prior to September first, nineteen hundred sixty-seven: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding escape from prison; that kind of disorderly conduct defined in subdivisions six and eight of section seven hundred twenty-two of such former penal law; violations of sections four hundred eighty-three, four hundred eighty-three-b, four hundred eighty-four-h and article one hundred six of such former penal law; that kind of [criminal sexual act] ANAL RAPE, ORAL RAPE or rape which was designated as a misdemeanor; violation of section seventeen hundred forty-seven-d and seventeen hundred forty-seven-e of such former penal law; any violation of any provision of article thirty-three of the public health law relating to narcotic drugs which was defined as a misdemeanor by section seventeen hundred fifty-one-a of such former penal law, and any violation of any provision of article thirty-three-A of the public health law relating to depressant and stimulant drugs which was defined as a misdemeanor by section seventeen hundred forty-seven-b of such former penal law.

S 29. Subdivision 3 of section 485.05 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

3. A "specified offense" is an offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); section 120.10

1 (assault in the first degree); section 120.12 (aggravated assault upon a
2 person less than eleven years old); section 120.13 (menacing in the
3 first degree); section 120.14 (menacing in the second degree); section
4 120.15 (menacing in the third degree); section 120.20 (reckless endan-
5 germent in the second degree); section 120.25 (reckless endangerment in
6 the first degree); section 121.12 (strangulation in the second degree);
7 section 121.13 (strangulation in the first degree); subdivision one of
8 section 125.15 (manslaughter in the second degree); subdivision one, two
9 or four of section 125.20 (manslaughter in the first degree); section
10 125.25 (murder in the second degree); section 120.45 (stalking in the
11 fourth degree); section 120.50 (stalking in the third degree); section
12 120.55 (stalking in the second degree); section 120.60 (stalking in the
13 first degree); subdivision one of section 130.35 (rape in the first
14 degree); subdivision one of section 130.50 ([criminal sexual act] ANAL
15 RAPE in the first degree); SUBDIVISION ONE OF SECTION 130.39 (ORAL RAPE
16 IN THE FIRST DEGREE); subdivision one of section 130.65 (sexual abuse in
17 the first degree); paragraph (a) of subdivision one of section 130.67
18 (aggravated sexual abuse in the second degree); paragraph (a) of subdi-
19 vision one of section 130.70 (aggravated sexual abuse in the first
20 degree); section 135.05 (unlawful imprisonment in the second degree);
21 section 135.10 (unlawful imprisonment in the first degree); section
22 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in
23 the first degree); section 135.60 (coercion in the second degree);
24 section 135.65 (coercion in the first degree); section 140.10 (criminal
25 trespass in the third degree); section 140.15 (criminal trespass in the
26 second degree); section 140.17 (criminal trespass in the first degree);
27 section 140.20 (burglary in the third degree); section 140.25 (burglary
28 in the second degree); section 140.30 (burglary in the first degree);
29 section 145.00 (criminal mischief in the fourth degree); section 145.05
30 (criminal mischief in the third degree); section 145.10 (criminal
31 mischief in the second degree); section 145.12 (criminal mischief in the
32 first degree); section 150.05 (arson in the fourth degree); section
33 150.10 (arson in the third degree); section 150.15 (arson in the second
34 degree); section 150.20 (arson in the first degree); section 155.25
35 (petit larceny); section 155.30 (grand larceny in the fourth degree);
36 section 155.35 (grand larceny in the third degree); section 155.40
37 (grand larceny in the second degree); section 155.42 (grand larceny in
38 the first degree); section 160.05 (robbery in the third degree); section
39 160.10 (robbery in the second degree); section 160.15 (robbery in the
40 first degree); section 240.25 (harassment in the first degree); subdivi-
41 sion one, two or four of section 240.30 (aggravated harassment in the
42 second degree); or any attempt or conspiracy to commit any of the fore-
43 going offenses.

44 S 30. Subdivision 42 of section 1.20 of the criminal procedure law, as
45 amended by chapter 7 of the laws of 2007, is amended to read as follows:

46 42. "Juvenile offender" means (1) a person, thirteen years old who is
47 criminally responsible for acts constituting murder in the second degree
48 as defined in subdivisions one and two of section 125.25 of the penal
49 law, or such conduct as a sexually motivated felony, where authorized
50 pursuant to section 130.91 of the penal law; and (2) a person fourteen
51 or fifteen years old who is criminally responsible for acts constituting
52 the crimes defined in subdivisions one and two of section 125.25 (murder
53 in the second degree) and in subdivision three of such section provided
54 that the underlying crime for the murder charge is one for which such
55 person is criminally responsible; section 135.25 (kidnapping in the
56 first degree); 150.20 (arson in the first degree); subdivisions one and

