

1358--A

Cal. No. 460

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. LITTLE, LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the penal law, in relation to providing that an elementary or secondary school student shall be incapable of consenting to sexual conduct with a school employee

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

1 Section 1. Section 130.00 of the penal law is amended by adding a new
2 subdivision 14 to read as follows:

3 14. "SCHOOL EMPLOYEE" SHALL MEAN ANY PERSON DEFINED AS AN "EMPLOYEE"
4 OR "VOLUNTEER" PURSUANT TO SECTION ELEVEN HUNDRED TWENTY-FIVE OF THE
5 EDUCATION LAW.

6 S 2. Paragraph (i) of subdivision 3 of section 130.05 of the penal
7 law, as added by section 2 of part G of chapter 501 of the laws of 2012,
8 is amended and a new paragraph (j) is added to read as follows:

9 (i) a resident or inpatient of a residential facility operated,
10 licensed or certified by (i) the office of mental health; (ii) the
11 office for people with developmental disabilities; or (iii) the office
12 of alcoholism and substance abuse services, and the actor is an employee
13 of the facility not married to such resident or inpatient. For purposes
14 of this paragraph, "employee" means either: an employee of the agency
15 operating the residential facility, who knows or reasonably should know
16 that such person is a resident or inpatient of such facility and who
17 provides direct care services, case management services, medical or
18 other clinical services, habilitative services or direct supervision of

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

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1 the residents in the facility in which the resident resides; or an offi-
2 cer or other employee, consultant, contractor or volunteer of the resi-
3 dential facility, who knows or reasonably should know that the person is
4 a resident of such facility and who is in direct contact with residents
5 or inpatients; provided, however, that the provisions of this paragraph
6 shall only apply to a consultant, contractor or volunteer providing
7 services pursuant to a contractual arrangement with the agency operating
8 the residential facility or, in the case of a volunteer, a written
9 agreement with such facility, provided that the person received written
10 notice concerning the provisions of this paragraph; provided further,
11 however, "employee" shall not include a person with a developmental
12 disability who is or was receiving services and is also an employee of a
13 service provider and who has sexual contact with another service recipi-
14 ent who is a consenting adult who has consented to such contact[.]; OR
15 (J) A STUDENT AT AN ELEMENTARY OR SECONDARY SCHOOL, AND THE ACTOR:
16 (I) IS A SCHOOL EMPLOYEE AT THE SAME SCHOOL SUCH STUDENT ATTENDS, AND
17 (II) IS EIGHTEEN YEARS OF AGE OR OLDER AND MORE THAN FOUR YEARS OLDER
18 THAN SUCH STUDENT AT THE TIME OF THE ACT, AND
19 (III) IS NOT MARRIED TO SUCH STUDENT, AND
20 (IV) KNOWS OR REASONABLY SHOULD KNOW THAT SUCH PERSON IS A STUDENT AT
21 SUCH SCHOOL, AND
22 (V) HE OR SHE IS NOT A STUDENT AT THE SAME SCHOOL.
23 S 3. This act shall take effect on the first of November next succeed-
24 ing the date on which it shall have become a law.