

# STATE OF NEW YORK

2043

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

Introduced by M. of A. GUNTHER, GALEF, BENEDETTO, JAFFEE, MONTESANO, STEC -- Multi-Sponsored by -- M. of A. BARCLAY, CRESPO, DAVILA, GIGLIO, GOODELL, PERRY, RIVERA, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to providing that an elementary or secondary school student shall be incapable of consenting to sexual conduct with a school employee

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

Section 1. Section 130.00 of the penal law is amended by adding a new subdivision 14 to read as follows:

14. "School employee" shall mean any person defined as an "employee" or "volunteer" pursuant to section eleven hundred twenty-five of the education law.

§ 2. Paragraphs (i) and (j) of subdivision 3 of section 130.05 of the penal law, paragraph (i) as amended and paragraph (j) as added by section 1 of part JJ of chapter 55 of the laws of 2018, are amended and a new paragraph (k) 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

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

LBD01866-01-9

1 a resident of such facility and who is in direct contact with residents  
2 or inpatients; provided, however, that the provisions of this paragraph  
3 shall only apply to a consultant, contractor or volunteer providing  
4 services pursuant to a contractual arrangement with the agency operating  
5 the residential facility or, in the case of a volunteer, a written  
6 agreement with such facility, provided that the person received written  
7 notice concerning the provisions of this paragraph; provided further,  
8 however, "employee" shall not include a person with a developmental  
9 disability who is or was receiving services and is also an employee of a  
10 service provider and who has sexual contact with another service recipi-  
11 ent who is a consenting adult who has consented to such contact; ~~[ex]~~

12 (j) detained or otherwise in the custody of a police officer, peace  
13 officer, or other law enforcement official and the actor is a police  
14 officer, peace officer or other law enforcement official who either: (i)  
15 is detaining or maintaining custody of such person; or (ii) knows, or  
16 reasonably should know, that at the time of the offense, such person was  
17 detained or in custody~~[+]~~; or

18 (k) a student at an elementary or secondary school, and the actor:

19 (i) is a school employee at the same school or co-located school such  
20 student attends, and

21 (ii) is eighteen years of age or older and more than four years older  
22 than such student at the time of the act, and

23 (iii) is not married to such student, and

24 (iv) knows or reasonably should know that such person is a student at  
25 such school or co-located school, and

26 (v) he or she is not a student at the same school.

27 § 3. This act shall take effect on the first of November next succeed-  
28 ing the date on which it shall have become a law.