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 Assembly, do enact as follows:

Section 1. Paragraph (i) of subdivision 3 of section 130.05 of the penal law, as added by section 2 of part G of chapter 501 of the laws of 2012, is amended and a new paragraph (j) is added to read as follows:

(i) a resident or inpatient of a residential facility operated, licensed or certified by (i) the office of mental health; (ii) the office for people with developmental disabilities; or (iii) the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes of this paragraph, "employee" means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, habilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility and who is in direct contact with residents or inpatients; provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the provisions of this paragraph; provided further, 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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disability who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient who is a consenting adult who has consented to such contact[.]; or

(j) a student enrolled in an elementary or secondary school in this state, regardless of age, who is engaged in sexual conduct as defined in subdivision ten of section 130.00 of this article with an employee or volunteer of the school attended by such student. For purposes of this paragraph, "employee" means any person receiving compensation to provide services to such school, whereby such services performed by such person involve direct student contact. "Volunteer" means any person, other than an employee, who provides services to such school, which involves direct student contact.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.