1 two of section 120.10 (assault in the first degree); 125.20 (manslaught-
2 er in the first degree); subdivisions one and two of section 130.35
3 (rape in the first degree); subdivisions one and two of section 130.50
4 ([criminal sexual act] ANAL RAPE in the first degree); SUBDIVISIONS ONE
5 AND TWO OF SECTION 130.39 (ORAL RAPE IN THE FIRST DEGREE); 130.70
6 (aggravated sexual abuse in the first degree); 140.30 (burglary in the
7 first degree); subdivision one of section 140.25 (burglary in the second
8 degree); 150.15 (arson in the second degree); 160.15 (robbery in the
9 first degree); subdivision two of section 160.10 (robbery in the second
10 degree) of the penal law; or section 265.03 of the penal law, where such
11 machine gun or such firearm is possessed on school grounds, as that
12 phrase is defined in subdivision fourteen of section 220.00 of the penal
13 law; or defined in the penal law as an attempt to commit murder in the
14 second degree or kidnapping in the first degree, or such conduct as a
15 sexually motivated felony, where authorized pursuant to section 130.91
16 of the penal law.

17 S 31. Subdivision 4 of section 180.75 of the criminal procedure law,
18 as amended by chapter 264 of the laws of 2003, is amended to read as
19 follows:

20 4. Notwithstanding the provisions of subdivisions two and three of
21 this section, a local criminal court shall, at the request of the
22 district attorney, order removal of an action against a juvenile offen-
23 der to the family court pursuant to the provisions of article seven
24 hundred twenty-five of this chapter if, upon consideration of the crite-
25 ria specified in subdivision two of section 210.43 of this chapter, it
26 is determined that to do so would be in the interests of justice.
27 Where, however, the felony complaint charges the juvenile offender with
28 murder in the second degree as defined in section 125.25 of the penal
29 law, rape in the first degree as defined in subdivision one of section
30 130.35 of the penal law, [criminal sexual act] ANAL RAPE in the first
31 degree as defined in subdivision one of section 130.50 of the penal law,
32 ORAL RAPE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION ONE OF SECTION
33 130.39 OF THE PENAL LAW, or an armed felony as defined in paragraph (a)
34 of subdivision forty-one of section 1.20 of this chapter, a determi-
35 nation that such action be removed to the family court shall, in addi-
36 tion, be based upon a finding of one or more of the following factors:
37 (i) mitigating circumstances that bear directly upon the manner in which
38 the crime was committed; or (ii) where the defendant was not the sole
39 participant in the crime, the defendant's participation was relatively
40 minor although not so minor as to constitute a defense to the prose-
41 cution; or (iii) possible deficiencies in proof of the crime.

42 S 32. Subdivision (a) of section 190.71 of the criminal procedure law,
43 as amended by chapter 7 of the laws of 2007, is amended to read as
44 follows:

45 (a) Except as provided in subdivision six of section 200.20 of this
46 chapter, a grand jury may not indict (i) a person thirteen years of age
47 for any conduct or crime other than conduct constituting a crime defined
48 in subdivisions one and two of section 125.25 (murder in the second
49 degree) or such conduct as a sexually motivated felony, where authorized
50 pursuant to section 130.91 of the penal law; (ii) a person fourteen or
51 fifteen years of age for any conduct or crime other than conduct consti-
52 tuting a crime defined in subdivisions one and two of section 125.25
53 (murder in the second degree) and in subdivision three of such section
54 provided that the underlying crime for the murder charge is one for
55 which such person is criminally responsible; 135.25 (kidnapping in the
56 first degree); 150.20 (arson in the first degree); subdivisions one and

1 two of section 120.10 (assault in the first degree); 125.20 (manslaught-
2 er in the first degree); subdivisions one and two of section 130.35
3 (rape in the first degree); subdivisions one and two of section 130.50
4 ([criminal sexual act] ANAL RAPE in the first degree); SUBDIVISIONS ONE
5 AND TWO OF SECTION 130.39 (ORAL RAPE IN THE FIRST DEGREE); 130.70
6 (aggravated sexual abuse in the first degree); 140.30 (burglary in the
7 first degree); subdivision one of section 140.25 (burglary in the second
8 degree); 150.15 (arson in the second degree); 160.15 (robbery in the
9 first degree); subdivision two of section 160.10 (robbery in the second
10 degree) of the penal law; [subdivision four of section 265.02 of the
11 penal law, where such firearm is possessed on school grounds, as that
12 phrase is defined in subdivision fourteen of section 220.00 of the penal
13 law;] or section 265.03 of the penal law, where such machine gun or such
14 firearm is possessed on school grounds, as that phrase is defined in
15 subdivision fourteen of section 220.00 of the penal law; or defined in
16 the penal law as an attempt to commit murder in the second degree or
17 kidnapping in the first degree, or such conduct as a sexually motivated
18 felony, where authorized pursuant to section 130.91 of the penal law.

