

# STATE OF NEW YORK

6152--A

2017-2018 Regular Sessions

## IN SENATE

May 11, 2017

Introduced by Sen. LANZA -- 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 making certain sex offenses committed against a child or a mentally disabled person class A-I felonies for which a sentence of life imprisonment without parole shall be imposed; and to repeal certain provisions of such law relating to sex offenses committed against children or the mentally disabled

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

1 Section 1. Section 60.06 of the penal law, as amended by chapter 482  
2 of the laws of 2009, is amended to read as follows:  
3 § 60.06 Authorized disposition; murder in the first degree offenders;  
4 aggravated murder offenders; certain murder in the second  
5 degree offenders; certain sex offenders; certain terrorism  
6 offenders; criminal possession of a chemical weapon or biolog-  
7 ical weapon offenders; criminal use of a chemical weapon or  
8 biological weapon offenders.  
9 When a defendant is convicted of murder in the first degree as defined  
10 in section 125.27 of this chapter, the court shall, in accordance with  
11 the provisions of section 400.27 of the criminal procedure law, sentence  
12 the defendant to death, to life imprisonment without parole in accord-  
13 ance with subdivision five of section 70.00 of this title, or to a term  
14 of imprisonment for a class A-I felony other than a sentence of life  
15 imprisonment without parole, in accordance with subdivisions one through  
16 three of section 70.00 of this title. When a person is convicted of  
17 murder in the second degree as defined in subdivision five of section  
18 125.25 of this chapter or of the crime of aggravated murder as defined  
19 in subdivision one of section 125.26 of this chapter, the court shall  
20 sentence the defendant to life imprisonment without parole in accordance  
21 with subdivision five of section 70.00 of this title. When a defendant

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

LBD11643-02-8

1 is convicted of aggravated rape as defined in section 130.36, aggravated  
2 criminal sexual act as defined in section 130.51 or course of sexual  
3 conduct against a child in the first degree as defined in section 130.75  
4 of this chapter, the court shall sentence the defendant to life impri-  
5 sonment without parole in accordance with subdivision five of section  
6 70.00 of this title. When a defendant is convicted of the crime of  
7 terrorism as defined in section 490.25 of this chapter, and the speci-  
8 fied offense the defendant committed is a class A-I felony offense, or  
9 when a defendant is convicted of the crime of criminal possession of a  
10 chemical weapon or biological weapon in the first degree as defined in  
11 section 490.45 of this chapter, or when a defendant is convicted of the  
12 crime of criminal use of a chemical weapon or biological weapon in the  
13 first degree as defined in section 490.55 of this chapter, the court  
14 shall sentence the defendant to life imprisonment without parole in  
15 accordance with subdivision five of section 70.00 of this title;  
16 provided, however, that nothing in this section shall preclude or  
17 prevent a sentence of death when the defendant is also convicted of  
18 murder in the first degree as defined in section 125.27 of this chapter.  
19 When a defendant is convicted of aggravated murder as defined in subdi-  
20 vision two of section 125.26 of this chapter, the court shall sentence  
21 the defendant to life imprisonment without parole or to a term of impri-  
22 sonment for a class A-I felony other than a sentence of life imprison-  
23 ment without parole, in accordance with subdivisions one through three  
24 of section 70.00 of this title.

25 § 2. Subdivision 5 of section 70.00 of the penal law, as amended by  
26 chapter 482 of the laws of 2009, is amended to read as follows:

27 5. Life imprisonment without parole. Notwithstanding any other  
28 provision of law, a defendant sentenced to life imprisonment without  
29 parole shall not be or become eligible for parole or conditional  
30 release. For purposes of commitment and custody, other than parole and  
31 conditional release, such sentence shall be deemed to be an indetermi-  
32 nate sentence. A defendant may be sentenced to life imprisonment with-  
33 out parole upon conviction for the crime of murder in the first degree  
34 as defined in section 125.27 of this chapter and in accordance with the  
35 procedures provided by law for imposing a sentence for such crime. A  
36 defendant must be sentenced to life imprisonment without parole upon  
37 conviction for the crime of terrorism as defined in section 490.25 of  
38 this chapter, where the specified offense the defendant committed is a  
39 class A-I felony; the crime of criminal possession of a chemical weapon  
40 or biological weapon in the first degree as defined in section 490.45 of  
41 this chapter; or the crime of criminal use of a chemical weapon or  
42 biological weapon in the first degree as defined in section 490.55 of  
43 this chapter; provided, however, that nothing in this subdivision shall  
44 preclude or prevent a sentence of death when the defendant is also  
45 convicted of the crime of murder in the first degree as defined in  
46 section 125.27 of this chapter. A defendant must be sentenced to life  
47 imprisonment without parole upon conviction for the crime of murder in  
48 the second degree as defined in subdivision five of section 125.25 of  
49 this chapter or for the crime of aggravated murder as defined in subdi-  
50 vision one of section 125.26 of this chapter. A defendant may be  
51 sentenced to life imprisonment without parole upon conviction for the  
52 crime of aggravated murder as defined in subdivision two of section  
53 125.26 of this chapter. A defendant must be sentenced to life imprison-  
54 ment without parole upon conviction of the crime of aggravated rape as  
55 defined in section 130.36, aggravated criminal sexual act as defined in

1 section 130.51, or course of sexual conduct against a child in the first  
2 degree as defined in section 130.75 of this chapter.

