

2067

2015-2016 Regular Sessions

I N   S E N A T E

January 21, 2015

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Introduced by Sen. YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the executive law, in relation to enacting the "Jessica Lunsford act" relating to predatory sexual assault against a child

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "Jessica Lunsford act".  
3     S 2. Subparagraph (ii) of paragraph (a) of subdivision 3 of section  
4     70.00 of the penal law, as amended by chapter 107 of the laws of 2006,  
5     is amended to read as follows:  
6     (ii) For a class A-II felony, such minimum period shall not be less  
7     than three years nor more than eight years four months, except that for  
8     the class A-II felony of predatory sexual assault as defined in section  
9     130.95 of this chapter [or the class A-II felony of predatory sexual  
10    assault against a child as defined in section 130.96 of this chapter],  
11    such minimum period shall be not less than ten years nor more than twenty-five years, AND EXCEPT THAT FOR THE CLASS A-II FELONY OF PREDATORY  
12    SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THIS  
13    CHAPTER, SUCH MINIMUM PERIOD SHALL BE TWENTY-FIVE YEARS.  
14    S 3. Paragraph (a) of subdivision 4 of section 70.06 of the penal law,  
15    as amended by chapter 107 of the laws of 2006, is amended to read as  
16    follows:  
17    (a) The minimum period of imprisonment for a second felony offender  
18    convicted of a class A-II felony must be fixed by the court at no less  
19    than six years and not to exceed twelve and one-half years and must be  
20    specified in the sentence, except that for the class A-II felony of  
21    predatory sexual assault as defined in section 130.95 of this chapter  
22    [or the class A-II felony of predatory sexual assault against a child as  
23    defined in section 130.96 of this chapter], such minimum period shall be  
24

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

LBD06194-01-5

1 not less than ten years nor more than twenty-five years, AND EXCEPT THAT  
2 FOR THE CLASS A-II FELONY OF PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS  
3 DEFINED IN SECTION 130.96 OF THIS CHAPTER, SUCH MINIMUM PERIOD SHALL BE  
4 TWENTY-FIVE YEARS.

5 S 4. Section 130.96 of the penal law, as added by chapter 107 of the  
6 laws of 2006, is amended to read as follows:

7 S 130.96 Predatory sexual assault against a child.

8 A person is guilty of predatory sexual assault against a child when,  
9 being eighteen years old or more, he or she commits the crime of rape in  
10 the first degree, criminal sexual act in the first degree, aggravated  
11 sexual abuse in the first degree, or course of sexual conduct against a  
12 child in the first degree, as defined in this article, [and the victim  
13 is less than thirteen years old.] WHEN:

14 1. THE VICTIM OF SUCH CRIME IS A CHILD LESS THAN THIRTEEN YEARS OLD;  
15 OR

16 2. THE VICTIM OF SUCH CRIME IS A CHILD NOT LESS THAN THIRTEEN YEARS  
17 OLD, NOR MORE THAN SIXTEEN YEARS OLD, AND

18 (A) THE ACTOR IS RELATED TO SUCH VICTIM BY BLOOD OR AFFINITY TO THE  
19 THIRD DEGREE, OR

20 (B) THE ACTOR HAS SUPERVISORY OR DISCIPLINARY AUTHORITY OVER SUCH  
21 VICTIM BY VIRTUE OF HIS OR HER LEGAL, PROFESSIONAL OR OCCUPATIONAL  
22 STATUS, OR

23 (C) THE ACTOR IS THE PARENT OR GUARDIAN OF SUCH VICTIM, OR IN A POSI-  
24 TION OF LOCO PARENTIS TO SUCH VICTIM; OR

25 3. THE VICTIM OF SUCH CRIME IS A CHILD LESS THAN EIGHTEEN YEARS OLD,  
26 AND SUCH CRIME IS COMMITTED, ACTING ALONE OR WITH ONE OR MORE PERSONS,  
27 DURING THE COMMISSION OR ATTEMPTED COMMISSION OF BURGLARY, ROBBERY,  
28 ARSON, KIDNAPPING, CRIMINAL ESCAPE OR A SEX OFFENSE; OR

29 4. THE VICTIM OF SUCH CRIME IS A CHILD LESS THAN EIGHTEEN YEARS OLD,  
30 AND THE ACTOR DURING THE COURSE OF SUCH CRIME IS ARMED WITH A WEAPON, OR  
31 DANGEROUS INSTRUMENT, OR DISPLAYS WHAT APPEARS TO THE VICTIM TO BE A  
32 WEAPON OR DANGEROUS INSTRUMENT, OR THREATENS THE USE OF A WEAPON OR  
33 DANGEROUS INSTRUMENT; OR

34 5. THE VICTIM OF SUCH CRIME IS A CHILD LESS THAN EIGHTEEN YEARS OLD,  
35 AND THE ACTOR, AIDED OR ABETTED BY ONE OR MORE PERSONS, USES PHYSICAL  
36 FORCE OR THREATENS THE USE OF PHYSICAL FORCE AGAINST THE VICTIM; OR

37 6. THE VICTIM OF SUCH CRIME IS A CHILD LESS THAN EIGHTEEN YEARS OLD  
38 WHO SUSTAINS SERIOUS PHYSICAL INJURY DURING THE COURSE OF SUCH CRIME; OR

39 7. THE VICTIM OF SUCH CRIME IS A CHILD LESS THAN EIGHTEEN YEARS OLD  
40 WHO IS MENTALLY DISABLED, MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS,  
41 AND THE ACTOR KNEW OR SHOULD HAVE KNOWN THAT SUCH VICTIM WAS MENTALLY  
42 DISABLED, MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS.

43 Predatory sexual assault against a child is a class A-II felony.

44 S 5. Section 259-c of the executive law is amended by adding a new  
45 subdivision 14-a to read as follows:

46 14-A. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY,  
47 WHERE A PERSON SERVING A SENTENCE FOR PREDATORY SEXUAL ASSAULT AGAINST A  
48 CHILD, AS DEFINED IN SECTION 130.96 OF THE PENAL LAW, IS RELEASED ON  
49 PAROLE OR CONDITIONALLY RELEASED PURSUANT TO SUBDIVISION ONE OR TWO OF  
50 THIS SECTION, THE BOARD SHALL REQUIRE, AS A MANDATORY CONDITION OF SUCH  
51 RELEASE, THAT SUCH PERSON SUBMIT TO THE USE OF AN ELECTRONIC MONITORING  
52 OR GLOBAL POSITION SATELLITE TRACKING DEVICE MONITORED BY THE BOARD  
53 THROUGHOUT THE PERIOD OF SUCH RELEASE OR SUCH PERSON'S LIFE, WHICHEVER  
54 SHALL TERMINATE EARLIER.

55 S 6. This act shall take effect on the first of November next succeed-  
56 ing the date on which it shall have become a law.