

# STATE OF NEW YORK

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1849

2017-2018 Regular Sessions

## IN ASSEMBLY

January 13, 2017

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Introduced by M. of A. GUNTHER, GALEF, BENEDETTO, JAFFEE, HOOPER, McKEVITT, MONTESANO, GRAF, STEC -- Multi-Sponsored by -- M. of A. BARCLAY, CRESPO, CROUCH, DAVILA, GIGLIO, GOODELL, OAKS, PERRY, RIVERA, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to providing that an elementary or secondary school student shall be incapable of consenting to sexual conduct with a school employee

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 130.00 of the penal law is amended by adding a new  
2 subdivision 14 to read as follows:

3 14. "School employee" shall mean any person defined as an "employee"  
4 or "volunteer" pursuant to section eleven hundred twenty-five of the  
5 education law.

6 § 2. Paragraph (i) of subdivision 3 of section 130.05 of the penal  
7 law, as added by section 2 of part G of chapter 501 of the laws of 2012,  
8 is amended and a new paragraph (j) is added to read as follows:

9 (i) a resident or inpatient of a residential facility operated,  
10 licensed or certified by (i) the office of mental health; (ii) the  
11 office for people with developmental disabilities; or (iii) the office  
12 of alcoholism and substance abuse services, and the actor is an employee  
13 of the facility not married to such resident or inpatient. For purposes  
14 of this paragraph, "employee" means either: an employee of the agency  
15 operating the residential facility, who knows or reasonably should know  
16 that such person is a resident or inpatient of such facility and who  
17 provides direct care services, case management services, medical or  
18 other clinical services, habilitative services or direct supervision of  
19 the residents in the facility in which the resident resides; or an officer  
20 or other employee, consultant, contractor or volunteer of the residential  
21 facility, who knows or reasonably should know that the person is  
22 a resident of such facility and who is in direct contact with residents

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

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1 or inpatients; provided, however, that the provisions of this paragraph  
2 shall only apply to a consultant, contractor or volunteer providing  
3 services pursuant to a contractual arrangement with the agency operating  
4 the residential facility or, in the case of a volunteer, a written  
5 agreement with such facility, provided that the person received written  
6 notice concerning the provisions of this paragraph; provided further,  
7 however, "employee" shall not include a person with a developmental  
8 disability who is or was receiving services and is also an employee of a  
9 service provider and who has sexual contact with another service recipi-  
10 ent who is a consenting adult who has consented to such contact[~~-~~]; or

11 (j) a student at an elementary or secondary school, and the actor:

12 (i) is a school employee at the same school or co-located school such  
13 student attends, and

14 (ii) is eighteen years of age or older and more than four years older  
15 than such student at the time of the act, and

16 (iii) is not married to such student, and

17 (iv) knows or reasonably should know that such person is a student at  
18 such school or co-located school, and

19 (v) he or she is not a student at the same school.

20 § 3. This act shall take effect on the first of November next succeed-  
21 ing the date on which it shall have become a law.