3 § 3. Subdivision 5 of section 70.00 of the penal law, as amended by  
4 section 40-a of part WWW of chapter 59 of the laws of 2017, is amended  
5 to read as follows:

6 5. Life imprisonment without parole. Notwithstanding any other  
7 provision of law, a defendant sentenced to life imprisonment without  
8 parole shall not be or become eligible for parole or conditional  
9 release. For purposes of commitment and custody, other than parole and  
10 conditional release, such sentence shall be deemed to be an indetermi-  
11 nate sentence. A defendant may be sentenced to life imprisonment without  
12 parole upon conviction for the crime of murder in the first degree as  
13 defined in section 125.27 of this chapter and in accordance with the  
14 procedures provided by law for imposing a sentence for such crime. A  
15 defendant who was eighteen years of age or older at the time of the  
16 commission of the crime must be sentenced to life imprisonment without  
17 parole upon conviction for the crime of terrorism as defined in section  
18 490.25 of this chapter, where the specified offense the defendant  
19 committed is a class A-I felony; the crime of criminal possession of a  
20 chemical weapon or biological weapon in the first degree as defined in  
21 section 490.45 of this chapter; or the crime of criminal use of a chemi-  
22 cal weapon or biological weapon in the first degree as defined in  
23 section 490.55 of this chapter; provided, however, that nothing in this  
24 subdivision shall preclude or prevent a sentence of death when the  
25 defendant is also convicted of the crime of murder in the first degree  
26 as defined in section 125.27 of this chapter. A defendant who was seven-  
27 teen years of age or younger at the time of the commission of the crime  
28 may be sentenced, in accordance with law, to the applicable indetermi-  
29 nate sentence with a maximum term of life imprisonment. A defendant must  
30 be sentenced to life imprisonment without parole upon conviction for the  
31 crime of murder in the second degree as defined in subdivision five of  
32 section 125.25 of this chapter or for the crime of aggravated murder as  
33 defined in subdivision one of section 125.26 of this chapter. A defend-  
34 ant may be sentenced to life imprisonment without parole upon conviction  
35 for the crime of aggravated murder as defined in subdivision two of  
36 section 125.26 of this chapter. A defendant must be sentenced to life  
37 imprisonment without parole upon conviction of the crime of aggravated  
38 rape as defined in section 130.36, aggravated criminal sexual act as  
39 defined in section 130.51, or course of sexual conduct against a child  
40 in the first degree as defined in section 130.75 of this chapter.

41 § 4. Section 130.30 of the penal law is REPEALED.

42 § 5. Section 130.35 of the penal law, as amended by chapter 1 of the  
43 laws of 2000, is amended to read as follows:

44 § 130.35 Rape in the first degree.

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

- 47 1. By forcible compulsion; or
- 48 2. Who is incapable of consent by reason of being physically help-  
49 less[~~, or~~
- 50 ~~3. Who is less than eleven years old; or~~
- 51 ~~4. Who is less than thirteen years old and the actor is eighteen years~~  
52 ~~old or more].~~

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

54 § 6. The penal law is amended by adding a new section 130.36 to read  
55 as follows:

56 § 130.36 Aggravated rape.

A person is guilty of aggravated rape when:

1. being eighteen years or more, he or she engages in sexual intercourse with another person less than fifteen years old; or

2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated; or

3. he or she engages in sexual intercourse with another person who is less than thirteen years old.

It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense.

Aggravated rape is a class A-I felony.

§ 7. Section 130.45 of the penal law is REPEALED.

§ 8. Section 130.50 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

§ 130.50 Criminal sexual act in the first degree.

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

1. By forcible compulsion; or

2. Who is incapable of consent by reason of being physically helpless[~~;~~ ~~or~~

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

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

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

§ 9. The penal law is amended by adding a new section 130.51 to read as follows:

§ 130.51 Aggravated criminal sexual act.

A person is guilty of aggravated criminal sexual act when:

1. being eighteen years or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or

2. he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated; or

3. he or she engages in oral sexual conduct or anal sexual conduct with another person who is less than thirteen years old.

It shall be an affirmative defense to the offense of aggravated criminal sexual act as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense.

Aggravated criminal sexual act is a class A-I felony.

§ 10. The closing paragraph of section 130.75 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

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

§ 11. Section 130.96 of the penal law is REPEALED.

§ 12. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to offenses committed on or after such effective date; provided, however, that if section 40-a of part WWW of chapter 59 of the laws of 2017 shall not have taken effect on or before such date, then section three of this act shall take effect on the same date and in the same manner as such section of such part of such chapter of the laws of 2017 takes effect.