STATE OF NEW YORK

8562

2019-2020 Regular Sessions

IN ASSEMBLY

September 13, 2019

Introduced by M. of A. JACOBSON -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to aggravated sexual abuse in the fourth degree; and to amend the public health law, in relation to creating a private right of action for fertility fraud

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

Section 1. Section 130.65-a of the penal law, as added by chapter 1 of the laws of 2000, subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

§ 130.65-a Aggravated sexual abuse in the fourth degree.

1. A person is guilty of aggravated sexual abuse in the fourth degree when:

(a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; [~~or~~]

(b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old**; or**

(c) (i) He or she is a health care practitioner who, in the course of performing an assisted reproduction procedure on a patient, uses human reproductive material from a donor knowing or reasonably should have known that such patient had not expressly consented to the use of human reproductive material from such donor.

(ii) As used in this paragraph, the following terms shall have the following meanings:

(1) "Health care practitioner" means a physician, nurse practitioner or physician assistant.

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

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(2) "Human reproductive material" means a human spermatozoon or ovum, or a human organism at any stage of development from fertilized ovum to embryo.

(3) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes intrauterine insemination, donation of eggs, donation of embryos, in vitro fertilization and transfer of embryos and intracytoplasmic sperm injection.

(4) "Donor" means an individual who provides human reproductive material to be used for assisted reproduction, regardless of whether the eggs or sperm are provided for consideration.

2. Conduct performed for a valid medical purpose does not violate the provisions of paragraphs (a) and (b) of subdivision one of this section.

Aggravated sexual abuse in the fourth degree is a class E felony.

§ 2. The public health law is amended by adding a new section 2500-l to read as follows:

§ 2500-l. Private right of action; fertility fraud. 1. As used in this section the following terms shall have the following meanings:

(a) "Assisted reproduction procedure" means a method of causing pregnancy other than sexual intercourse. The term includes:

(i) intrauterine insemination;

(ii) donation of eggs;

(iii) donation of embryos;

(iv) in vitro fertilization and transfer of embryos; and

(v) intracytoplasmic sperm injection.

(b) "Human reproductive material" means:

(i) a human spermatozoon or ovum; or

(ii) a human organism at any stage of development from fertilized ovum to embryo.

(c) "Health care practitioner" means a physician, nurse practitioner or physician assistant licensed under the education law.

(d) "Donor" means an individual who provides human reproductive material to be used for assisted reproduction, regardless of whether the eggs or sperm are provided for consideration.

2. (a) The patient, after being treated for infertility by an assisted reproduction procedure, and in the event that such patient gives birth to a child, the spouse of such patient, the surviving spouse of such patient or a child born as a result of the actions described in this section shall have a cause of action against a health care practitioner who knowingly or intentionally performed an assisted reproduction procedure on such patient using:

(i) such health care practitioner's own human reproductive material; or

(ii) the human reproductive material of any donor without the informed written consent of such patient to treatment using such reproductive material.

(b) Each child born pursuant to paragraph (a) of this subdivision shall constitute a separate cause of action.

3. (a) A donor of human reproductive material shall have a cause of action against a health care practitioner who performs an assisted reproduction procedure using such donor's human reproductive material who knew or reasonably should have known that such human reproductive material was used either:

(i) without such donor's consent; or

(ii) in a manner or to an extent other than to which such donor consented.

(b) Each individual who receives an assisted reproduction procedure pursuant to the provisions of paragraph (a) of this subdivision shall constitute a separate cause of action.

4. (a) Except as provided in paragraph (b) of this subdivision, an action pursuant to this section shall be commenced no later than:

(i) ten years after the eighteenth birthday of the child conceived through the assisted reproduction procedure which is the subject of such action; or

(ii) ten years after an assisted reproduction procedure was performed if subparagraph (i) of this paragraph is not applicable.

(b) An action pursuant to this section that would otherwise be barred under this section may be commenced not later than three years after the earliest of the date on which:

(i) the person first discovers evidence sufficient to bring an action against the defendant through DNA (deoxyribonucleic acid) analysis, a recording, documents or other instrument that provides evidence sufficient to bring an action against the defendant; or

(ii) the defendant confesses to the offense.

5. A plaintiff who prevails in an action under this section shall be entitled to:

(a) reasonable attorneys' fees;

(b) compensatory, punitive and economic damages; and

(c) if such plaintiff commenced such action pursuant to subdivision two of this section, the costs of the assisted reproduction procedure.

6. Nothing in this section shall be construed to prohibit a person from pursuing any other remedy provided by law.

§ 3. This act shall take effect immediately.