

3710--C

Cal. No. 391

2013-2014 Regular Sessions

I N S E N A T E

February 12, 2013

Introduced by Sens. YOUNG, GOLDEN, LANZA, NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Rules -- reported favorably from said committee to third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

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 ASSEMBLY, 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 CONSISTING OF  
5 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:

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

LBD08888-05-3

1 1. He or she engages in [oral sexual conduct or] anal sexual conduct  
2 with a person who is incapable of consent by reason of some factor other  
3 than being less than seventeen years old;

4 2. Being twenty-one years old or more, he or she engages in [oral  
5 sexual conduct or] anal sexual conduct with a person less than seventeen  
6 years old; or

7 3. He or she engages in [oral sexual conduct or] anal sexual conduct  
8 with another person without such person's consent where such lack of  
9 consent is by reason of some factor other than incapacity to consent.

10 [Criminal sexual act] ANAL RAPE in the third degree is a class E felo-  
11 ny.

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

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

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

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

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

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

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

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

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

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

35 1. By forcible compulsion; or

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

38 3. Who is less than eleven years old; or

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

41 [Criminal sexual act] ANAL RAPE in the first degree is a class B felo-  
42 ny.

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

45 S 130.37 ORAL RAPE IN THE THIRD DEGREE.

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

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

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

52 3. HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT WITH ANOTHER PERSON WITH-  
53 OUT SUCH PERSON'S CONSENT WHERE SUCH LACK OF CONSENT IS BY REASON OF  
54 SOME FACTOR OTHER THAN INCAPACITY TO CONSENT.

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

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

3 S 130.38 ORAL RAPE IN THE SECOND DEGREE.

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

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

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

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

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

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

17 S 130.39 ORAL RAPE IN THE FIRST DEGREE.

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

20 1. BY FORCIBLE COMPULSION; OR

21 2. WHO IS INCAPABLE OF CONSENT BY REASON OF BEING PHYSICALLY HELPLESS;  
22 OR

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

24 4. WHO IS LESS THAN THIRTEEN YEARS OLD AND THE ACTOR IS EIGHTEEN YEARS  
25 OLD OR MORE.

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

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

30 (2) a person fourteen or fifteen years old who is criminally responsi-  
31 ble for acts constituting the crimes defined in subdivisions one and two  
32 of section 125.25 (murder in the second degree) and in subdivision three  
33 of such section provided that the underlying crime for the murder charge  
34 is one for which such person is criminally responsible; section 135.25  
35 (kidnapping in the first degree); 150.20 (arson in the first degree);  
36 subdivisions one and two of section 120.10 (assault in the first  
37 degree); 125.20 (manslaughter in the first degree); subdivisions one and  
38 two of section 130.35 (rape in the first degree); subdivisions one and  
39 two of section 130.50 ([criminal sexual act] ANAL RAPE in the first  
40 degree); SUBDIVISIONS ONE AND TWO OF SECTION 130.39 (ORAL RAPE IN THE  
41 FIRST DEGREE); 130.70 (aggravated sexual abuse in the first degree);  
42 140.30 (burglary in the first degree); subdivision one of section 140.25  
43 (burglary in the second degree); 150.15 (arson in the second degree);  
44 160.15 (robbery in the first degree); subdivision two of section 160.10  
45 (robbery in the second degree) of this chapter; or section 265.03 of  
46 this chapter, where such machine gun or such firearm is possessed on  
47 school grounds, as that phrase is defined in subdivision fourteen of  
48 section 220.00 of this chapter; or defined in this chapter as an attempt  
49 to commit murder in the second degree or kidnapping in the first degree,  
50 or such conduct as a sexually motivated felony, where authorized pursu-  
51 ant to section 130.91 of [the penal law] THIS CHAPTER.

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

54 2. A person thirteen, fourteen or fifteen years of age is criminally  
55 responsible for acts constituting murder in the second degree as defined  
56 in subdivisions one and two of section 125.25 and in subdivision three

1 of such section provided that the underlying crime for the murder charge  
2 is one for which such person is criminally responsible or for such  
3 conduct as a sexually motivated felony, where authorized pursuant to  
4 section 130.91 of [the penal law] THIS CHAPTER; and a person fourteen or  
5 fifteen years of age is criminally responsible for acts constituting the  
6 crimes defined in section 135.25 (kidnapping in the first degree);  
7 150.20 (arson in the first degree); subdivisions one and two of section  
8 120.10 (assault in the first degree); 125.20 (manslaughter in the first  
9 degree); subdivisions one and two of section 130.35 (rape in the first  
10 degree); subdivisions one and two of section 130.50 ([criminal sexual  
11 act] ANAL RAPE in the first degree); SUBDIVISIONS ONE AND TWO OF SECTION  
12 130.39 (ORAL RAPE IN THE FIRST DEGREE); 130.70 (aggravated sexual abuse  
13 in the first degree); 140.30 (burglary in the first degree); subdivision  
14 one of section 140.25 (burglary in the second degree); 150.15 (arson in  
15 the second degree); 160.15 (robbery in the first degree); subdivision  
16 two of section 160.10 (robbery in the second degree) of this chapter; or  
17 section 265.03 of this chapter, where such machine gun or such firearm  
18 is possessed on school grounds, as that phrase is defined in subdivision  
19 fourteen of section 220.00 of this chapter; or defined in this chapter  
20 as an attempt to commit murder in the second degree or kidnapping in the  
21 first degree, or for such conduct as a sexually motivated felony, where  
22 authorized pursuant to section 130.91 of [the penal law] THIS CHAPTER.