19 S 33. Paragraph (b) of subdivision 1 of section 210.43 of the criminal
20 procedure law, as amended by chapter 264 of the laws of 2003, is amended
21 to read as follows:

22 (b) with the consent of the district attorney, order removal of an
23 action involving an indictment charging a juvenile offender with murder
24 in the second degree as defined in section 125.25 of the penal law; rape
25 in the first degree, as defined in subdivision one of section 130.35 of
26 the penal law; [criminal sexual act] ANAL RAPE in the first degree, as
27 defined in subdivision one of section 130.50 of the penal law; ORAL RAPE
28 IN THE FIRST DEGREE, AS DEFINED IN SUBDIVISION ONE OF SECTION 130.39 OF
29 THE PENAL LAW; or an armed felony as defined in paragraph (a) of subdi-
30 vision forty-one of section 1.20, to the family court pursuant to the
31 provisions of article seven hundred twenty-five of this chapter if the
32 court finds one or more of the following factors: (i) mitigating circum-
33 stances that bear directly upon the manner in which the crime was
34 committed; (ii) where the defendant was not the sole participant in the
35 crime, the defendant's participation was relatively minor although not
36 so minor as to constitute a defense to the prosecution; or (iii) possi-
37 ble deficiencies in the proof of the crime, and, after consideration of
38 the factors set forth in subdivision two of this section, the court
39 determined that removal of the action to the family court would be in
40 the interests of justice.

41 S 34. Subparagraph (iii) of paragraph (g) of subdivision 5 of section
42 220.10 of the criminal procedure law, as amended by chapter 264 of the
43 laws of 2003, is amended to read as follows:

44 (iii) Where the indictment does not charge a crime specified in
45 subparagraph (i) of this paragraph, the district attorney may recommend
46 removal of the action to the family court. Upon making such recommenda-
47 tion the district attorney shall submit a subscribed memorandum setting
48 forth: (1) a recommendation that the interests of justice would best be
49 served by removal of the action to the family court; and (2) if the
50 indictment charges a thirteen year old with the crime of murder in the
51 second degree, or a fourteen or fifteen year old with the crimes of rape
52 in the first degree as defined in subdivision one of section 130.35 of
53 the penal law, or [criminal sexual act] ANAL RAPE in the first degree as
54 defined in subdivision one of section 130.50 of the penal law, OR ORAL
55 RAPE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION ONE OF SECTION 130.39
56 OF THE PENAL LAW, or an armed felony as defined in paragraph (a) of

1 subdivision forty-one of section 1.20 of this chapter specific factors,
2 one or more of which reasonably supports the recommendation, showing,
3 (i) mitigating circumstances that bear directly upon the manner in which
4 the crime was committed, or (ii) where the defendant was not the sole
5 participant in the crime, that the defendant's participation was rela-
6 tively minor although not so minor as to constitute a defense to the
7 prosecution, or (iii) possible deficiencies in proof of the crime, or
8 (iv) where the juvenile offender has no previous adjudications of having
9 committed a designated felony act, as defined in subdivision eight of
10 section 301.2 of the family court act, regardless of the age of the
11 offender at the time of commission of the act, that the criminal act was
12 not part of a pattern of criminal behavior and, in view of the history
13 of the offender, is not likely to be repeated.

14 S 35. Subdivision 6 of section 300.50 of the criminal procedure law,
15 as amended by chapter 264 of the laws of 2003, is amended to read as
16 follows:

17 6. For purposes of this section, the offenses of rape in the third
18 degree as defined in subdivision three of section 130.25 of the penal
19 law [and criminal sexual act], ANAL RAPE in the third degree as defined
20 in subdivision three of section 130.40 of the penal law AND ORAL RAPE IN
21 THE THIRD DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 130.37 OF
22 THE PENAL LAW, are not lesser included offenses of rape in the first
23 degree, [criminal sexual act] ANAL RAPE in the first degree, ORAL RAPE
24 IN THE FIRST DEGREE or any other offense. Notwithstanding the foregoing,
25 either such offense may be submitted as a lesser included offense of the
26 applicable first degree offense when (i) there is a reasonable view of
27 the evidence which would support a finding that the defendant committed
28 such lesser offense but did not commit the greater offense, and (ii)
29 both parties consent to its submission.

