STATE OF NEW YORK

6169--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 sex offenses, prostitution offenses, obscenity offenses and sexual performance by a child offense committed against a minor

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

Section 1. Subparagraph (i) of paragraph (a) of subdivision 3 of section 70.00 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(i) For a class A-I felony, such minimum period shall not be less than fifteen years nor more than twenty-five years; provided, however, that (A) where a sentence, other than a sentence of death or life imprisonment without parole, is imposed upon a defendant convicted of murder in the first degree as defined in section 125.27 of this chapter such minimum period shall be not less than twenty years nor more than twenty-five years, and, (B) where a sentence is imposed upon a defendant convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or convicted of aggravated murder as defined in section 125.26 of this chapter, the sentence shall be life imprisonment without parole, and, (C) where a sentence is imposed upon a defendant convicted of attempted murder in the first degree as defined in article one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a) of subdivision one and paragraph (b) of subdivision one of section 125.27 of this chapter or attempted aggravated murder as defined in article one hundred ten of this chapter and section 125.26 of this chapter such minimum period shall be not less than twenty years nor more than forty years**, and, (D) where a sentence is imposed upon a defendant**

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

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convicted of rape of a child as defined in section 130.36 of this chapter, convicted of criminal sexual act against a child as defined in section 130.51 of this chapter, convicted of sexual abuse of a child as defined in section 130.64 of this chapter, convicted of aggravated sexual abuse of a child as defined in section 130.71 of this chapter, convicted of course of sexual conduct against a child in the first degree as defined in section 130.75 of this chapter, convicted of course of sexual conduct against a child in the second degree as defined in section 130.80 of this chapter, convicted of predatory sexual assault against a child as defined in section 130.96 of this chapter, convicted of patronizing a person for prostitution in the first degree as defined in section 230.06 of this chapter, convicted of aggravated patronizing a minor for prostitution in the first degree as defined in section 230.13 of this chapter, convicted of promoting prostitution in the first degree as defined in section 230.32 of this chapter, convicted of compelling prostitution as defined in section 230.33 of this chapter, convicted of disseminating indecent material to minors in the first degree as defined in section 235.22 of this chapter, convicted of use of a child in a sexual performance as defined in section 263.05 of this chapter or convicted of facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of this chapter, the sentence shall be life imprisonment without parole.

§ 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 for the crime of rape of a child as defined in section 130.36 of this chapter, for the crime of criminal sexual act against a child as defined in section 130.51 of this chapter, for the crime of sexual abuse of a child as defined in section 130.64 of this chapter, for the crime of aggravated sexual abuse of a child as

defined in section 130.71 of this chapter, for the crime of course of sexual conduct against a child in the first degree as defined in section 130.75 of this chapter, for the crime of course of sexual conduct against a child in the second degree as defined in section 130.80 of this chapter, for the crime of predatory sexual assault against a child as defined in section 130.96 of this chapter, for the crime of patronizing a person for prostitution in the first degree as defined in section 230.06 of this chapter, for the crime of aggravated patronizing a minor for prostitution in the first degree as defined in section 230.13 of this chapter, for the crime of promoting prostitution in the first degree as defined in section 230.32 of this chapter, for the crime of compelling prostitution as defined in section 230.33 of this chapter, for the crime of disseminating indecent material to minors in the first degree as defined in section 235.22 of this chapter, for the crime of use of a child in a sexual performance as defined in section 263.05 of this chapter, or for the crime of facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 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 for the crime of rape of a child as defined in section 130.36 of this chapter, for the crime of criminal sexual act against a child as defined in section 130.51 of this chapter, for the crime of sexual abuse of a child as defined in section

130.64 of this chapter, for the crime of aggravated sexual abuse of a child as defined in section 130.71 of this chapter, for the crime of course of sexual conduct against a child in the first degree as defined in section 130.75 of this chapter, for the crime of course of sexual conduct against a child in the second degree as defined in section 130.80 of this chapter, for the crime of predatory sexual assault against a child as defined in section 130.96 of this chapter, for the crime of patronizing a person for prostitution in the first degree as defined in section 230.06 of this chapter, for the crime of aggravated patronizing a minor for prostitution in the first degree as defined in section 230.13 of this chapter, for the crime of promoting prostitution in the first degree as defined in section 230.32 of this chapter, for the crime of compelling prostitution as defined in section 230.33 of this chapter, for the crime of disseminating indecent material to minors in the first degree as defined in section 235.22 of this chapter, for the crime of use of a child in a sexual performance as defined in section 263.05 of this chapter, or for the crime of facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of this chapter.

