

STATE OF NEW YORK

5703

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. GIGLIO, BRABENEC, DeSTEFANO, FINCH, KOLB, LAWRENCE, McDONOUGH, B. MILLER, MORINELLO, RAIA, REILLY, SAYEGH, TAGUE -- Multi-Sponsored by -- M. of A. CROUCH, HAWLEY, MIKULIN -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, the penal law and the family court act, in relation to providing juvenile offender status to persons thirteen, fourteen or fifteen years of age who have committed certain sex offenses

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

1 Section 1. Subdivision 42 of section 1.20 of the criminal procedure
2 law, as amended by chapter 7 of the laws of 2007, is amended to read as
3 follows:

4 42. "Juvenile offender" means (1) a person, thirteen years old who is
5 criminally responsible for acts constituting murder in the second degree
6 as defined in subdivisions one and two of section 125.25 of the penal
7 law~~[-]~~; subdivisions one and two of section 130.35 (rape in the first
8 degree); subdivisions one and two of section 130.50 (criminal sexual act
9 in the first degree); section 130.70 (aggravated sexual abuse in the
10 first degree) of the penal law; or such conduct as a sexually motivated
11 felony, where authorized pursuant to section 130.91 of the penal law;
12 and (2) a person fourteen or fifteen years old who is criminally respon-
13 sible for acts constituting the crimes defined in subdivisions one and
14 two of section 125.25 (murder in the second degree) and in subdivision
15 three of such section provided that the underlying crime for the murder
16 charge is one for which such person is criminally responsible; section
17 135.25 (kidnapping in the first degree); 150.20 (arson in the first
18 degree); subdivisions one and two of section 120.10 (assault in the
19 first degree); 125.20 (manslaughter in the first degree); subdivisions
20 one and two of section 130.35 (rape in the first degree); subdivisions
21 one and two of section 130.50 (criminal sexual act in the first degree);

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

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1 section 130.66 (aggravated sexual abuse in the third degree); section
2 130.67 (aggravated sexual abuse in the second degree); 130.70 (aggra-
3 vated sexual abuse in the first degree); 140.30 (burglary in the first
4 degree); subdivision one of section 140.25 (burglary in the second
5 degree); 150.15 (arson in the second degree); 160.15 (robbery in the
6 first degree); subdivision two of section 160.10 (robbery in the second
7 degree) of the penal law; or section 265.03 of the penal law, where such
8 machine gun or such firearm is possessed on school grounds, as that
9 phrase is defined in subdivision fourteen of section 220.00 of the penal
10 law; or defined in the penal law as an attempt to commit murder in the
11 second degree or kidnapping in the first degree, or such conduct as a
12 sexually motivated felony, where authorized pursuant to section 130.91
13 of the penal law.

14 § 2. Subdivision (a) of section 190.71 of the criminal procedure law,
15 as amended by chapter 7 of the laws of 2007, is amended to read as
16 follows:

17 (a) Except as provided in subdivision six of section 200.20 of this
18 chapter, a grand jury may not indict (i) a person thirteen years of age
19 for any conduct or crime other than conduct constituting a crime defined
20 in subdivisions one and two of section 125.25 (murder in the second
21 degree); subdivisions one and two of section 130.35 (rape in the first
22 degree); subdivisions one and two of section 130.50 (criminal sexual act
23 in the first degree); section 130.70 (aggravated sexual abuse in the
24 first degree); or such conduct as a sexually motivated felony, where
25 authorized pursuant to section 130.91 of the penal law; (ii) a person
26 fourteen or fifteen years of age for any conduct or crime other than
27 conduct constituting a crime defined in subdivisions one and two of
28 section 125.25 (murder in the second degree) and in subdivision three of
29 such section provided that the underlying crime for the murder charge is
30 one for which such person is criminally responsible; 135.25 (kidnapping
31 in the first degree); 150.20 (arson in the first degree); subdivisions
32 one and two of section 120.10 (assault in the first degree); 125.20
33 (manslaughter in the first degree); subdivisions one and two of section
34 130.35 (rape in the first degree); subdivisions one and two of section
35 130.50 (criminal sexual act in the first degree); section 130.66 (aggra-
36 vated sexual abuse in the third degree); section 130.67 (aggravated
37 sexual abuse in the second degree); 130.70 (aggravated sexual abuse in
38 the first degree); 140.30 (burglary in the first degree); subdivision
39 one of section 140.25 (burglary in the second degree); 150.15 (arson in
40 the second degree); 160.15 (robbery in the first degree); subdivision
41 two of section 160.10 (robbery in the second degree) of the penal law;
42 subdivision four of section 265.02 of the penal law, where such firearm
43 is possessed on school grounds, as that phrase is defined in subdivision
44 fourteen of section 220.00 of the penal law; or section 265.03 of the
45 penal law, where such machine gun or such firearm is possessed on school
46 grounds, as that phrase is defined in subdivision fourteen of section
47 220.00 of the penal law; or defined in the penal law as an attempt to
48 commit murder in the second degree or kidnapping in the first degree, or
49 such conduct as a sexually motivated felony, where authorized pursuant
50 to section 130.91 of the penal law.