30 S 36. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
31 procedure law, as amended by chapter 405 of the laws of 2010, is amended
32 to read as follows:

33 (b) Any of the following felonies: assault in the second degree as
34 defined in section 120.05 of the penal law, assault in the first degree
35 as defined in section 120.10 of the penal law, reckless endangerment in
36 the first degree as defined in section 120.25 of the penal law, promot-
37 ing a suicide attempt as defined in section 120.30 of the penal law,
38 strangulation in the second degree as defined in section 121.12 of the
39 penal law, strangulation in the first degree as defined in section
40 121.13 of the penal law, criminally negligent homicide as defined in
41 section 125.10 of the penal law, manslaughter in the second degree as
42 defined in section 125.15 of the penal law, manslaughter in the first
43 degree as defined in section 125.20 of the penal law, murder in the
44 second degree as defined in section 125.25 of the penal law, murder in
45 the first degree as defined in section 125.27 of the penal law, abortion
46 in the second degree as defined in section 125.40 of the penal law,
47 abortion in the first degree as defined in section 125.45 of the penal
48 law, rape in the third degree as defined in section 130.25 of the penal
49 law, rape in the second degree as defined in section 130.30 of the penal
50 law, rape in the first degree as defined in section 130.35 of the penal
51 law, [criminal sexual act] ANAL RAPE in the third degree as defined in
52 section 130.40 of the penal law, [criminal sexual act] ORAL RAPE IN THE
53 THIRD DEGREE AS DEFINED IN SECTION 130.37 OF THE PENAL LAW, ANAL RAPE in
54 the second degree as defined in section 130.45 of the penal law, [crimi-
55 nal sexual act] ORAL RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION
56 130.38 OF THE PENAL LAW, ANAL RAPE in the first degree as defined in

1 section 130.50 of the penal law, ORAL RAPE IN THE FIRST DEGREE AS
2 DEFINED IN SECTION 130.39 OF THE PENAL LAW, sexual abuse in the first
3 degree as defined in section 130.65 of the penal law, unlawful imprison-
4 ment in the first degree as defined in section 135.10 of the penal law,
5 kidnapping in the second degree as defined in section 135.20 of the
6 penal law, kidnapping in the first degree as defined in section 135.25
7 of the penal law, labor trafficking as defined in section 135.35 of the
8 penal law, custodial interference in the first degree as defined in
9 section 135.50 of the penal law, coercion in the first degree as defined
10 in section 135.65 of the penal law, criminal trespass in the first
11 degree as defined in section 140.17 of the penal law, burglary in the
12 third degree as defined in section 140.20 of the penal law, burglary in
13 the second degree as defined in section 140.25 of the penal law,
14 burglary in the first degree as defined in section 140.30 of the penal
15 law, criminal mischief in the third degree as defined in section 145.05
16 of the penal law, criminal mischief in the second degree as defined in
17 section 145.10 of the penal law, criminal mischief in the first degree
18 as defined in section 145.12 of the penal law, criminal tampering in the
19 first degree as defined in section 145.20 of the penal law, arson in the
20 fourth degree as defined in section 150.05 of the penal law, arson in
21 the third degree as defined in section 150.10 of the penal law, arson in
22 the second degree as defined in section 150.15 of the penal law, arson
23 in the first degree as defined in section 150.20 of the penal law, grand
24 larceny in the fourth degree as defined in section 155.30 of the penal
25 law, grand larceny in the third degree as defined in section 155.35 of
26 the penal law, grand larceny in the second degree as defined in section
27 155.40 of the penal law, grand larceny in the first degree as defined in
28 section 155.42 of the penal law, health care fraud in the fourth degree
29 as defined in section 177.10 of the penal law, health care fraud in the
30 third degree as defined in section 177.15 of the penal law, health care
31 fraud in the second degree as defined in section 177.20 of the penal
32 law, health care fraud in the first degree as defined in section 177.25
33 of the penal law, robbery in the third degree as defined in section
34 160.05 of the penal law, robbery in the second degree as defined in
35 section 160.10 of the penal law, robbery in the first degree as defined
36 in section 160.15 of the penal law, unlawful use of secret scientific
37 material as defined in section 165.07 of the penal law, criminal
38 possession of stolen property in the fourth degree as defined in section
39 165.45 of the penal law, criminal possession of stolen property in the
40 third degree as defined in section 165.50 of the penal law, criminal
41 possession of stolen property in the second degree as defined by section
42 165.52 of the penal law, criminal possession of stolen property in the
43 first degree as defined by section 165.54 of the penal law, trademark
44 counterfeiting in the second degree as defined in section 165.72 of the
45 penal law, trademark counterfeiting in the first degree as defined in
46 section 165.73 of the penal law, forgery in the second degree as defined
47 in section 170.10 of the penal law, forgery in the first degree as
48 defined in section 170.15 of the penal law, criminal possession of a
49 forged instrument in the second degree as defined in section 170.25 of
50 the penal law, criminal possession of a forged instrument in the first
51 degree as defined in section 170.30 of the penal law, criminal
52 possession of forgery devices as defined in section 170.40 of the penal
53 law, falsifying business records in the first degree as defined in
54 section 175.10 of the penal law, tampering with public records in the
55 first degree as defined in section 175.25 of the penal law, offering a
56 false instrument for filing in the first degree as defined in section

