

STATE OF NEW YORK

677

2017-2018 Regular Sessions

IN ASSEMBLY

January 9, 2017

Introduced by M. of A. RODRIGUEZ -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law, in relation to deeming students who
engage in sexual conduct with an employee or volunteer of the school
such student attends as being incapable of consent

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

1 Section 1. Paragraph (i) of subdivision 3 of section 130.05 of the
2 penal law, as added by section 2 of part G of chapter 501 of the laws of
3 2012, is amended and a new paragraph (j) is added to read as follows:
4 (i) a resident or inpatient of a residential facility operated,
5 licensed or certified by (i) the office of mental health; (ii) the
6 office for people with developmental disabilities; or (iii) the office
7 of alcoholism and substance abuse services, and the actor is an employee
8 of the facility not married to such resident or inpatient. For purposes
9 of this paragraph, "employee" means either: an employee of the agency
10 operating the residential facility, who knows or reasonably should know
11 that such person is a resident or inpatient of such facility and who
12 provides direct care services, case management services, medical or
13 other clinical services, habilitative services or direct supervision of
14 the residents in the facility in which the resident resides; or an offi-
15 cer, or other employee, consultant, contractor or volunteer of the resi-
16 dential facility, who knows or reasonably should know that the person is
17 a resident of such facility and who is in direct contact with residents
18 or inpatients; provided, however, that the provisions of this paragraph
19 shall only apply to a consultant, contractor or volunteer providing
20 services pursuant to a contractual arrangement with the agency operating
21 the residential facility or, in the case of a volunteer, a written
22 agreement with such facility, provided that the person received written
23 notice concerning the provisions of this paragraph; provided further,
24 however, "employee" shall not include a person with a developmental

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

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1 disability who is or was receiving services and is also an employee of a
2 service provider and who has sexual contact with another service recipi-
3 ent who is a consenting adult who has consented to such contact[-]; or
4 (j) a student enrolled in an elementary or secondary school in this
5 state, regardless of age, who is engaged in sexual conduct as defined in
6 subdivision ten of section 130.00 of this article with an employee or
7 volunteer of the school attended by such student. For purposes of this
8 paragraph, "employee" means any person receiving compensation to provide
9 services to such school, whereby such services performed by such person
10 involve direct student contact. "Volunteer" means any person, other than
11 an employee, who provides services to such school, which involves direct
12 student contact.
13 § 2. This act shall take effect on the thirtieth day after it shall
14 have become a law.