

8053

I N   S E N A T E

June 8, 2016

---

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

AN ACT to amend the penal law, in relation to sex offenses, prostitution offenses, obscenity offenses and sexual performance by a child offense committed against a minor

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

1     Section 1. Subparagraph (i) of paragraph (a) of subdivision 3 of  
2     section 70.00 of the penal law, as amended by chapter 107 of the laws of  
3     2006, is amended to read as follows:  
4     (i) For a class A-I felony, such minimum period shall not be less than  
5     fifteen years nor more than twenty-five years; provided, however, that  
6     (A) where a sentence, other than a sentence of death or life imprisonment  
7     without parole, is imposed upon a defendant convicted of murder in  
8     the first degree as defined in section 125.27 of this chapter such minimum  
9     period shall be not less than twenty years nor more than twenty-five  
10    years, and, (B) where a sentence is imposed upon a defendant convicted  
11    of murder in the second degree as defined in subdivision five of section  
12    125.25 of this chapter or convicted of aggravated murder as defined in  
13    section 125.26 of this chapter, the sentence shall be life imprisonment  
14    without parole, and, (C) where a sentence is imposed upon a defendant  
15    convicted of attempted murder in the first degree as defined in article  
16    one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of  
17    paragraph (a) of subdivision one and paragraph (b) of subdivision one of  
18    section 125.27 of this chapter or attempted aggravated murder as defined  
19    in article one hundred ten of this chapter and section 125.26 of this  
20    chapter such minimum period shall be not less than twenty years nor more  
21    than forty years, AND, (D) WHERE A SENTENCE IS IMPOSED UPON A DEFENDANT  
22    CONVICTED OF RAPE OF A CHILD AS DEFINED IN SECTION 130.36 OF THIS CHAPTER,  
23    CONVICTED OF CRIMINAL SEXUAL ACT AGAINST A CHILD AS DEFINED IN  
24    SECTION 130.51 OF THIS CHAPTER, CONVICTED OF SEXUAL ABUSE OF A CHILD AS  
25    DEFINED IN SECTION 130.64 OF THIS CHAPTER, CONVICTED OF AGGRAVATED SEXUAL  
26    ABUSE OF A CHILD AS DEFINED IN SECTION 130.71 OF THIS CHAPTER,  
27    CONVICTED OF COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST

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

LBD15750-01-6

1 DEGREE AS DEFINED IN SECTION 130.75 OF THIS CHAPTER, CONVICTED OF COURSE  
2 OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN  
3 SECTION 130.80 OF THIS CHAPTER, CONVICTED OF PREDATORY SEXUAL ASSAULT  
4 AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THIS CHAPTER, CONVICTED  
5 OF PATRONIZING A PERSON FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED  
6 IN SECTION 230.06 OF THIS CHAPTER, CONVICTED OF AGGRAVATED PATRONIZING A  
7 MINOR FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.13  
8 OF THIS CHAPTER, CONVICTED OF PROMOTING PROSTITUTION IN THE FIRST DEGREE  
9 AS DEFINED IN SECTION 230.32 OF THIS CHAPTER, CONVICTED OF COMPELLING  
10 PROSTITUTION AS DEFINED IN SECTION 230.33 OF THIS CHAPTER, CONVICTED OF  
11 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE AS DEFINED  
12 IN SECTION 235.22 OF THIS CHAPTER, CONVICTED OF USE OF A CHILD IN A  
13 SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF THIS CHAPTER OR  
14 CONVICTED OF FACILITATING A SEXUAL PERFORMANCE BY A CHILD WITH A  
15 CONTROLLED SUBSTANCE OR ALCOHOL AS DEFINED IN SECTION 263.30 OF THIS  
16 CHAPTER, THE SENTENCE SHALL BE LIFE IMPRISONMENT WITHOUT PAROLE.