1 175.35 of the penal law, issuing a false certificate as defined in
2 section 175.40 of the penal law, criminal diversion of prescription
3 medications and prescriptions in the second degree as defined in section
4 178.20 of the penal law, criminal diversion of prescription medications
5 and prescriptions in the first degree as defined in section 178.25 of
6 the penal law, residential mortgage fraud in the fourth degree as
7 defined in section 187.10 of the penal law, residential mortgage fraud
8 in the third degree as defined in section 187.15 of the penal law, resi-
9 dential mortgage fraud in the second degree as defined in section 187.20
10 of the penal law, residential mortgage fraud in the first degree as
11 defined in section 187.25 of the penal law, escape in the second degree
12 as defined in section 205.10 of the penal law, escape in the first
13 degree as defined in section 205.15 of the penal law, absconding from
14 temporary release in the first degree as defined in section 205.17 of
15 the penal law, promoting prison contraband in the first degree as
16 defined in section 205.25 of the penal law, hindering prosecution in the
17 second degree as defined in section 205.60 of the penal law, hindering
18 prosecution in the first degree as defined in section 205.65 of the
19 penal law, sex trafficking as defined in section 230.34 of the penal
20 law, criminal possession of a weapon in the third degree as defined in
21 subdivisions two, three and five of section 265.02 of the penal law,
22 criminal possession of a weapon in the second degree as defined in
23 section 265.03 of the penal law, criminal possession of a weapon in the
24 first degree as defined in section 265.04 of the penal law, manufacture,
25 transport, disposition and defacement of weapons and dangerous instru-
26 ments and appliances defined as felonies in subdivisions one, two, and
27 three of section 265.10 of the penal law, sections 265.11, 265.12 and
28 265.13 of the penal law, or prohibited use of weapons as defined in
29 subdivision two of section 265.35 of the penal law, relating to firearms
30 and other dangerous weapons, or failure to disclose the origin of a
31 recording in the first degree as defined in section 275.40 of the penal
32 law;

33 S 37. Paragraph (a) of subdivision 2 of section 720.10 of the criminal
34 procedure law, as amended by chapter 316 of the laws of 2006, is amended
35 to read as follows:

36 (a) the conviction to be replaced by a youthful offender finding is
37 for (i) a class A-I or class A-II felony, or (ii) an armed felony as
38 defined in subdivision forty-one of section 1.20, except as provided in
39 subdivision three, or (iii) rape in the first degree, [criminal sexual
40 act] ANAL RAPE in the first degree, ORAL RAPE IN THE FIRST DEGREE or
41 aggravated sexual abuse, except as provided in subdivision three, or

42 S 38. Subdivision 11 of section 123 of the agriculture and markets
43 law, as amended by chapter 392 of the laws of 2004 and as renumbered by
44 section 18 of part T of chapter 59 of the laws of 2010, is amended to
45 read as follows:

46 11. The owner shall not be liable pursuant to subdivision six, seven,
47 eight, nine or ten of this section if the dog was coming to the aid or
48 defense of a person during the commission or attempted commission of a
49 murder, robbery, burglary, arson, rape in the first degree as defined in
50 subdivision one or two of section 130.35 of the penal law, [criminal
51 sexual act] ANAL RAPE in the first degree as defined in subdivision one
52 or two of section 130.50 of the penal law, ORAL RAPE IN THE FIRST DEGREE
53 AS DEFINED IN SUBDIVISION ONE OR TWO OF SECTION 130.39 OF THE PENAL LAW
54 or kidnapping within the dwelling or upon the real property of the owner
55 of the dog and the dog injured or killed the person committing such
56 criminal activity.