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

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

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

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

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

39 (a) Class B violent felony offenses: an attempt to commit the class  
40 A-I felonies of murder in the second degree as defined in section  
41 125.25, kidnapping in the first degree as defined in section 135.25, and  
42 arson in the first degree as defined in section 150.20; manslaughter in  
43 the first degree as defined in section 125.20, aggravated manslaughter  
44 in the first degree as defined in section 125.22, rape in the first  
45 degree as defined in section 130.35, [criminal sexual act] ANAL RAPE in  
46 the first degree as defined in section 130.50, ORAL RAPE IN THE FIRST  
47 DEGREE AS DEFINED IN SECTION 130.39, aggravated sexual abuse in the  
48 first degree as defined in section 130.70, course of sexual conduct  
49 against a child in the first degree as defined in section 130.75;  
50 assault in the first degree as defined in section 120.10, kidnapping in  
51 the second degree as defined in section 135.20, burglary in the first  
52 degree as defined in section 140.30, arson in the second degree as  
53 defined in section 150.15, robbery in the first degree as defined in  
54 section 160.15, incest in the first degree as defined in section 255.27,  
55 criminal possession of a weapon in the first degree as defined in  
56 section 265.04, criminal use of a firearm in the first degree as defined

1 in section 265.09, criminal sale of a firearm in the first degree as  
2 defined in section 265.13, aggravated assault upon a police officer or a  
3 peace officer as defined in section 120.11, gang assault in the first  
4 degree as defined in section 120.07, intimidating a victim or witness in  
5 the first degree as defined in section 215.17, hindering prosecution of  
6 terrorism in the first degree as defined in section 490.35, criminal  
7 possession of a chemical weapon or biological weapon in the second  
8 degree as defined in section 490.40, and criminal use of a chemical  
9 weapon or biological weapon in the third degree as defined in section  
10 490.47.

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

14 (c) Class D violent felony offenses: an attempt to commit any of the  
15 class C felonies set forth in paragraph (b); reckless assault of a child  
16 as defined in section 120.02, assault in the second degree as defined in  
17 section 120.05, menacing a police officer or peace officer as defined in  
18 section 120.18, stalking in the first degree, as defined in subdivision  
19 one of section 120.60, strangulation in the second degree as defined in  
20 section 121.12, rape in the second degree as defined in section 130.30,  
21 [criminal sexual act] ANAL RAPE in the second degree as defined in  
22 section 130.45, ORAL RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION  
23 130.38, sexual abuse in the first degree as defined in section 130.65,  
24 course of sexual conduct against a child in the second degree as defined  
25 in section 130.80, aggravated sexual abuse in the third degree as  
26 defined in section 130.66, facilitating a sex offense with a controlled  
27 substance as defined in section 130.90, criminal possession of a weapon  
28 in the third degree as defined in subdivision five, six, seven or eight  
29 of section 265.02, criminal sale of a firearm in the third degree as  
30 defined in section 265.11, intimidating a victim or witness in the  
31 second degree as defined in section 215.16, soliciting or providing  
32 support for an act of terrorism in the second degree as defined in  
33 section 490.10, and making a terroristic threat as defined in section  
34 490.20, falsely reporting an incident in the first degree as defined in  
35 section 240.60, placing a false bomb or hazardous substance in the first  
36 degree as defined in section 240.62, placing a false bomb or hazardous  
37 substance in a sports stadium or arena, mass transportation facility or  
38 enclosed shopping mall as defined in section 240.63, and aggravated  
39 unpermitted use of indoor pyrotechnics in the first degree as defined in  
40 section 405.18.

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

44 (c) Class D violent felony offenses: an attempt to commit any of the  
45 class C felonies set forth in paragraph (b); reckless assault of a child  
46 as defined in section 120.02, assault in the second degree as defined in  
47 section 120.05, menacing a police officer or peace officer as defined in  
48 section 120.18, stalking in the first degree, as defined in subdivision  
49 one of section 120.60, strangulation in the second degree as defined in  
50 section 121.12, rape in the second degree as defined in section 130.30,  
51 [criminal sexual act] ANAL RAPE in the second degree as defined in  
52 section 130.45, ORAL RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION  
53 130.38, sexual abuse in the first degree as defined in section 130.65,  
54 course of sexual conduct against a child in the second degree as defined  
55 in section 130.80, aggravated sexual abuse in the third degree as  
56 defined in section 130.66, facilitating a sex offense with a controlled

1 substance as defined in section 130.90, criminal possession of a weapon  
2 in the third degree as defined in subdivision five, six, seven, eight,  
3 nine or ten of section 265.02, criminal sale of a firearm in the third  
4 degree as defined in section 265.11, intimidating a victim or witness in  
5 the second degree as defined in section 215.16, soliciting or providing  
6 support for an act of terrorism in the second degree as defined in  
7 section 490.10, and making a terroristic threat as defined in section  
8 490.20, falsely reporting an incident in the first degree as defined in  
9 section 240.60, placing a false bomb or hazardous substance in the first  
10 degree as defined in section 240.62, placing a false bomb or hazardous  
11 substance in a sports stadium or arena, mass transportation facility or  
12 enclosed shopping mall as defined in section 240.63, and aggravated  
13 unpermitted use of indoor pyrotechnics in the first degree as defined in  
14 section 405.18.