17 S 2. Subdivision 5 of section 70.00 of the penal law, as amended by  
18 chapter 482 of the laws of 2009, is amended to read as follows:

19 5. Life imprisonment without parole. Notwithstanding any other  
20 provision of law, a defendant sentenced to life imprisonment without  
21 parole shall not be or become eligible for parole or conditional  
22 release. For purposes of commitment and custody, other than parole and  
23 conditional release, such sentence shall be deemed to be an indetermi-  
24 nate sentence. A defendant may be sentenced to life imprisonment with-  
25 out parole upon conviction for the crime of murder in the first degree  
26 as defined in section 125.27 of this chapter and in accordance with the  
27 procedures provided by law for imposing a sentence for such crime. A  
28 defendant must be sentenced to life imprisonment without parole upon  
29 conviction for the crime of terrorism as defined in section 490.25 of  
30 this chapter, where the specified offense the defendant committed is a  
31 class A-I felony; the crime of criminal possession of a chemical weapon  
32 or biological weapon in the first degree as defined in section 490.45 of  
33 this chapter; or the crime of criminal use of a chemical weapon or  
34 biological weapon in the first degree as defined in section 490.55 of  
35 this chapter; provided, however, that nothing in this subdivision shall  
36 preclude or prevent a sentence of death when the defendant is also  
37 convicted of the crime of murder in the first degree as defined in  
38 section 125.27 of this chapter. A defendant must be sentenced to life  
39 imprisonment without parole upon conviction for the crime of murder in  
40 the second degree as defined in subdivision five of section 125.25 of  
41 this chapter or for the crime of aggravated murder as defined in subdi-  
42 vision one of section 125.26 of this chapter. A defendant may be  
43 sentenced to life imprisonment without parole upon conviction for the  
44 crime of aggravated murder as defined in subdivision two of section  
45 125.26 of this chapter. A DEFENDANT MUST BE SENTENCED TO LIFE IMPRISON-  
46 MENT WITHOUT PAROLE UPON CONVICTION FOR THE CRIME OF RAPE OF A CHILD AS  
47 DEFINED IN SECTION 130.36 OF THIS CHAPTER, FOR THE CRIME OF CRIMINAL  
48 SEXUAL ACT AGAINST A CHILD AS DEFINED IN SECTION 130.51 OF THIS CHAPTER,  
49 FOR THE CRIME OF SEXUAL ABUSE OF A CHILD AS DEFINED IN SECTION 130.64 OF  
50 THIS CHAPTER, FOR THE CRIME OF AGGRAVATED SEXUAL ABUSE OF A CHILD AS  
51 DEFINED IN SECTION 130.71 OF THIS CHAPTER, FOR THE CRIME OF COURSE OF  
52 SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION  
53 130.75 OF THIS CHAPTER, FOR THE CRIME OF COURSE OF SEXUAL CONDUCT  
54 AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.80 OF  
55 THIS CHAPTER, FOR THE CRIME OF PREDATORY SEXUAL ASSAULT AGAINST A CHILD  
56 AS DEFINED IN SECTION 130.96 OF THIS CHAPTER, FOR THE CRIME OF PATRONIZ-

1   ING A PERSON FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION  
2   230.06 OF THIS CHAPTER, FOR THE CRIME OF AGGRAVATED PATRONIZING A MINOR  
3   FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.13 OF  
4   THIS CHAPTER, FOR THE CRIME OF PROMOTING PROSTITUTION IN THE FIRST  
5   DEGREE AS DEFINED IN SECTION 230.32 OF THIS CHAPTER, FOR THE CRIME OF  
6   COMPELLING PROSTITUTION AS DEFINED IN SECTION 230.33 OF THIS CHAPTER,  
7   FOR THE CRIME OF DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST  
8   DEGREE AS DEFINED IN SECTION 235.22 OF THIS CHAPTER, FOR THE CRIME OF  
9   USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF  
10   THIS CHAPTER, OR FOR THE CRIME OF FACILITATING A SEXUAL PERFORMANCE BY A  
11   CHILD WITH A CONTROLLED SUBSTANCE OR ALCOHOL AS DEFINED IN SECTION  
12   263.30 OF THIS CHAPTER.

13   S 3. Section 130.35 of the penal law, as amended by chapter 1 of the  
14   laws of 2000, is amended to read as follows:

15   S 130.35 Rape in the first degree.

16   A person is guilty of rape in the first degree when he or she engages  
17   in sexual intercourse with another person:

18   1. By forcible compulsion; or

19   2. Who is incapable of consent by reason of being physically help-  
20   less[; or

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

22   4. Who is less than thirteen years old and the actor is eighteen years  
23   old or more].