1 S 39. Section 213-c of the civil practice law and rules, as added by
2 chapter 3 of the laws of 2006, is amended to read as follows:

3 S 213-c. Action by victim of conduct constituting certain sexual
4 offenses. Notwithstanding any other limitation set forth in this arti-
5 cle, a civil claim or cause of action to recover from a defendant as
6 hereinafter defined, for physical, psychological or other injury or
7 condition suffered by a person as a result of acts by such defendant of
8 rape in the first degree as defined in section 130.35 of the penal law,
9 or [criminal sexual act] ANAL RAPE in the first degree as defined in
10 section 130.50 of the penal law, OR ORAL RAPE IN THE FIRST DEGREE AS
11 DEFINED IN SECTION 130.39 OF THE PENAL LAW, or aggravated sexual abuse
12 in the first degree as defined in section 130.70 of the penal law, or
13 course of sexual conduct against a child in the first degree as defined
14 in section 130.75 of the penal law may be brought within five years. As
15 used in this section, the term "defendant" shall mean only a person who
16 commits the acts described in this section or who, in a criminal
17 proceeding, could be charged with criminal liability for the commission
18 of such acts pursuant to section 20.00 of the penal law and shall not
19 apply to any related civil claim or cause of action arising from such
20 acts. Nothing in this section shall be construed to require that a crim-
21 inal charge be brought or a criminal conviction be obtained as a condi-
22 tion of bringing a civil cause of action or receiving a civil judgment
23 pursuant to this section or be construed to require that any of the
24 rules governing a criminal proceeding be applicable to any such civil
25 action.

26 S 40. Paragraph (b) of subdivision 8 of section 215 of the civil prac-
27 tice law and rules, as added by chapter 3 of the laws of 2006, is
28 amended to read as follows:

29 (b) Whenever it is shown that a criminal action against the same
30 defendant has been commenced with respect to the event or occurrence
31 from which a claim governed by this section arises, and such criminal
32 action is for rape in the first degree as defined in section 130.35 of
33 the penal law, or [criminal sexual act] ANAL RAPE in the first degree as
34 defined in section 130.50 of the penal law, OR ORAL RAPE IN THE FIRST
35 DEGREE AS DEFINED IN SECTION 130.39 OF THE PENAL LAW, or aggravated
36 sexual abuse in the first degree as defined in section 130.70 of the
37 penal law, or course of sexual conduct against a child in the first
38 degree as defined in section 130.75 of the penal law, the plaintiff
39 shall have at least five years from the termination of the criminal
40 action as defined in section 1.20 of the criminal procedure law in which
41 to commence the civil action, notwithstanding that the time in which to
42 commence such action has already expired or has less than a year remain-
43 ing.

44 S 41. The opening paragraph of subdivision (b) of section 117 of the
45 family court act, as amended by chapter 7 of the laws of 2007, is
46 amended to read as follows:

47 For every juvenile delinquency proceeding under article three involv-
48 ing an allegation of an act committed by a person which, if done by an
49 adult, would be a crime (i) defined in sections 125.27 (murder in the
50 first degree); 125.25 (murder in the second degree); 135.25 (kidnapping
51 in the first degree); or 150.20 (arson in the first degree) of the penal
52 law committed by a person thirteen, fourteen or fifteen years of age; or
53 such conduct committed as a sexually motivated felony, where authorized
54 pursuant to section 130.91 of the penal law; (ii) defined in sections
55 120.10 (assault in the first degree); 125.20 (manslaughter in the first
56 degree); 130.35 (rape in the first degree); 130.50 ([criminal sexual

1 act] ANAL RAPE in the first degree); 130.39 (ORAL RAPE IN THE FIRST
2 DEGREE); 135.20 (kidnapping in the second degree), but only where the
3 abduction involved the use or threat of use of deadly physical force;
4 150.15 (arson in the second degree); or 160.15 (robbery in the first
5 degree) of the penal law committed by a person thirteen, fourteen or
6 fifteen years of age; or such conduct committed as a sexually motivated
7 felony, where authorized pursuant to section 130.91 of the penal law;
8 (iii) defined in the penal law as an attempt to commit murder in the
9 first or second degree or kidnapping in the first degree committed by a
10 person thirteen, fourteen or fifteen years of age; or such conduct
11 committed as a sexually motivated felony, where authorized pursuant to
12 section 130.91 of the penal law; (iv) defined in section 140.30
13 (burglary in the first degree); subdivision one of section 140.25
14 (burglary in the second degree); subdivision two of section 160.10
15 (robbery in the second degree) of the penal law; or section 265.03 of
16 the penal law, where such machine gun or such firearm is possessed on
17 school grounds, as that phrase is defined in subdivision fourteen of
18 section 220.00 of the penal law committed by a person fourteen or
19 fifteen years of age; or such conduct committed as a sexually motivated
20 felony, where authorized pursuant to section 130.91 of the penal law;
21 (v) defined in section 120.05 (assault in the second degree) or 160.10
22 (robbery in the second degree) of the penal law committed by a person
23 fourteen or fifteen years of age but only where there has been a prior
24 finding by a court that such person has previously committed an act
25 which, if committed by an adult, would be the crime of assault in the
26 second degree, robbery in the second degree or any designated felony act
27 specified in clause (i), (ii) or (iii) of this subdivision regardless of
28 the age of such person at the time of the commission of the prior act;
29 or (vi) other than a misdemeanor, committed by a person at least seven
30 but less than sixteen years of age, but only where there has been two
31 prior findings by the court that such person has committed a prior act
32 which, if committed by an adult would be a felony:

33 S 42. Subdivision 8 of section 301.2 of the family court act, as
34 amended by chapter 7 of the laws of 2007, is amended to read as follows:

35 8. "Designated felony act" means an act which, if done by an adult,
36 would be a crime: (i) defined in sections 125.27 (murder in the first
37 degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the
38 first degree); or 150.20 (arson in the first degree) of the penal law
39 committed by a person thirteen, fourteen or fifteen years of age; or
40 such conduct committed as a sexually motivated felony, where authorized
41 pursuant to section 130.91 of the penal law; (ii) defined in sections
42 120.10 (assault in the first degree); 125.20 (manslaughter in the first
43 degree); 130.35 (rape in the first degree); 130.50 ([criminal sexual
44 act] ANAL RAPE in the first degree); 130.39 (ORAL RAPE IN THE FIRST
45 DEGREE); 130.70 (aggravated sexual abuse in the first degree); 135.20
46 (kidnapping in the second degree) but only where the abduction involved
47 the use or threat of use of deadly physical force; 150.15 (arson in the
48 second degree) or 160.15 (robbery in the first degree) of the penal law
49 committed by a person thirteen, fourteen or fifteen years of age; or
50 such conduct committed as a sexually motivated felony, where authorized
51 pursuant to section 130.91 of the penal law; (iii) defined in the penal
52 law as an attempt to commit murder in the first or second degree or
53 kidnapping in the first degree committed by a person thirteen, fourteen
54 or fifteen years of age; or such conduct committed as a sexually moti-
55 vated felony, where authorized pursuant to section 130.91 of the penal
56 law; (iv) defined in section 140.30 (burglary in the first degree);

1 subdivision one of section 140.25 (burglary in the second degree);
2 subdivision two of section 160.10 (robbery in the second degree) of the
3 penal law; or section 265.03 of the penal law, where such machine gun or
4 such firearm is possessed on school grounds, as that phrase is defined
5 in subdivision fourteen of section 220.00 of the penal law committed by
6 a person fourteen or fifteen years of age; or such conduct committed as
7 a sexually motivated felony, where authorized pursuant to section 130.91
8 of the penal law; (v) defined in section 120.05 (assault in the second
9 degree) or 160.10 (robbery in the second degree) of the penal law
10 committed by a person fourteen or fifteen years of age but only where
11 there has been a prior finding by a court that such person has previous-
12 ly committed an act which, if committed by an adult, would be the crime
13 of assault in the second degree, robbery in the second degree or any
14 designated felony act specified in paragraph (i), (ii), or (iii) of this
15 subdivision regardless of the age of such person at the time of the
16 commission of the prior act; or (vi) other than a misdemeanor committed
17 by a person at least seven but less than sixteen years of age, but only
18 where there has been two prior findings by the court that such person
19 has committed a prior felony.

20 S 43. Subdivision 4 of section 308.1 of the family court act, as
21 amended by chapter 264 of the laws of 2003, is amended to read as
22 follows:

23 4. The probation service shall not adjust a case in which the child
24 has allegedly committed a delinquent act which would be a crime defined
25 in section 120.25, (reckless endangerment in the first degree), subdivi-
26 sion one of section 125.15, (manslaughter in the second degree), subdivi-
27 sion one of section 130.25, (rape in the third degree), subdivision
28 one of section 130.40, ([criminal sexual act] ANAL RAPE in the third
29 degree), SUBDIVISION ONE OF SECTION 130.37, (ORAL RAPE IN THE THIRD
30 DEGREE), subdivision one or two of section 130.65, (sexual abuse in the
31 first degree), section 135.65, (coercion in the first degree), section
32 140.20, (burglary in the third degree), section 150.10, (arson in the
33 third degree), section 160.05, (robbery in the third degree), subdivi-
34 sion two[,] OR three [or four] of section 265.02, (criminal possession
35 of a weapon in the third degree), section 265.03, (criminal possession
36 of a weapon in the second degree), or section 265.04, (criminal
37 possession of a dangerous weapon in the first degree) of the penal law
38 where the child has previously had one or more adjustments of a case in
39 which such child allegedly committed an act which would be a crime spec-
40 ified in this subdivision unless it has received written approval from
41 the court and the appropriate presentment agency.

