STATE OF NEW YORK

8442--A

2017-2018 Regular Sessions

IN ASSEMBLY

June 16, 2017

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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:

Section 1. Section 60.06 of the penal law, as amended by chapter 482 of the laws of 2009, is amended to read as follows:

§ 60.06 Authorized disposition; murder in the first degree offenders; aggravated murder offenders; certain murder in the second degree offenders; **certain sex offenders;** certain terrorism offenders; criminal possession of a chemical weapon or biological weapon offenders; criminal use of a chemical weapon or biological weapon offenders.

When a defendant is convicted of murder in the first degree as defined in section 125.27 of this chapter, the court shall, in accordance with the provisions of section 400.27 of the criminal procedure law, sentence the defendant to death, to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title, or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment without parole, in accordance with subdivisions one through three of section 70.00 of this title. When a person is convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or of the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title. **When a defendant is convicted of aggravated rape as defined in section 130.36, aggravated**

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

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criminal sexual act as defined in section 130.51 or course of sexual conduct against a child in the first degree as defined in section 130.75 of this chapter, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title. When a defendant is convicted of the crime of terrorism as defined in section 490.25 of this chapter, and the specified offense the defendant committed is a class A-I felony offense, or when a defendant is convicted of the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter, or when a defendant is convicted of the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title; provided, however, that nothing in this section shall preclude or prevent a sentence of death when the defendant is also convicted of murder in the first degree as defined in section 125.27 of this chapter. When a defendant is convicted of aggravated murder as defined in subdivision two of section 125.26 of this chapter, the court shall sentence the defendant to life imprisonment without parole or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment without parole, in accordance with subdivisions one through three of section 70.00 of this title.

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

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the procedures provided by law for imposing a sentence for such crime. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter. A defendant must be sentenced to life imprisonment without parole upon conviction of the crime of aggravated rape as defined in section 130.36, aggravated criminal sexual act as defined in section 130.51, or course of sexual conduct against a child in the first degree as defined in section 130.75 of this chapter.

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

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the procedures provided by law for imposing a sentence for such crime. A defendant who was eighteen years of age or older at the time of the commission of the crime must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant who was seventeen years of age or younger at the time of the commission of the crime may be sentenced, in accordance with law, to the applicable indeterminate sentence with a maximum term of life imprisonment. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter**. A defendant must be sentenced to life imprisonment without parole upon conviction of the crime of aggravated rape as defined in section 130.36, aggravated criminal sexual act as defined in section 130.51, or course of sexual conduct against a child in the first degree as defined in section 130.75 of this chapter**.

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

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

§ 130.35 Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in sexual intercourse 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~~].

Rape in the first degree is a class B felony.

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

§ 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.