

2994--A

2015-2016 Regular Sessions

I N S E N A T E

February 2, 2015

Introduced by Sens. YOUNG, BONACIC, FUNKE, LARKIN, O'MARA, ORTT, RANZEN-HOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to aggravated sexual offenses; and to amend the criminal procedure law, in relation to youthful offender status

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

1 Section 1. Paragraphs (a), (b) and (c) of subdivision 1 of section
2 70.02 of the penal law, paragraphs (a) and (c) as amended by chapter 368
3 of the laws of 2015, and paragraph (b) as amended by chapter 1 of the
4 laws of 2013, are amended to read as follows:
5 (a) Class B violent felony offenses: an attempt to commit the class
6 A-I felonies of murder in the second degree as defined in section
7 125.25, kidnapping in the first degree as defined in section 135.25, and
8 arson in the first degree as defined in section 150.20; manslaughter in
9 the first degree as defined in section 125.20, aggravated manslaughter
10 in the first degree as defined in section 125.22, rape in the first
11 degree as defined in section 130.35, criminal sexual act in the first
12 degree as defined in section 130.50, aggravated sexual abuse in the
13 [first] SECOND degree as defined in section 130.70, course of sexual
14 conduct against a child in the first degree as defined in section
15 130.75; assault in the first degree as defined in section 120.10,
16 kidnapping in the second degree as defined in section 135.20, burglary
17 in the first degree as defined in section 140.30, arson in the second
18 degree as defined in section 150.15, robbery in the first degree as
19 defined in section 160.15, sex trafficking as defined in paragraphs (a)
20 and (b) of subdivision five of section 230.34, incest in the first

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

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1 degree as defined in section 255.27, criminal possession of a weapon in
2 the first degree as defined in section 265.04, criminal use of a firearm
3 in the first degree as defined in section 265.09, criminal sale of a
4 firearm in the first degree as defined in section 265.13, aggravated
5 assault upon a police officer or a peace officer as defined in section
6 120.11, gang assault in the first degree as defined in section 120.07,
7 intimidating a victim or witness in the first degree as defined in
8 section 215.17, hindering prosecution of terrorism in the first degree
9 as defined in section 490.35, criminal possession of a chemical weapon
10 or biological weapon in the second degree as defined in section 490.40,
11 and criminal use of a chemical weapon or biological weapon in the third
12 degree as defined in section 490.47.

13 (b) Class C violent felony offenses: an attempt to commit any of the
14 class B felonies set forth in paragraph (a) of this subdivision; aggra-
15 vated criminally negligent homicide as defined in section 125.11, aggra-
16 vated manslaughter in the second degree as defined in section 125.21,
17 aggravated sexual abuse in the [second] THIRD degree as defined in
18 section 130.67, assault on a peace officer, police officer, fireman or
19 emergency medical services professional as defined in section 120.08,
20 assault on a judge as defined in section 120.09, gang assault in the
21 second degree as defined in section 120.06, strangulation in the first
22 degree as defined in section 121.13, burglary in the second degree as
23 defined in section 140.25, robbery in the second degree as defined in
24 section 160.10, criminal possession of a weapon in the second degree as
25 defined in section 265.03, criminal use of a firearm in the second
26 degree as defined in section 265.08, criminal sale of a firearm in the
27 second degree as defined in section 265.12, criminal sale of a firearm
28 with the aid of a minor as defined in section 265.14, aggravated crimi-
29 nal possession of a weapon as defined in section 265.19, soliciting or
30 providing support for an act of terrorism in the first degree as defined
31 in section 490.15, hindering prosecution of terrorism in the second
32 degree as defined in section 490.30, and criminal possession of a chemi-
33 cal weapon or biological weapon in the third degree as defined in
34 section 490.37.

35 (c) Class D violent felony offenses: an attempt to commit any of the
36 class C felonies set forth in paragraph (b); reckless assault of a child
37 as defined in section 120.02, assault in the second degree as defined in
38 section 120.05, menacing a police officer or peace officer as defined in
39 section 120.18, stalking in the first degree, as defined in subdivision
40 one of section 120.60, strangulation in the second degree as defined in
41 section 121.12, rape in the second degree as defined in section 130.30,
42 criminal sexual act in the second degree as defined in section 130.45,
43 sexual abuse in the first degree as defined in section 130.65, course of
44 sexual conduct against a child in the second degree as defined in
45 section 130.80, aggravated sexual abuse in the [third] FOURTH degree as
46 defined in section 130.66, facilitating a sex offense with a controlled
47 substance as defined in section 130.90, labor trafficking as defined in
48 paragraphs (a) and (b) of subdivision three of section 135.35, criminal
49 possession of a weapon in the third degree as defined in subdivision
50 five, six, seven, eight, nine or ten of section 265.02, criminal sale of
51 a firearm in the third degree as defined in section 265.11, intimidating
52 a victim or witness in the second degree as defined in section 215.16,
53 soliciting or providing support for an act of terrorism in the second
54 degree as defined in section 490.10, and making a terroristic threat as
55 defined in section 490.20, falsely reporting an incident in the first
56 degree as defined in section 240.60, placing a false bomb or hazardous

substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

S 2. The penal law is amended by adding three new sections 130.36, 130.51 and 130.71 to read as follows:

S 130.36 AGGRAVATED RAPE.