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

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

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

31 5. Being eighteen years old or more, while in the course of committing  
32 rape in the first, second or third degree, [criminal sexual act] ANAL  
33 RAPE in the first, second or third degree, ORAL RAPE IN THE FIRST,  
34 SECOND OR THIRD DEGREE, sexual abuse in the first degree, aggravated  
35 sexual abuse in the first, second, third or fourth degree, or incest in  
36 the first, second or third degree, against a person less than fourteen  
37 years old, he or she intentionally causes the death of such person.

38 S 17. Subparagraph (vii) of paragraph (a) of subdivision 1 of section  
39 125.27 of the penal law, as amended by chapter 264 of the laws of 2003,  
40 is amended to read as follows:

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

1 ity is based upon the conduct of another pursuant to section 20.00 of  
2 this chapter; or

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

6 (d) Where the offense charged is rape in the third degree as defined  
7 in subdivision three of section 130.25, [or criminal sexual act] ANAL  
8 RAPE in the third degree as defined in subdivision three of section  
9 130.40, OR ORAL RAPE IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION THREE  
10 OF SECTION 130.37, in addition to forcible compulsion, circumstances  
11 under which, at the time of the act of intercourse, oral sexual conduct  
12 or anal sexual conduct, the victim clearly expressed that he or she did  
13 not consent to engage in such act, and a reasonable person in the  
14 actor's situation would have understood such person's words and acts as  
15 an expression of lack of consent to such act under all the circum-  
16 stances.

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

20 (h) a client or patient and the actor is a health care provider or  
21 mental health care provider charged with rape in the third degree as  
22 defined in section 130.25, [criminal sexual act] ANAL RAPE in the third  
23 degree as defined in section 130.40, ORAL RAPE IN THE THIRD DEGREE AS  
24 DEFINED IN SECTION 130.37, aggravated sexual abuse in the fourth degree  
25 as defined in section 130.65-a, or sexual abuse in the third degree as  
26 defined in section 130.55, and the act of sexual conduct occurs during a  
27 treatment session, consultation, interview, or examination; or

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

30 3. In any prosecution for the crime of rape in the third degree as  
31 defined in section 130.25, [criminal sexual act] ANAL RAPE in the third  
32 degree as defined in section 130.40, ORAL RAPE IN THE THIRD DEGREE AS  
33 DEFINED IN SECTION 130.37, aggravated sexual abuse in the fourth degree  
34 as defined in section 130.65-a, or sexual abuse in the third degree as  
35 defined in section 130.55 in which incapacity to consent is based on the  
36 circumstances set forth in paragraph (h) of subdivision three of section  
37 130.05 of this article it shall be an affirmative defense that the  
38 client or patient consented to such conduct charged after having been  
39 expressly advised by the health care or mental health care provider that  
40 such conduct was not performed for a valid medical purpose.

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

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

49 2. He or she has engaged in conduct constituting 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, against one or more additional persons; or

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

1 A person is guilty of predatory sexual assault against a child when,  
2 being eighteen years old or more, he or she commits the crime of rape in  
3 the first degree, [criminal sexual act] ANAL RAPE in the first degree,  
4 ORAL RAPE IN THE FIRST DEGREE, aggravated sexual abuse in the first  
5 degree, or course of sexual conduct against a child in the first degree,  
6 as defined in this article, and the victim is less than thirteen years  
7 old.

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

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

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

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

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



1 ment in the first degree); section 135.60 (coercion in the second  
2 degree); section 135.65 (coercion in the first degree); section 140.20  
3 (burglary in the third degree); section 140.25 (burglary in the second  
4 degree); section 140.30 (burglary in the first degree); section 145.00  
5 (criminal mischief in the fourth degree); section 145.05 (criminal  
6 mischief in the third degree); section 145.10 (criminal mischief in the  
7 second degree); section 145.12 (criminal mischief in the first degree);  
8 section 145.14 (criminal tampering in the third degree); section 215.50  
9 (criminal contempt in the second degree); section 215.51 (criminal  
10 contempt in the first degree); section 215.52 (aggravated criminal  
11 contempt); section 240.25 (harassment in the first degree); subdivision  
12 one, two or four of section 240.30 (aggravated harassment in the second  
13 degree); aggravated family offense as defined in this section or any  
14 attempt or conspiracy to commit any of the foregoing offenses where the  
15 defendant and the person against whom the offense was committed were  
16 members of the same family or household as defined in subdivision one of  
17 section 530.11 of the criminal procedure law.

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

20 A person is guilty of incest in the second degree when he or she  
21 commits the crime of rape in the second degree, as defined in section  
22 130.30 of this part, [or criminal sexual act] ANAL RAPE in the second  
23 degree, as defined in section 130.45 of this part, OR ORAL RAPE IN THE  
24 SECOND DEGREE AS DEFINED IN SECTION 130.38 OF THIS PART, against a  
25 person whom he or she knows to be related to him or her, whether through  
26 marriage or not, as an ancestor, descendant, brother or sister of either  
27 the whole or the half blood, uncle, aunt, nephew or niece.

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

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

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

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

1 hundred fifty-one-a of such former penal law, and any violation of any  
2 provision of article thirty-three-A of the public health law relating to  
3 depressant and stimulant drugs which was defined as a misdemeanor by  
4 section seventeen hundred forty-seven-b of such former penal law.