§ 4. 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.

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

§ 130.36 Rape of a child.

A person is guilty of rape of a child when he or she engages in sexual intercourse with another person:

1. Who is less than eleven years old; or

2. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape of a child is a class A-I felony.

§ 6. 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.

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

§ 130.51 Criminal sexual act against a child.

A person is guilty of criminal sexual act against a child when he or she engages in oral sexual conduct or anal sexual conduct with another person:

1. Who is less than eleven years old; or

2. Who is less than thirteen years old and the actor is eighteen years old or more.

Criminal sexual act against a child is a class A-I felony.

§ 8. Section 130.65 of the penal law, as amended by chapter 26 of the laws of 2011, is amended to read as follows:

§ 130.65 Sexual abuse in the first degree.

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or

2. When the other person is incapable of consent by reason of being physically helpless[~~; or~~

~~3. When the other person is less than eleven years old; or~~

~~4. When the other person is less than thirteen years old and the actor is twenty-one years old or older~~].

Sexual abuse in the first degree is a class D felony.

§ 9. The penal law is amended by adding a new section 130.64 to read as follows:

§ 130.64 Sexual abuse of a child.

A person is guilty of sexual abuse of a child when he or she subjects another person to sexual contact:

1. When the other person is less than eleven years old; or

2. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse of a child is a class A-I felony.

§ 10. Section 130.67 of the penal law, as added by chapter 450 of the laws of 1988, the opening paragraph of subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

§ 130.67 Aggravated sexual abuse in the second degree.

1. A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless[~~; or~~

~~(c) When the other person is less than eleven years old~~].

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the second degree is a class C felony.

§ 11. Section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, the opening paragraph of subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

§ 130.70 Aggravated sexual abuse in the first degree.

1. A person is guilty of aggravated sexual abuse in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless[~~; or~~

~~(c) When the other person is less than eleven years old~~].

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the first degree is a class B felony.

§ 12. The penal law is amended by adding a new section 130.71 to read as follows:

§ 130.71 Aggravated sexual abuse of a child.

1. A person is guilty of aggravated sexual abuse of a child when he or she inserts a finger or foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person, when such person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse of a child is a class A-I felony.

§ 13. 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.

§ 14. The closing paragraph of section 130.80 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 second degree is a class [~~D~~] **A-I** felony.

§ 15. Section 130.96 of the penal law, as added by chapter 107 of the laws of 2006, is amended to read as follows:

§ 130.96 Predatory sexual assault against a child.

A person is guilty of predatory sexual assault against a child when, being eighteen years old or more, he or she commits the crime of rape [~~in the first degree~~] **of a child**, criminal sexual act [~~in the first degree~~] **against a child**, aggravated sexual abuse [~~in the first degree~~] **of a child, course of sexual conduct against a child in the second degree**, or course of sexual conduct against a child in the first degree, as defined in this article, and the victim is less than thirteen years old.

Predatory sexual assault against a child is a class [~~A-II~~] **A-I** felony.

§ 16. The closing paragraph of section 230.06 of the penal law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

Patronizing a person for prostitution in the first degree is a class [~~D~~] **A-I** felony.

§ 17. The closing paragraph of section 230.13 of the penal law, as added by chapter 368 of the laws of 2015, is amended to read as follows:

Aggravated patronizing a minor for prostitution in the first degree is a class [~~B~~] **A-I** felony.

§ 18. The closing paragraph of section 230.32 of the penal law, as added by chapter 627 of the laws of 1978, is amended to read as follows:

Promoting prostitution in the first degree is a class [~~B~~] **A-I** felony.

§ 19. The closing paragraph of section 230.33 of the penal law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

Compelling prostitution is a class [~~B~~] **A-I** felony.

§ 20. The closing paragraph of section 235.22 of the penal law, as added by chapter 600 of the laws of 1996, is amended to read as follows:

Disseminating indecent material to minors in the first degree is a class [~~D~~] **A-I** felony.

§ 21. The closing paragraph of section 263.05 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

Use of a child in a sexual performance is a class [~~C~~] **A-I** felony.

§ 22. The closing paragraph of section 263.30 of the penal law, as added by chapter 431 of the laws of 2008, is amended to read as follows:

Facilitating a sexual performance by a child with a controlled substance or alcohol is a class [~~B~~] A-I felony.

§ 23. 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 date; provided, however, that section three of this act shall take effect on the same date and in the same manner as section 40-a of part WWW of chapter 59 of the laws of 2017 takes effect.