

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

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

4 (4) NO LATER THAN FOUR HOURS AFTER ARRIVING AT THE HOSPITAL, THE
5 VICTIM SHALL, DURING THE EXAMINATION BY A SEXUAL ASSAULT FORENSIC EXAM-
6 INER, HAVE HIS OR HER BLOOD DRAWN AND TESTED FOR GAMMA HYDROXYBUTYRIC
7 ACID (GHB), ROHYPNOL (FLUNITRAZEPAM) AND KETAMINE (KETAMINE HYDROCHLO-
8 RIDE), COMMONLY KNOWN AS "DATE RAPE DRUGS". SUCH TESTED MATERIAL AND
9 RESULTS SHALL BE COLLECTED AND MAINTAINED AS EVIDENCE PURSUANT TO SUBDI-
10 VISION TWO OF THIS SECTION.

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

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

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

18 1. knowingly and unlawfully possesses [a] ONE OR MORE OF THE FOLLOWING
19 controlled [substance or any preparation, compound, mixture or substance
20 that requires a prescription to obtain] SUBSTANCES: GAMMA HYDROXYBUTYRIC
21 ACID (GHB), ROHYPNOL (FLUNITRAZEPAM), OR KETAMINE (KETAMINE HYDROCHLO-
22 RIDE), 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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1 substance [or preparation, compound, mixture or substance that requires
2 a prescription to obtain] OR SUBSTANCES to another person without such
3 person's consent and with intent to commit against such person conduct
4 constituting a felony defined in this article; and

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

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

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

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

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

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

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

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

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

30 (b) Class C violent felony offenses: an attempt to commit any of the
31 class B felonies set forth in paragraph (a) of this subdivision; aggra-
32 vated criminally negligent homicide as defined in section 125.11, aggra-
33 vated manslaughter in the second degree as defined in section 125.21,
34 aggravated sexual abuse in the second degree as defined in section
35 130.67, FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE IN THE
36 FIRST DEGREE AS DEFINED IN SECTION 130.90, assault on a peace officer,
37 police officer, fireman or emergency medical services professional as
38 defined in section 120.08, assault on a judge as defined in section
39 120.09, gang assault in the second degree as defined in section 120.06,
40 strangulation in the first degree as defined in section 121.13, burglary
41 in the second degree as defined in section 140.25, robbery in the second
42 degree as defined in section 160.10, criminal possession of a weapon in
43 the second degree as defined in section 265.03, criminal use of a
44 firearm in the second degree as defined in section 265.08, criminal sale
45 of a firearm in the second degree as defined in section 265.12, criminal
46 sale of a firearm with the aid of a minor as defined in section 265.14,
47 aggravated criminal possession of a weapon as defined in section 265.19,
48 soliciting or providing support for an act of terrorism in the first
49 degree as defined in section 490.15, hindering prosecution of terrorism
50 in the second degree as defined in section 490.30, and criminal
51 possession of a chemical weapon or biological weapon in the third degree
52 as defined in section 490.37.

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

1 section 120.18, stalking in the first degree, as defined in subdivision
2 one of section 120.60, strangulation in the second degree as defined in
3 section 121.12, rape in the second degree as defined in section 130.30,
4 criminal sexual act in the second degree as defined in section 130.45,
5 sexual abuse in the first degree as defined in section 130.65, course of
6 sexual conduct against a child in the second degree as defined in
7 section 130.80, aggravated sexual abuse in the third degree as defined
8 in section 130.66, facilitating a sex offense with a controlled
9 substance IN THE SECOND DEGREE as defined in section [130.90] 130.89,
10 criminal possession of a weapon in the third degree as defined in subdi-
11 vision five, six, seven, eight, nine or ten of section 265.02, criminal
12 sale of a firearm in the third degree as defined in section 265.11,
13 intimidating a victim or witness in the second degree as defined in
14 section 215.16, soliciting or providing support for an act of terrorism
15 in the second degree as defined in section 490.10, and making a terror-
16 istic threat as defined in section 490.20, falsely reporting an incident
17 in the first degree as defined in section 240.60, placing a false bomb
18 or hazardous substance in the first degree as defined in section 240.62,
19 placing a false bomb or hazardous substance in a sports stadium or
20 arena, mass transportation facility or enclosed shopping mall as defined
21 in section 240.63, and aggravated unpermitted use of indoor pyrotechnics
22 in the first degree as defined in section 405.18.

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

25 2-f. Whenever a person is convicted of FACILITATING A SEX OFFENSE WITH
26 A CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.89
27 OR facilitating a sex offense with a controlled substance IN THE FIRST
28 DEGREE as defined in section 130.90 of this chapter, the sentence
29 imposed by the court for such offense may be ordered to run consecutive-
30 ly to any sentence imposed upon conviction of an offense defined in
31 article one hundred thirty of this chapter arising from the same crimi-
32 nal transaction.

33 S 6. Subparagraph (ii) of paragraph (a) of subdivision 3 of section
34 168-a of the correction law, as amended by chapter 107 of the laws of
35 2006, is amended to read as follows:

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

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