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

7 3. A "specified offense" is an offense defined by any of the following  
8 provisions of this chapter: section 120.00 (assault in the third  
9 degree); section 120.05 (assault in the second degree); section 120.10  
10 (assault in the first degree); section 120.12 (aggravated assault upon a  
11 person less than eleven years old); section 120.13 (menacing in the  
12 first degree); section 120.14 (menacing in the second degree); section  
13 120.15 (menacing in the third degree); section 120.20 (reckless endan-  
14 germent in the second degree); section 120.25 (reckless endangerment in  
15 the first degree); section 121.12 (strangulation in the second degree);  
16 section 121.13 (strangulation in the first degree); subdivision one of  
17 section 125.15 (manslaughter in the second degree); subdivision one, two  
18 or four of section 125.20 (manslaughter in the first degree); section  
19 125.25 (murder in the second degree); section 120.45 (stalking in the  
20 fourth degree); section 120.50 (stalking in the third degree); section  
21 120.55 (stalking in the second degree); section 120.60 (stalking in the  
22 first degree); subdivision one of section 130.35 (rape in the first  
23 degree); subdivision one of section 130.50 ([criminal sexual act] ANAL  
24 RAPE in the first degree); SUBDIVISION ONE OF SECTION 130.39 (ORAL RAPE  
25 IN THE FIRST DEGREE); subdivision one of section 130.65 (sexual abuse in  
26 the first degree); paragraph (a) of subdivision one of section 130.67  
27 (aggravated sexual abuse in the second degree); paragraph (a) of subdi-  
28 vision one of section 130.70 (aggravated sexual abuse in the first  
29 degree); section 135.05 (unlawful imprisonment in the second degree);  
30 section 135.10 (unlawful imprisonment in the first degree); section  
31 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in  
32 the first degree); section 135.60 (coercion in the second degree);  
33 section 135.65 (coercion in the first degree); section 140.10 (criminal  
34 trespass in the third degree); section 140.15 (criminal trespass in the  
35 second degree); section 140.17 (criminal trespass in the first degree);  
36 section 140.20 (burglary in the third degree); section 140.25 (burglary  
37 in the second degree); section 140.30 (burglary in the first degree);  
38 section 145.00 (criminal mischief in the fourth degree); section 145.05  
39 (criminal mischief in the third degree); section 145.10 (criminal  
40 mischief in the second degree); section 145.12 (criminal mischief in the  
41 first degree); section 150.05 (arson in the fourth degree); section  
42 150.10 (arson in the third degree); section 150.15 (arson in the second  
43 degree); section 150.20 (arson in the first degree); section 155.25  
44 (petit larceny); section 155.30 (grand larceny in the fourth degree);  
45 section 155.35 (grand larceny in the third degree); section 155.40  
46 (grand larceny in the second degree); section 155.42 (grand larceny in  
47 the first degree); section 160.05 (robbery in the third degree); section  
48 160.10 (robbery in the second degree); section 160.15 (robbery in the  
49 first degree); section 240.25 (harassment in the first degree); subdivi-  
50 sion one, two or four of section 240.30 (aggravated harassment in the  
51 second degree); or any attempt or conspiracy to commit any of the fore-  
52 going offenses.

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

55 42. "Juvenile offender" means (1) a person, thirteen years old who is  
56 criminally responsible for acts constituting murder in the second degree

1 as defined in subdivisions one and two of section 125.25 of the penal  
2 law, or such conduct as a sexually motivated felony, where authorized  
3 pursuant to section 130.91 of the penal law; and (2) a person fourteen  
4 or fifteen years old who is criminally responsible for acts constituting  
5 the crimes defined in subdivisions one and two of section 125.25 (murder  
6 in the second degree) and in subdivision three of such section provided  
7 that the underlying crime for the murder charge is one for which such  
8 person is criminally responsible; section 135.25 (kidnapping in the  
9 first degree); 150.20 (arson in the first degree); subdivisions one and  
10 two of section 120.10 (assault in the first degree); 125.20 (manslaught-  
11 er in the first degree); subdivisions one and two of section 130.35  
12 (rape in the first degree); subdivisions one and two of section 130.50  
13 ([criminal sexual act] ANAL RAPE in the first degree); SUBDIVISIONS ONE  
14 AND TWO OF SECTION 130.39 (ORAL RAPE IN THE FIRST DEGREE); 130.70  
15 (aggravated sexual abuse in the first degree); 140.30 (burglary in the  
16 first degree); subdivision one of section 140.25 (burglary in the second  
17 degree); 150.15 (arson in the second degree); 160.15 (robbery in the  
18 first degree); subdivision two of section 160.10 (robbery in the second  
19 degree) of the penal law; or section 265.03 of the penal law, where such  
20 machine gun or such firearm is possessed on school grounds, as that  
21 phrase is defined in subdivision fourteen of section 220.00 of the penal  
22 law; or defined in the penal law as an attempt to commit murder in the  
23 second degree or kidnapping in the first degree, or such conduct as a  
24 sexually motivated felony, where authorized pursuant to section 130.91  
25 of the penal law.