A MALE IS GUILTY OF AGGRAVATED RAPE WHEN HE ENGAGES IN SEXUAL INTERCOURSE WITH A FEMALE BY FORCIBLE COMPULSION AND WHEN, IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE OR ANOTHER PARTICIPANT IN THE CRIME:

1. IS ARMED WITH A DEADLY WEAPON; OR
2. USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR
3. CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME; OR
4. DISPLAYS WHAT APPEARS TO BE A FIREARM.

AGGRAVATED RAPE IS A CLASS A-II FELONY.

S 130.51 AGGRAVATED CRIMINAL SEXUAL ACT.

A PERSON IS GUILTY OF AGGRAVATED CRIMINAL SEXUAL ACT WHEN HE OR SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER PERSON BY FORCIBLE COMPULSION AND WHEN, IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE, SHE OR ANOTHER PARTICIPANT IN THE CRIME:

1. IS ARMED WITH A DEADLY WEAPON; OR
2. USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR
3. CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME; OR
4. DISPLAYS WHAT APPEARS TO BE A FIREARM.

AGGRAVATED CRIMINAL SEXUAL ACT IS A CLASS A-II FELONY.

S 130.71 AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE.

1. A PERSON IS GUILTY OF AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE WHEN HE OR SHE INSERTS A FINGER OR FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS OR RECTUM OF ANOTHER PERSON BY FORCIBLE COMPULSION CAUSING PHYSICAL INJURY TO SUCH PERSON AND WHEN, IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE, SHE OR ANOTHER PARTICIPANT IN THE CRIME:

- (A) IS ARMED WITH A DEADLY WEAPON; OR
- (B) USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR
- (C) CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME; OR
- (D) DISPLAYS WHAT APPEARS TO BE A FIREARM.

2. CONDUCT PERFORMED FOR A VALID MEDICAL PURPOSE DOES NOT VIOLATE THE PROVISIONS OF THIS SECTION.

AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE IS A CLASS A-II FELONY.

S 3. Section 130.65-a of the penal law, as added by chapter 1 of the laws of 2000, subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

S 130.65-a Aggravated sexual abuse in the [fourth] FIFTH degree.

1. A person is guilty of aggravated sexual abuse in the [fourth] FIFTH degree when:

- (a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or

(b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the [fourth] FIFTH degree is a class E felony.

S 4. Section 130.66 of the penal law, as added by chapter 181 of the laws of 1996, subdivisions 1 and 2 as amended by chapter 485 of the laws of 2009, subdivision 3 as renumbered by chapter 1 of the laws of 2000, is amended to read as follows:

S 130.66 Aggravated sexual abuse in the [third] FOURTH degree.

1. A person is guilty of aggravated sexual abuse in the [third] FOURTH degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. A person is guilty of aggravated sexual abuse in the [third] FOURTH degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the [third] FOURTH degree is a class D felony.

S 5. Section 130.67 of the penal law, as added by chapter 450 of the laws of 1988, the opening paragraph of subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

S 130.67 Aggravated sexual abuse in the [second] THIRD degree.

1. A person is guilty of aggravated sexual abuse in the [second] THIRD degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the [second] THIRD degree is a class C felony.

S 6. Section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, the opening paragraph of subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

S 130.70 Aggravated sexual abuse in the [first] SECOND degree.

1. A person is guilty of aggravated sexual abuse in the [first] SECOND degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the [first] SECOND degree is a class B felony.

S 7. Subdivisions 2 and 3 of section 720.10 of the criminal procedure law, subdivision 2 as amended by chapter 416 of the laws of 1986, paragraph (a) of subdivision 2 as amended by chapter 316 of the laws of 2006 and subdivision 3 as amended by chapter 264 of the laws of 2003, are amended to read as follows:

2. "Eligible youth" means a youth who is eligible to be found a youthful offender. Every youth is so eligible unless:

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse IN THE SECOND DEGREE, except as provided in subdivision three, or

(b) such youth has previously been convicted and sentenced for a felony, or

(c) such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen hundred seventy-eight a juvenile delinquent who committed a designated felony act as defined in the family court act.

3. Notwithstanding the provisions of subdivision two, a youth who has been convicted of an armed felony offense or of rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse IN THE SECOND DEGREE is an eligible youth if the court determines that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.

S 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided that if chapter 368 of the laws of 2015 has not taken effect prior to such effective date, then paragraphs (a) and (c) of subdivision 1 of section 70.02 of the penal law, as amended by section one of this act, such paragraphs shall take effect on the same date and in the same manner as chapter 368 of the laws of 2015 takes effect.