24   Rape in the first degree is a class B felony.

25   S 4. The penal law is amended by adding a new section 130.36 to read  
26   as follows:

27   S 130.36 RAPE OF A CHILD.

28   A PERSON IS GUILTY OF RAPE OF A CHILD WHEN HE OR SHE ENGAGES IN SEXUAL  
29   INTERCOURSE WITH ANOTHER PERSON:

30   1. WHO IS LESS THAN ELEVEN YEARS OLD; OR

31   2. WHO IS LESS THAN THIRTEEN YEARS OLD AND THE ACTOR IS EIGHTEEN YEARS  
32   OLD OR MORE.

33   RAPE OF A CHILD IS A CLASS A-I FELONY.

34   S 5. Section 130.50 of the penal law, as amended by chapter 264 of the  
35   laws of 2003, is amended to read as follows:

36   S 130.50 Criminal sexual act in the first degree.

37   A person is guilty of criminal sexual act in the first degree when he  
38   or she engages in oral sexual conduct or anal sexual conduct with another  
39   person:

40   1. By forcible compulsion; or

41   2. Who is incapable of consent by reason of being physically help-  
42   less[; or

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

44   4. Who is less than thirteen years old and the actor is eighteen years  
45   old or more].

46   Criminal sexual act in the first degree is a class B felony.

47   S 6. The penal law is amended by adding a new section 130.51 to read  
48   as follows:

49   S 130.51 CRIMINAL SEXUAL ACT AGAINST A CHILD.

50   A PERSON IS GUILTY OF CRIMINAL SEXUAL ACT AGAINST A CHILD WHEN HE OR  
51   SHE ENGAGES IN ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH ANOTHER  
52   PERSON:

53   1. WHO IS LESS THAN ELEVEN YEARS OLD; OR

54   2. WHO IS LESS THAN THIRTEEN YEARS OLD AND THE ACTOR IS EIGHTEEN YEARS  
55   OLD OR MORE.

56   CRIMINAL SEXUAL ACT AGAINST A CHILD IS A CLASS A-I FELONY.

1 S 7. Section 130.65 of the penal law, as amended by chapter 26 of the  
2 laws of 2011, is amended to read as follows:

3 S 130.65 Sexual abuse in the first degree.

4 A person is guilty of sexual abuse in the first degree when he or she  
5 subjects another person to sexual contact:

6 1. By forcible compulsion; or

7 2. When the other person is incapable of consent by reason of being  
8 physically helpless[; or

9 3. When the other person is less than eleven years old; or

10 4. When the other person is less than thirteen years old and the actor  
11 is twenty-one years old or older].

12 Sexual abuse in the first degree is a class D felony.

13 S 8. The penal law is amended by adding a new section 130.64 to read  
14 as follows:

15 S 130.64 SEXUAL ABUSE OF A CHILD.

16 A PERSON IS GUILTY OF SEXUAL ABUSE OF A CHILD WHEN HE OR SHE SUBJECTS  
17 ANOTHER PERSON TO SEXUAL CONTACT:

18 1. WHEN THE OTHER PERSON IS LESS THAN ELEVEN YEARS OLD; OR

19 2. WHEN THE OTHER PERSON IS LESS THAN THIRTEEN YEARS OLD AND THE ACTOR  
20 IS TWENTY-ONE YEARS OLD OR OLDER.