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

29 4. Notwithstanding the provisions of subdivisions two and three of  
30 this section, a local criminal court shall, at the request of the  
31 district attorney, order removal of an action against a juvenile offen-  
32 der to the family court pursuant to the provisions of article seven  
33 hundred twenty-five of this chapter if, upon consideration of the crite-  
34 ria specified in subdivision two of section 210.43 of this chapter, it  
35 is determined that to do so would be in the interests of justice.  
36 Where, however, the felony complaint charges the juvenile offender with  
37 murder in the second degree as defined in section 125.25 of the penal  
38 law, rape in the first degree as defined in subdivision one of section  
39 130.35 of the penal law, [criminal sexual act] ANAL RAPE in the first  
40 degree as defined in subdivision one of section 130.50 of the penal law,  
41 ORAL RAPE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION ONE OF SECTION  
42 130.39 OF THE PENAL LAW, or an armed felony as defined in paragraph (a)  
43 of subdivision forty-one of section 1.20 of this chapter, a determi-  
44 nation that such action be removed to the family court shall, in addi-  
45 tion, be based upon a finding of one or more of the following factors:  
46 (i) mitigating circumstances that bear directly upon the manner in which  
47 the crime was committed; or (ii) where the defendant was not the sole  
48 participant in the crime, the defendant's participation was relatively  
49 minor although not so minor as to constitute a defense to the prose-  
50 cution; or (iii) possible deficiencies in proof of the crime.

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

54 (a) Except as provided in subdivision six of section 200.20 of this  
55 chapter, a grand jury may not indict (i) a person thirteen years of age  
56 for any conduct or crime other than conduct constituting a crime defined

1 in subdivisions one and two of section 125.25 (murder in the second  
2 degree) or such conduct as a sexually motivated felony, where authorized  
3 pursuant to section 130.91 of the penal law; (ii) a person fourteen or  
4 fifteen years of age for any conduct or crime other than conduct consti-  
5 tuting a crime defined in subdivisions one and two of section 125.25  
6 (murder in the second degree) and in subdivision three of such section  
7 provided that the underlying crime for the murder charge is one for  
8 which such person is criminally responsible; 135.25 (kidnapping in the  
9 first degree); 150.20 (arson in the first degree); subdivisions one and  
10 two of section 120.10 (assault in the first degree); 125.20 (manslaught-  
11 er in the first degree); subdivisions one and two of section 130.35  
12 (rape in the first degree); subdivisions one and two of section 130.50  
13 ([criminal sexual act] ANAL RAPE in the first degree); SUBDIVISIONS ONE  
14 AND TWO OF SECTION 130.39 (ORAL RAPE IN THE FIRST DEGREE); 130.70  
15 (aggravated sexual abuse in the first degree); 140.30 (burglary in the  
16 first degree); subdivision one of section 140.25 (burglary in the second  
17 degree); 150.15 (arson in the second degree); 160.15 (robbery in the  
18 first degree); subdivision two of section 160.10 (robbery in the second  
19 degree) of the penal law; [subdivision four of section 265.02 of the  
20 penal law, where such firearm is possessed on school grounds, as that  
21 phrase is defined in subdivision fourteen of section 220.00 of the penal  
22 law;] or section 265.03 of the penal law, where such machine gun or such  
23 firearm is possessed on school grounds, as that phrase is defined in  
24 subdivision fourteen of section 220.00 of the penal law; or defined in  
25 the penal law as an attempt to commit murder in the second degree or  
26 kidnapping in the first degree, or such conduct as a sexually motivated  
27 felony, where authorized pursuant to section 130.91 of the penal law.

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

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

50 S 34. Subparagraph (iii) of paragraph (g) of subdivision 5 of section  
51 220.10 of the criminal procedure law, as amended by chapter 264 of the  
52 laws of 2003, is amended to read as follows:

53 (iii) Where the indictment does not charge a crime specified in  
54 subparagraph (i) of this paragraph, the district attorney may recommend  
55 removal of the action to the family court. Upon making such recommenda-  
56 tion the district attorney shall submit a subscribed memorandum setting

1 forth: (1) a recommendation that the interests of justice would best be  
2 served by removal of the action to the family court; and (2) if the  
3 indictment charges a thirteen year old with the crime of murder in the  
4 second degree, or a fourteen or fifteen year old with the crimes of rape  
5 in the first degree as defined in subdivision one of section 130.35 of  
6 the penal law, or [criminal sexual act] ANAL RAPE in the first degree as  
7 defined in subdivision one of section 130.50 of the penal law, OR ORAL  
8 RAPE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION ONE OF SECTION 130.39  
9 OF THE PENAL LAW, or an armed felony as defined in paragraph (a) of  
10 subdivision forty-one of section 1.20 of this chapter specific factors,  
11 one or more of which reasonably supports the recommendation, showing,  
12 (i) mitigating circumstances that bear directly upon the manner in which  
13 the crime was committed, or (ii) where the defendant was not the sole  
14 participant in the crime, that the defendant's participation was rela-  
15 tively minor although not so minor as to constitute a defense to the  
16 prosecution, or (iii) possible deficiencies in proof of the crime, or  
17 (iv) where the juvenile offender has no previous adjudications of having  
18 committed a designated felony act, as defined in subdivision eight of  
19 section 301.2 of the family court act, regardless of the age of the  
20 offender at the time of commission of the act, that the criminal act was  
21 not part of a pattern of criminal behavior and, in view of the history  
22 of the offender, is not likely to be repeated.