51 § 3. Subdivision 18 of section 10.00 of the penal law, as amended by
52 chapter 7 of the laws of 2007, is amended to read as follows:

53 18. "Juvenile offender" means (1) a person thirteen years old who is
54 criminally responsible for acts constituting murder in the second degree
55 as defined in subdivisions one and two of section 125.25 of this
56 chapter; subdivisions one and two of section 130.35 (rape in the first

1 degree); subdivisions one and two of section 130.50 (criminal sexual act
2 in the first degree); section 130.70 (aggravated sexual abuse in the
3 first degree) of this chapter; or such conduct as a sexually motivated
4 felony, where authorized pursuant to section 130.91 of [~~the penal law~~]
5 this chapter; and

6 (2) a person fourteen or fifteen years old who is criminally responsi-
7 ble for acts constituting the crimes defined in subdivisions one and two
8 of section 125.25 (murder in the second degree) and in subdivision three
9 of such section provided that the underlying crime for the murder charge
10 is one for which such person is criminally responsible; section 135.25
11 (kidnapping in the first degree); 150.20 (arson in the first degree);
12 subdivisions one and two of section 120.10 (assault in the first
13 degree); 125.20 (manslaughter in the first degree); subdivisions one and
14 two of section 130.35 (rape in the first degree); subdivisions one and
15 two of section 130.50 (criminal sexual act in the first degree); section
16 130.66 (aggravated sexual abuse in the third degree); section 130.67
17 (aggravated sexual abuse in the second degree); 130.70 (aggravated sexu-
18 al abuse in the first degree); 140.30 (burglary in the first degree);
19 subdivision one of section 140.25 (burglary in the second degree);
20 150.15 (arson in the second degree); 160.15 (robbery in the first
21 degree); subdivision two of section 160.10 (robbery in the second
22 degree) of this chapter; or section 265.03 of this chapter, where such
23 machine gun or such firearm is possessed on school grounds, as that
24 phrase is defined in subdivision fourteen of section 220.00 of this
25 chapter; or defined in this chapter as an attempt to commit murder in
26 the second degree or kidnapping in the first degree, or such conduct as
27 a sexually motivated felony, where authorized pursuant to section 130.91
28 of [~~the penal law~~] this chapter.

29 § 4. Subdivision 2 of section 30.00 of the penal law, as amended by
30 section 38 of part WWW of chapter 59 of the laws of 2017, is amended to
31 read as follows:

32 2. A person thirteen, fourteen or, fifteen years of age is criminally
33 responsible for acts constituting murder in the second degree as defined
34 in subdivisions one and two of section 125.25 and in subdivision three
35 of such section provided that the underlying crime for the murder charge
36 is one for which such person is criminally responsible or for such
37 conduct as a sexually motivated felony, where authorized pursuant to
38 section 130.91 of this chapter; a person thirteen years of age is
39 criminally responsible for acts constituting the crimes defined in
40 subdivisions one and two of section 130.25(rape in the first degree);
41 subdivisions one and two of section 130.50 (criminal sexual act in the
42 first degree); and section 130.70 (aggravated sexual abuse in the first
43 degree) of this chapter; and a person fourteen or, fifteen years of age
44 is criminally responsible for acts constituting the crimes defined in
45 section 135.25 (kidnapping in the first degree); 150.20 (arson in the
46 first degree); subdivisions one and two of section 120.10 (assault in
47 the first degree); 125.20 (manslaughter in the first degree); subdivi-
48 sions one and two of section 130.35 (rape in the first degree); subdivi-
49 sions one and two of section 130.50 (criminal sexual act in the first
50 degree); section 130.66 (aggravated sexual abuse in the third degree);
51 section 130.67 (aggravated sexual abuse in the second degree); 130.70
52 (aggravated sexual abuse in the first degree); 140.30 (burglary in the
53 first degree); subdivision one of section 140.25 (burglary in the second
54 degree); 150.15 (arson in the second degree); 160.15 (robbery in the
55 first degree); subdivision two of section 160.10 (robbery in the second
56 degree) of this chapter; or section 265.03 of this chapter, where such

