

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.

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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-

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

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

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

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

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

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

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

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

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

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

S 22. The opening paragraph of section 130.96 of the penal law, as 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.