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

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

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

42 (b) Any of the following felonies: assault in the second degree as  
43 defined in section 120.05 of the penal law, assault in the first degree  
44 as defined in section 120.10 of the penal law, reckless endangerment in  
45 the first degree as defined in section 120.25 of the penal law, promot-  
46 ing a suicide attempt as defined in section 120.30 of the penal law,  
47 strangulation in the second degree as defined in section 121.12 of the  
48 penal law, strangulation in the first degree as defined in section  
49 121.13 of the penal law, criminally negligent homicide as defined in  
50 section 125.10 of the penal law, manslaughter in the second degree as  
51 defined in section 125.15 of the penal law, manslaughter in the first  
52 degree as defined in section 125.20 of the penal law, murder in the  
53 second degree as defined in section 125.25 of the penal law, murder in  
54 the first degree as defined in section 125.27 of the penal law, abortion  
55 in the second degree as defined in section 125.40 of the penal law,  
56 abortion in the first degree as defined in section 125.45 of the penal

1 law, rape in the third degree as defined in section 130.25 of the penal  
2 law, rape in the second degree as defined in section 130.30 of the penal  
3 law, rape in the first degree as defined in section 130.35 of the penal  
4 law, [criminal sexual act] ANAL RAPE in the third degree as defined in  
5 section 130.40 of the penal law, [criminal sexual act] ORAL RAPE IN THE  
6 THIRD DEGREE AS DEFINED IN SECTION 130.37 OF THE PENAL LAW, ANAL RAPE in  
7 the second degree as defined in section 130.45 of the penal law, [crimi-  
8 nal sexual act] ORAL RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION  
9 130.38 OF THE PENAL LAW, ANAL RAPE in the first degree as defined in  
10 section 130.50 of the penal law, ORAL RAPE IN THE FIRST DEGREE AS  
11 DEFINED IN SECTION 130.39 OF THE PENAL LAW, sexual abuse in the first  
12 degree as defined in section 130.65 of the penal law, unlawful imprison-  
13 ment in the first degree as defined in section 135.10 of the penal law,  
14 kidnapping in the second degree as defined in section 135.20 of the  
15 penal law, kidnapping in the first degree as defined in section 135.25  
16 of the penal law, labor trafficking as defined in section 135.35 of the  
17 penal law, custodial interference in the first degree as defined in  
18 section 135.50 of the penal law, coercion in the first degree as defined  
19 in section 135.65 of the penal law, criminal trespass in the first  
20 degree as defined in section 140.17 of the penal law, burglary in the  
21 third degree as defined in section 140.20 of the penal law, burglary in  
22 the second degree as defined in section 140.25 of the penal law,  
23 burglary in the first degree as defined in section 140.30 of the penal  
24 law, criminal mischief in the third degree as defined in section 145.05  
25 of the penal law, criminal mischief in the second degree as defined in  
26 section 145.10 of the penal law, criminal mischief in the first degree  
27 as defined in section 145.12 of the penal law, criminal tampering in the  
28 first degree as defined in section 145.20 of the penal law, arson in the  
29 fourth degree as defined in section 150.05 of the penal law, arson in  
30 the third degree as defined in section 150.10 of the penal law, arson in  
31 the second degree as defined in section 150.15 of the penal law, arson  
32 in the first degree as defined in section 150.20 of the penal law, grand  
33 larceny in the fourth degree as defined in section 155.30 of the penal  
34 law, grand larceny in the third degree as defined in section 155.35 of  
35 the penal law, grand larceny in the second degree as defined in section  
36 155.40 of the penal law, grand larceny in the first degree as defined in  
37 section 155.42 of the penal law, health care fraud in the fourth degree  
38 as defined in section 177.10 of the penal law, health care fraud in the  
39 third degree as defined in section 177.15 of the penal law, health care  
40 fraud in the second degree as defined in section 177.20 of the penal  
41 law, health care fraud in the first degree as defined in section 177.25  
42 of the penal law, robbery in the third degree as defined in section  
43 160.05 of the penal law, robbery in the second degree as defined in  
44 section 160.10 of the penal law, robbery in the first degree as defined  
45 in section 160.15 of the penal law, unlawful use of secret scientific  
46 material as defined in section 165.07 of the penal law, criminal  
47 possession of stolen property in the fourth degree as defined in section  
48 165.45 of the penal law, criminal possession of stolen property in the  
49 third degree as defined in section 165.50 of the penal law, criminal  
50 possession of stolen property in the second degree as defined by section  
51 165.52 of the penal law, criminal possession of stolen property in the  
52 first degree as defined by section 165.54 of the penal law, trademark  
53 counterfeiting in the second degree as defined in section 165.72 of the  
54 penal law, trademark counterfeiting in the first degree as defined in  
55 section 165.73 of the penal law, forgery in the second degree as defined  
56 in section 170.10 of the penal law, forgery in the first degree as