42 S 44. Section 4 of the judiciary law, as amended by chapter 264 of the
43 laws of 2003, is amended to read as follows:

44 S 4. Sittings of courts to be public. The sittings of every court
45 within this state shall be public, and every citizen may freely attend
46 the same, except that in all proceedings and trials in cases for
47 divorce, seduction, abortion, rape, assault with intent to commit rape,
48 [criminal sexual act] ANAL RAPE, ORAL RAPE, bastardy or filiation, the
49 court may, in its discretion, exclude therefrom all persons who are not
50 directly interested therein, excepting jurors, witnesses, and officers
51 of the court.

52 S 45. Subdivision 2 of section 120.60 of the penal law, as amended by
53 chapter 434 of the laws of 2000, is amended to read as follows:

54 2. commits a class A misdemeanor defined in article one hundred thirty
55 of this chapter, or a class E felony defined in section 130.25, 130.37,

1 130.40 or 130.85 of this chapter, or a class D felony defined in section
2 130.30, 130.38 or 130.45 of this chapter.

3 S 46. Subdivision 3 of section 720.10 of the criminal procedure law,
4 as amended by chapter 264 of the laws of 2003, is amended to read as
5 follows:

6 3. Notwithstanding the provisions of subdivision two, a youth who has
7 been convicted of an armed felony offense or of rape in the first
8 degree, [criminal sexual act] ANAL RAPE in the first degree, ORAL RAPE
9 IN THE FIRST DEGREE or aggravated sexual abuse is an eligible youth if
10 the court determines that one or more of the following factors exist:
11 (i) mitigating circumstances that bear directly upon the manner in which
12 the crime was committed; or (ii) where the defendant was not the sole
13 participant in the crime, the defendant's participation was relatively
14 minor although not so minor as to constitute a defense to the prose-
15 cution. Where the court determines that the eligible youth is a youthful
16 offender, the court shall make a statement on the record of the reasons
17 for its determination, a transcript of which shall be forwarded to the
18 state division of criminal justice services, to be kept in accordance
19 with the provisions of subdivision three of section eight hundred thir-
20 ty-seven-a of the executive law.

21 S 47. Paragraph (a) of subdivision 2 of section 30.10 of the criminal
22 procedure law, as amended by chapter 467 of the laws of 2008, is amended
23 to read as follows:

24 (a) A prosecution for a class A felony, or rape in the first degree as
25 defined in section 130.35 of the penal law, OR ANAL RAPE IN THE FIRST
26 DEGREE AS DEFINED IN SECTION 130.50 OF THE PENAL LAW, OR ORAL RAPE IN
27 THE FIRST DEGREE AS DEFINED IN SECTION 130.39 OF THE PENAL LAW, or a
28 crime [defined or] formerly defined in section 130.50 of the penal law,
29 or aggravated sexual abuse in the first degree as defined in section
30 130.70 of the penal law, or course of sexual conduct against a child in
31 the first degree as defined in section 130.75 of the penal law may be
32 commenced at any time;

33 S 48. Subparagraph (i) of paragraph (a) of subdivision 2 of section
34 168-a of the correction law, as amended by chapter 405 of the laws of
35 2008, is amended to read as follows:

36 (i) a conviction of or a conviction for an attempt to commit any of
37 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.37,
38 130.38, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and
39 255.27 or article two hundred sixty-three of the penal law, or section
40 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping
41 offenses, provided the victim of such kidnapping or related offense is
42 less than seventeen years old and the offender is not the parent of the
43 victim, or section 230.04, where the person patronized is in fact less
44 than seventeen years of age, 230.05 or 230.06, or subdivision two of
45 section 230.30, or section 230.32 or 230.33 of the penal law, or

46 S 49. Subparagraph (i) of paragraph (a) of subdivision 3 of section
47 168-a of the correction law, as amended by chapter 107 of the laws of
48 2006, is amended to read as follows:

49 (i) a conviction of or a conviction for an attempt to commit any of
50 the provisions of sections 130.35, 130.39, 130.50, 130.65, 130.66,
51 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law, or

52 S 50. This act shall take effect immediately; provided that section
53 fourteen of this act shall take effect on the same date and in the same
54 manner as section 27 of chapter 1 of the laws of 2013, takes effect.