S T A T E O F N E W Y O R K

2710

2015-2016 Regular Sessions

I N S E N A T E

January 28, 2015

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

AN ACT to amend the penal law, in relation to increasing the penalties for the rape or sexual assault of a child

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

Section 1. Paragraph (a) of subdivision 3 of section 70.02 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

(a) For a class B felony, the term must be at least five years and must not exceed twenty-five years, provided, however, that the term must be: (i) at least ten years and must not exceed thirty years where the sentence is for the crime of aggravated assault upon a police officer or peace officer as defined in section 120.11 of this chapter; [and] (ii) at least ten years and must not exceed thirty years where the sentence is for the crime of aggravated manslaughter in the first degree as defined in section 125.22 of this chapter; AND (III) AT LEAST TWELVE AND ONE-HALF YEARS AND MUST NOT EXCEED TWENTY-FIVE YEARS WHERE THE SENTENCE IS FOR THE CRIME OF RAPE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.35 OF THIS CHAPTER WHERE THE VICTIM WAS A CHILD FIVE YEARS OF AGE OR LESS;

S 2. Subdivisions 1, 2, 3 and 4 of section 70.07 of the penal law, subdivisions 1, 2 and 3 as amended by chapter 264 of the laws of 2003, subdivision 4 as added by chapter 1 of the laws of 2000 and paragraphs (a) and (b) of subdivision 4 as amended by chapter 107 of the laws of 2006, are amended and a new subdivision 2-a is added to read as follows:

1. A person who stands convicted of a felony offense for a sexual assault against a child OR FOR A SEXUAL ASSAULT AGAINST A CHILD FIVE YEARS OF AGE OR LESS, having been subjected to a predicate felony conviction for a sexual assault against a child OR FOR A SEXUAL ASSAULT

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

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AGAINST A CHILD FIVE YEARS OF AGE OR LESS, must be sentenced in accordance with the provisions of subdivision four or five of this section.

2. A "sexual assault against a child" means a felony offense, other than persistent sexual abuse as defined in section 130.53 of this chapter, (a) the essential elements of which include the commission or attempted commission of sexual conduct, as defined in subdivision ten of section 130.00 of this chapter, (b) committed or attempted to be committed against a child less than fifteen years old.

2-A. A "SEXUAL ASSAULT AGAINST A CHILD FIVE YEARS OF AGE OR LESS" MEANS A FELONY OFFENSE, OTHER THAN PERSISTENT SEXUAL ABUSE AS DEFINED IN SECTION 130.53 OF THIS CHAPTER, (A) THE ESSENTIAL ELEMENTS OF WHICH INCLUDE THE COMMISSION OR ATTEMPTED COMMISSION OF SEXUAL CONDUCT, AS DEFINED IN SUBDIVISION TEN OF SECTION 130.00 OF THIS CHAPTER, (B) COMMITTED OR ATTEMPTED TO BE COMMITTED AGAINST A CHILD FIVE YEARS OF AGE OR LESS.

3. For purposes of determining whether a person has been subjected to a predicate felony conviction under this section, the criteria set forth in paragraph (b) of subdivision one of section 70.06 shall apply provided however that for purposes of this subdivision, the terms "ten year" or "ten years", as provided in subparagraphs (iv) and (v) of paragraph (b) of subdivision one of such section 70.06, shall be "fifteen year" or "fifteen years". The provisions of section 400.19 of the criminal procedure law shall govern the procedures that must be followed to determine whether a person who stands convicted of a sexual assault against a child OR A SEXUAL ASSAULT AGAINST A CHILD FIVE YEARS OF AGE OR LESS has been previously subjected to a predicate felony conviction for such a sexual assault and whether such offender was eighteen years of age or older at the time of the commission of the predicate felony.

4. Where the court has found pursuant to subdivision three of this section that a person who stands convicted of a felony offense defined in article one hundred thirty of this chapter for the commission or attempted commission of a sexual assault against a child has been subjected to a predicate felony conviction for a sexual assault against a child, the court shall sentence the defendant as follows:

(a) where the defendant stands convicted of such sexual assault against a child and such conviction is for a class A-II or class B felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall impose an indeterminate sentence of imprisonment, the maximum term of which shall be life and the minimum period of which shall be at least fifteen years and no more than twenty-five years;

(A-1) WHERE THE DEFENDANT STANDS CONVICTED OF SUCH SEXUAL ASSAULT AGAINST A CHILD FIVE YEARS OF AGE OR LESS, AND THE PREDICATE CONVICTION FOR SUCH SEXUAL ASSAULT AGAINST A CHILD FIVE YEARS OF AGE OR LESS IS A CLASS B OR CLASS C FELONY OFFENSE, THE COURT SHALL IMPOSE AN INDETERMINATE SENTENCE OF IMPRISONMENT, THE MAXIMUM OF WHICH SHALL BE LIFE AND THE MINIMUM OF WHICH SHALL BE AT LEAST THIRTY YEARS;

(b) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class C felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least twelve years and must not exceed thirty years; provided however, that if the court determines that a longer sentence is warranted, the court shall set forth on the record the reasons for such determination and, in lieu of imposing such sentence of imprisonment, may impose an

indeterminate sentence of imprisonment, the maximum term of which shall be life and the minimum period of which shall be at least fifteen years and no more than twenty-five years;

(c) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class B felony offense, and the predicate conviction for such sexual assault against a child is for a class D or class E felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least twelve years and must not exceed thirty years;

(d) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class C felony offense, and the predicate conviction for such sexual assault against a child is for a class D or class E felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least ten years and must not exceed twenty-five years;

(e) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class D felony offense, and the predicate conviction for such sexual assault against a child is for a felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least five years and must not exceed fifteen years; and

(f) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class E felony offense, and the predicate conviction for such sexual assault against a child is for a felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least four years and must not exceed twelve years.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.