1 defined in section 170.15 of the penal law, criminal possession of a  
2 forged instrument in the second degree as defined in section 170.25 of  
3 the penal law, criminal possession of a forged instrument in the first  
4 degree as defined in section 170.30 of the penal law, criminal  
5 possession of forgery devices as defined in section 170.40 of the penal  
6 law, falsifying business records in the first degree as defined in  
7 section 175.10 of the penal law, tampering with public records in the  
8 first degree as defined in section 175.25 of the penal law, offering a  
9 false instrument for filing in the first degree as defined in section  
10 175.35 of the penal law, issuing a false certificate as defined in  
11 section 175.40 of the penal law, criminal diversion of prescription  
12 medications and prescriptions in the second degree as defined in section  
13 178.20 of the penal law, criminal diversion of prescription medications  
14 and prescriptions in the first degree as defined in section 178.25 of  
15 the penal law, residential mortgage fraud in the fourth degree as  
16 defined in section 187.10 of the penal law, residential mortgage fraud  
17 in the third degree as defined in section 187.15 of the penal law, resi-  
18 dential mortgage fraud in the second degree as defined in section 187.20  
19 of the penal law, residential mortgage fraud in the first degree as  
20 defined in section 187.25 of the penal law, escape in the second degree  
21 as defined in section 205.10 of the penal law, escape in the first  
22 degree as defined in section 205.15 of the penal law, absconding from  
23 temporary release in the first degree as defined in section 205.17 of  
24 the penal law, promoting prison contraband in the first degree as  
25 defined in section 205.25 of the penal law, hindering prosecution in the  
26 second degree as defined in section 205.60 of the penal law, hindering  
27 prosecution in the first degree as defined in section 205.65 of the  
28 penal law, sex trafficking as defined in section 230.34 of the penal  
29 law, criminal possession of a weapon in the third degree as defined in  
30 subdivisions two, three and five of section 265.02 of the penal law,  
31 criminal possession of a weapon in the second degree as defined in  
32 section 265.03 of the penal law, criminal possession of a weapon in the  
33 first degree as defined in section 265.04 of the penal law, manufacture,  
34 transport, disposition and defacement of weapons and dangerous instru-  
35 ments and appliances defined as felonies in subdivisions one, two, and  
36 three of section 265.10 of the penal law, sections 265.11, 265.12 and  
37 265.13 of the penal law, or prohibited use of weapons as defined in  
38 subdivision two of section 265.35 of the penal law, relating to firearms  
39 and other dangerous weapons, or failure to disclose the origin of a  
40 recording in the first degree as defined in section 275.40 of the penal  
41 law;

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

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

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

55 11. The owner shall not be liable pursuant to subdivision six, seven,  
56 eight, nine or ten of this section if the dog was coming to the aid or

1 defense of a person during the commission or attempted commission of a  
2 murder, robbery, burglary, arson, rape in the first degree as defined in  
3 subdivision one or two of section 130.35 of the penal law, [criminal  
4 sexual act] ANAL RAPE in the first degree as defined in subdivision one  
5 or two of section 130.50 of the penal law, ORAL RAPE IN THE FIRST DEGREE  
6 AS DEFINED IN SUBDIVISION ONE OR TWO OF SECTION 130.39 OF THE PENAL LAW  
7 or kidnapping within the dwelling or upon the real property of the owner  
8 of the dog and the dog injured or killed the person committing such  
9 criminal activity.

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

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

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

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

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



1 For every juvenile delinquency proceeding under article three involv-  
2 ing an allegation of an act committed by a person which, if done by an  
3 adult, would be a crime (i) defined in sections 125.27 (murder in the  
4 first degree); 125.25 (murder in the second degree); 135.25 (kidnapping  
5 in the first degree); or 150.20 (arson in the first degree) of the penal  
6 law committed by a person thirteen, fourteen or fifteen years of age; or  
7 such conduct committed as a sexually motivated felony, where authorized  
8 pursuant to section 130.91 of the penal law; (ii) defined in sections  
9 120.10 (assault in the first degree); 125.20 (manslaughter in the first  
10 degree); 130.35 (rape in the first degree); 130.50 ([criminal sexual  
11 act] ANAL RAPE in the first degree); 130.39 (ORAL RAPE IN THE FIRST  
12 DEGREE); 135.20 (kidnapping in the second degree), but only where the  
13 abduction involved the use or threat of use of deadly physical force;  
14 150.15 (arson in the second degree); or 160.15 (robbery in the first  
15 degree) of the penal law committed by a person thirteen, fourteen or  
16 fifteen years of age; or such conduct committed as a sexually motivated  
17 felony, where authorized pursuant to section 130.91 of the penal law;  
18 (iii) defined in the penal law as an attempt to commit murder in the  
19 first or second degree or kidnapping in the first degree committed by a  
20 person thirteen, fourteen or fifteen years of age; or such conduct  
21 committed as a sexually motivated felony, where authorized pursuant to  
22 section 130.91 of the penal law; (iv) defined in section 140.30  
23 (burglary in the first degree); subdivision one of section 140.25  
24 (burglary in the second degree); subdivision two of section 160.10  
25 (robbery in the second degree) of the penal law; or section 265.03 of  
26 the penal law, where such machine gun or such firearm is possessed on  
27 school grounds, as that phrase is defined in subdivision fourteen of  
28 section 220.00 of the penal law committed by a person fourteen or  
29 fifteen years of age; or such conduct committed as a sexually motivated  
30 felony, where authorized pursuant to section 130.91 of the penal law;  
31 (v) defined in section 120.05 (assault in the second degree) or 160.10  
32 (robbery in the second degree) of the penal law committed by a person  
33 fourteen or fifteen years of age but only where there has been a prior  
34 finding by a court that such person has previously committed an act  
35 which, if committed by an adult, would be the crime of assault in the  
36 second degree, robbery in the second degree or any designated felony act  
37 specified in clause (i), (ii) or (iii) of this subdivision regardless of  
38 the age of such person at the time of the commission of the prior act;  
39 or (vi) other than a misdemeanor, committed by a person at least seven  
40 but less than sixteen years of age, but only where there has been two  
41 prior findings by the court that such person has committed a prior act  
42 which, if committed by an adult would be a felony:

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

45 8. "Designated felony act" means an act which, if done by an adult,  
46 would be a crime: (i) defined in sections 125.27 (murder in the first  
47 degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the  
48 first degree); or 150.20 (arson 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; (ii) defined in sections  
52 120.10 (assault in the first degree); 125.20 (manslaughter in the first  
53 degree); 130.35 (rape in the first degree); 130.50 ([criminal sexual  
54 act] ANAL RAPE in the first degree); 130.39 (ORAL RAPE IN THE FIRST  
55 DEGREE); 130.70 (aggravated sexual abuse in the first degree); 135.20  
56 (kidnapping in the second degree) but only where the abduction involved

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

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

33 4. The probation service shall not adjust a case in which the child  
34 has allegedly committed a delinquent act which would be a crime defined  
35 in section 120.25, (reckless endangerment in the first degree), subdivi-  
36 sion one of section 125.15, (manslaughter in the second degree), subdivi-  
37 sion one of section 130.25, (rape in the third degree), subdivision  
38 one of section 130.40, ([criminal sexual act] ANAL RAPE in the third  
39 degree), SUBDIVISION ONE OF SECTION 130.37, (ORAL RAPE IN THE THIRD  
40 DEGREE), subdivision one or two of section 130.65, (sexual abuse in the  
41 first degree), section 135.65, (coercion in the first degree), section  
42 140.20, (burglary in the third degree), section 150.10, (arson in the  
43 third degree), section 160.05, (robbery in the third degree), subdivi-  
44 sion two[, ] OR three [or four] of section 265.02, (criminal possession  
45 of a weapon in the third degree), section 265.03, (criminal possession  
46 of a weapon in the second degree), or section 265.04, (criminal  
47 possession of a dangerous weapon in the first degree) of the penal law  
48 where the child has previously had one or more adjustments of a case in  
49 which such child allegedly committed an act which would be a crime spec-  
50 ified in this subdivision unless it has received written approval from  
51 the court and the appropriate presentment agency.

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

54 S 4. Sittings of courts to be public. The sittings of every court  
55 within this state shall be public, and every citizen may freely attend  
56 the same, except that in all proceedings and trials in cases for

1 divorce, seduction, abortion, rape, assault with intent to commit rape,  
2 [criminal sexual act] ANAL RAPE, ORAL RAPE, bastardy or filiation, the  
3 court may, in its discretion, exclude therefrom all persons who are not  
4 directly interested therein, excepting jurors, witnesses, and officers  
5 of the court.

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

8 2. commits a class A misdemeanor defined in article one hundred thirty  
9 of this chapter, or a class E felony defined in section 130.25, 130.37,  
10 130.40 or 130.85 of this chapter, or a class D felony defined in section  
11 130.30, 130.38 or 130.45 of this chapter.

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

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

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

33 (a) A prosecution for a class A felony, or rape in the first degree as  
34 defined in section 130.35 of the penal law, OR ANAL RAPE IN THE FIRST  
35 DEGREE AS DEFINED IN SECTION 130.50 OF THE PENAL LAW, OR ORAL RAPE IN  
36 THE FIRST DEGREE AS DEFINED IN SECTION 130.39 OF THE PENAL LAW, or a  
37 crime [defined or] formerly defined in section 130.50 of the penal law,  
38 or aggravated sexual abuse in the first degree as defined in section  
39 130.70 of the penal law, or course of sexual conduct against a child in  
40 the first degree as defined in section 130.75 of the penal law may be  
41 commenced at any time;

42 S 48. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
43 168-a of the correction law, as amended by chapter 405 of the laws of  
44 2008, is amended to read as follows:

45 (i) a conviction of or a conviction for an attempt to commit any of  
46 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.37,  
47 130.38, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and  
48 255.27 or article two hundred sixty-three of the penal law, or section  
49 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping  
50 offenses, provided the victim of such kidnapping or related offense is  
51 less than seventeen years old and the offender is not the parent of the  
52 victim, or section 230.04, where the person patronized is in fact less  
53 than seventeen years of age, 230.05 or 230.06, or subdivision two of  
54 section 230.30, or section 230.32 or 230.33 of the penal law, or

1 S 49. Subparagraph (i) of paragraph (a) of subdivision 3 of section  
2 168-a of the correction law, as amended by chapter 107 of the laws of  
3 2006, is amended to read as follows:

4 (i) a conviction of or a conviction for an attempt to commit any of  
5 the provisions of sections 130.35, 130.39, 130.50, 130.65, 130.66,  
6 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law, or

7 S 50. This act shall take effect on the ninetieth day after it shall  
8 have become a law and shall apply to any offense on or after such effec-  
9 tive date. As it pertains to the repealed sections of law, nothing in  
10 this act shall affect a requirement to register pursuant to article 6-C  
11 of the correction law; a lawfully required disclosure of a conviction;  
12 any restriction or prohibition for certain types of employment, housing,  
13 or government benefit; or any other ongoing matter related to a  
14 conviction of the sections repealed in this act.