21 SEXUAL ABUSE OF A CHILD IS A CLASS A-I FELONY.

22 S 9. Section 130.67 of the penal law, as added by chapter 450 of the  
23 laws of 1988, the opening paragraph of subdivision 1 as amended by chap-  
24 ter 485 of the laws of 2009, is amended to read as follows:

25 S 130.67 Aggravated sexual abuse in the second degree.

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

29 (a) By forcible compulsion; or

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

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

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

35 Aggravated sexual abuse in the second degree is a class C felony.

36 S 10. Section 130.70 of the penal law, as amended by chapter 450 of  
37 the laws of 1988, the opening paragraph of subdivision 1 as amended by  
38 chapter 485 of the laws of 2009, is amended to read as follows:

39 S 130.70 Aggravated sexual abuse in the first degree.

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

43 (a) By forcible compulsion; or

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

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

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

49 Aggravated sexual abuse in the first degree is a class B felony.

50 S 11. The penal law is amended by adding a new section 130.71 to read  
51 as follows:

52 S 130.71 AGGRAVATED SEXUAL ABUSE OF A CHILD.

53 1. A PERSON IS GUILTY OF AGGRAVATED SEXUAL ABUSE OF A CHILD WHEN HE OR  
54 SHE INSERTS A FINGER OR FOREIGN OBJECT IN THE VAGINA, URETHRA, PENIS,  
55 RECTUM OR ANUS OF ANOTHER PERSON CAUSING PHYSICAL INJURY TO SUCH PERSON,  
56 WHEN SUCH PERSON IS LESS THAN ELEVEN YEARS OLD.

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

3 AGGRAVATED SEXUAL ABUSE OF A CHILD IS A CLASS A-I FELONY.

4 S 12. The closing paragraph of section 130.75 of the penal law, as  
5 amended by chapter 1 of the laws of 2000, is amended to read as follows:

6 Course of sexual conduct against a child in the first degree is a  
7 class [B] A-I felony.

8 S 13. The closing paragraph of section 130.80 of the penal law, as  
9 amended by chapter 1 of the laws of 2000, is amended to read as follows:

10 Course of sexual conduct against a child in the second degree is a  
11 class [D] A-I felony.

12 S 14. Section 130.96 of the penal law, as added by chapter 107 of the  
13 laws of 2006, is amended to read as follows:

14 S 130.96 Predatory sexual assault against a child.

15 A person is guilty of predatory sexual assault against a child when,  
16 being eighteen years old or more, he or she commits the crime of rape  
17 [in the first degree] OF A CHILD, criminal sexual act [in the first  
18 degree] AGAINST A CHILD, aggravated sexual abuse [in the first degree]  
19 OF A CHILD, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND  
20 DEGREE, or course of sexual conduct against a child in the first degree,  
21 as defined in this article, and the victim is less than thirteen years  
22 old.

23 Predatory sexual assault against a child is a class [A-II] A-I felony.

24 S 15. The closing paragraph of section 230.06 of the penal law, as  
25 amended by chapter 368 of the laws of 2015, is amended to read as  
26 follows:

27 Patronizing a person for prostitution in the first degree is a class  
28 [D] A-I felony.

29 S 16. The closing paragraph of section 230.13 of the penal law, as  
30 added by chapter 368 of the laws of 2015, is amended to read as follows:

31 Aggravated patronizing a minor for prostitution in the first degree is  
32 a class [B] A-I felony.

33 S 17. The closing paragraph of section 230.32 of the penal law, as  
34 added by chapter 627 of the laws of 1978, is amended to read as follows:

35 Promoting prostitution in the first degree is a class [B] A-I felony.

36 S 18. The closing paragraph of section 230.33 of the penal law, as  
37 amended by chapter 368 of the laws of 2015, is amended to read as  
38 follows:

39 Compelling prostitution is a class [B] A-I felony.

40 S 19. The closing paragraph of section 235.22 of the penal law, as  
41 added by chapter 600 of the laws of 1996, is amended to read as follows:

42 Disseminating indecent material to minors in the first degree is a  
43 class [D] A-I felony.

44 S 20. The closing paragraph of section 263.05 of the penal law, as  
45 amended by chapter 1 of the laws of 2000, is amended to read as follows:

46 Use of a child in a sexual performance is a class [C] A-I felony.

47 S 21. The closing paragraph of section 263.30 of the penal law, as  
48 added by chapter 431 of the laws of 2008, is amended to read as follows:

49 Facilitating a sexual performance by a child with a controlled  
50 substance or alcohol is a class [B] A-I felony.

51 S 22. This act shall take effect on the first of November next  
52 succeeding the date on which it shall have become a law and shall apply  
53 to offenses committed on or after such date.