1 machine gun or such firearm is possessed on school grounds, as that
2 phrase is defined in subdivision fourteen of section 220.00 of this
3 chapter; or defined in this chapter as an attempt to commit murder in
4 the second degree or kidnapping in the first degree, or for such conduct
5 as a sexually motivated felony, where authorized pursuant to section
6 130.91 of this chapter.

7 § 5. Subdivision 8 of section 301.2 of the family court act, as
8 amended by section 57 of part WWW of chapter 59 of the laws of 2017, is
9 amended to read as follows:

10 8. "Designated felony act" means an act which, if done by an adult,
11 would be a crime: (i) defined in sections 125.27 (murder in the first
12 degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the
13 first degree); or 150.20 (arson in the first degree) of the penal law
14 committed by a person thirteen, fourteen, fifteen, or sixteen, or
15 commencing October first, two thousand nineteen, seventeen years of age;
16 or such conduct committed as a sexually motivated felony, where author-
17 ized pursuant to section 130.91 of the penal law; (ii) defined in
18 sections 120.10 (assault in the first degree); 125.20 (manslaughter in
19 the first degree); 130.35 (rape in the first degree); 130.50 (criminal
20 sexual act in the first degree); 130.66 (aggravated sexual abuse in the
21 third degree); 130.67 (aggravated sexual abuse in the second degree);
22 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping
23 in the second degree) but only where the abduction involved the use or
24 threat of use of deadly physical force; 150.15 (arson in the second
25 degree) or 160.15 (robbery in the first degree) of the penal law commit-
26 ted by a person thirteen, fourteen, fifteen, or sixteen, or, commencing
27 October first, two thousand nineteen, seventeen years of age; or such
28 conduct committed as a sexually motivated felony, where authorized
29 pursuant to section 130.91 of the penal law; (iii) defined in the penal
30 law as an attempt to commit murder in the first or second degree or
31 kidnapping in the first degree committed by a person thirteen, fourteen,
32 fifteen, or sixteen, or commencing October first, two thousand nineteen,
33 seventeen years of age; or such conduct committed as a sexually moti-
34 vated felony, where authorized pursuant to section 130.91 of the penal
35 law; (iv) defined in section 140.30 (burglary in the first degree);
36 subdivision one of section 140.25 (burglary in the second degree);
37 subdivision two of section 160.10 (robbery in the second degree) of the
38 penal law; or section 265.03 of the penal law, where such machine gun or
39 such firearm is possessed on school grounds, as that phrase is defined
40 in subdivision fourteen of section 220.00 of the penal law committed by
41 a person fourteen or fifteen years of age; or such conduct committed as
42 a sexually motivated felony, where authorized pursuant to section 130.91
43 of the penal law; (v) defined in section 120.05 (assault in the second
44 degree) or 160.10 (robbery in the second degree) of the penal law
45 committed by a person fourteen, fifteen, or sixteen or, commencing Octo-
46 ber first, two thousand nineteen, seventeen years of age but only where
47 there has been a prior finding by a court that such person has previous-
48 ly committed an act which, if committed by an adult, would be the crime
49 of assault in the second degree, robbery in the second degree or any
50 designated felony act specified in paragraph (i), (ii), or (iii) of this
51 subdivision regardless of the age of such person at the time of the
52 commission of the prior act; (vi) other than a misdemeanor committed by
53 a person at least seven but less than seventeen years of age, and
54 commencing October first, two thousand nineteen, a person at least seven
55 but less than eighteen years of age, but only where there has been two

1 prior findings by the court that such person has committed a prior felo-
2 ny.
3 § 6. This act shall take effect on the first of November next succeed-
4 ing the date on which it shall have become a law.