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

3999

2013-2014 Regular Sessions

I N A S S E M B L Y

January 30, 2013

Introduced by M. of A. CAMARA, AUBRY, GUNTHER, BOYLAND, BARRON, CASTRO -- Multi-Sponsored by -- M. of A. COOK, CORWIN, CROUCH, McDONOUGH, McKEVITT, RAIA, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the public health law, the penal law and the correction law, in relation to sex offenses facilitated by the use of drugs commonly referred to as "date rape drugs"

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

Section 1. Paragraph (b) of subdivision 4-b of section 2805-i of the public health law is amended by adding a new subparagraph 4 to read as follows:

(4) NO LATER THAN FOUR HOURS AFTER ARRIVING AT THE HOSPITAL, THE VICTIM SHALL, DURING THE EXAMINATION BY A SEXUAL ASSAULT FORENSIC EXAMINER, HAVE HIS OR HER BLOOD DRAWN AND TESTED FOR GAMMA HYDROXYBUTYRIC ACID (GHB), ROHYPNOL (FLUNITRAZEPAM) AND KETAMINE (KETAMINE HYDROCHLORIDE), COMMONLY KNOWN AS "DATE RAPE DRUGS". SUCH TESTED MATERIAL AND RESULTS SHALL BE COLLECTED AND MAINTAINED AS EVIDENCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

S 2. Section 130.90 of the penal law, as added by chapter 1 of the laws of 2000 and subdivisions 1 and 2 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 130.90 Facilitating a sex offense with a controlled substance IN THE FIRST DEGREE.

A person is guilty of facilitating a sex offense with a controlled substance IN THE FIRST DEGREE when he or she:

1. knowingly and unlawfully possesses [a] ONE OR MORE OF THE FOLLOWING controlled [substance or any preparation, compound, mixture or substance that requires a prescription to obtain] SUBSTANCES: GAMMA HYDROXYBUTYRIC ACID (GHB), ROHYPNOL (FLUNITRAZEPAM), OR KETAMINE (KETAMINE HYDROCHLORIDE), COMMONLY KNOWN AS "DATE RAPE DRUGS", and administers such

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

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substance [or preparation, compound, mixture or substance that requires a prescription to obtain] OR SUBSTANCES to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and

2. commits or attempts to commit such conduct constituting a felony defined in this article.

Facilitating a sex offense with a controlled substance IN THE FIRST DEGREE is a class [D] C felony.

S 3. The penal law is amended by adding a new section 130.89 to read as follows:

S 130.89 FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE SECOND DEGREE.

A PERSON IS GUILTY OF FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE SECOND DEGREE WHEN HE OR SHE:

1. KNOWINGLY AND UNLAWFULLY POSSESSES A CONTROLLED SUBSTANCE OR ANY PREPARATION, COMPOUND, MIXTURE OR SUBSTANCE, OTHER THAN THOSE CONTROLLED SUBSTANCES LISTED IN SECTION 130.90 OF THIS ARTICLE, THAT REQUIRES A PRESCRIPTION TO OBTAIN AND ADMINISTERS SUCH SUBSTANCE OR PREPARATION, COMPOUND, MIXTURE OR SUBSTANCE THAT REQUIRES A PRESCRIPTION TO OBTAIN TO ANOTHER PERSON WITHOUT SUCH PERSON'S CONSENT AND WITH INTENT TO COMMIT AGAINST SUCH PERSON CONDUCT CONSTITUTING A FELONY DEFINED IN THIS ARTICLE; AND

2. COMMITS OR ATTEMPTS TO COMMIT SUCH CONDUCT CONSTITUTING A FELONY DEFINED IN THIS ARTICLE.

FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE SECOND DEGREE IS A CLASS D FELONY.

S 4. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 1 of the laws of 2013, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.90, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in

section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance IN THE SECOND DEGREE as defined in section [130.90] 130.89, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

S 5. Subdivision 2-f of section 70.25 of the penal law, as added by chapter 1 of the laws of 2000, is amended to read as follows:

2-f. Whenever a person is convicted of FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.89 OR facilitating a sex offense with a controlled substance IN THE FIRST DEGREE as defined in section 130.90 of this chapter, the sentence imposed by the court for such offense may be ordered to run consecutively to any sentence imposed upon conviction of an offense defined in article one hundred thirty of this chapter arising from the same criminal transaction.

S 6. Subparagraph (ii) of paragraph (a) of subdivision 3 of section 168-a of the correction law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(ii) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.53, 130.65-a, 130.89 and 130.90 of the penal law, or

S 7. This act shall take effect on the ninetieth day after it shall have become a law; provided that if section 27 of chapter 1 of the laws of 2013 has not taken effect on such date, then the amendments made to paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law by section four of this act shall take effect on the same date and in the same manner as section 27 of chapter 1 of the laws of 2013, takes effect.