

# STATE OF NEW YORK

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171

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

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Introduced by Sen. HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to sexual assault against a child by a person in a position of trust

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

1 Section 1. Paragraphs (b) and (d) of subdivision 1 of section 70.02 of  
2 the penal law, paragraph (b) as amended by chapter 476 of the laws of  
3 2018 and paragraph (d) as amended by chapter 7 of the laws of 2007, are  
4 amended to read as follows:

5 (b) Class C violent felony offenses: an attempt to commit any of the  
6 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
7 vated criminally negligent homicide as defined in section 125.11, aggra-  
8 vated manslaughter in the second degree as defined in section 125.21,  
9 aggravated sexual abuse in the second degree as defined in section  
10 130.67, sexual assault against a child by a person in a position of  
11 trust in the first degree as defined in section 130.97, assault on a  
12 peace officer, police officer, firefighter or emergency medical services  
13 professional as defined in section 120.08, assault on a judge as defined  
14 in section 120.09, gang assault in the second degree as defined in  
15 section 120.06, strangulation in the first degree as defined in section  
16 121.13, burglary in the second degree as defined in section 140.25,  
17 robbery in the second degree as defined in section 160.10, criminal  
18 possession of a weapon in the second degree as defined in section  
19 265.03, criminal use of a firearm in the second degree as defined in  
20 section 265.08, criminal sale of a firearm in the second degree as  
21 defined in section 265.12, criminal sale of a firearm with the aid of a  
22 minor as defined in section 265.14, aggravated criminal possession of a  
23 weapon as defined in section 265.19, soliciting or providing support for  
24 an act of terrorism in the first degree as defined in section 490.15,

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

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1 hindering prosecution of terrorism in the second degree as defined in  
2 section 490.30, and criminal possession of a chemical weapon or biolog-  
3 ical weapon in the third degree as defined in section 490.37.

4 (d) Class E violent felony offenses: an attempt to commit any of the  
5 felonies of criminal possession of a weapon in the third degree as  
6 defined in subdivision five, six, seven or eight of section 265.02 as a  
7 lesser included offense of that section as defined in section 220.20 of  
8 the criminal procedure law, persistent sexual abuse as defined in  
9 section 130.53, aggravated sexual abuse in the fourth degree as defined  
10 in section 130.65-a, sexual assault against a child by a person in a  
11 position of trust in the second degree as defined in section 130.98,  
12 falsely reporting an incident in the second degree as defined in section  
13 240.55 and placing a false bomb or hazardous substance in the second  
14 degree as defined in section 240.61.

15 § 2. Section 130.00 of the penal law is amended by adding a new subdivi-  
16 sion 14 to read as follows:

17 14. "Person in a position of trust" means any person who is charged  
18 with any duty or responsibility for the health, education, welfare or  
19 supervision of a child, either independently or through another person,  
20 no matter how brief.

21 § 3. The penal law is amended by adding three new sections 130.97,  
22 130.98 and 130.99 to read as follows:

23 § 130.97 Sexual assault against a child by a person in a position of  
24 trust in the first degree.

25 A person is guilty of sexual assault against a child by a person in a  
26 position of trust in the first degree when he or she subjects a child  
27 less than eleven years old to sexual contact and when such person is a  
28 person in a position of trust with respect to such child.

29 Sexual assault against a child by a person in a position of trust in  
30 the first degree is a class C felony.

31 § 130.98 Sexual assault against a child by a person in a position of  
32 trust in the second degree.

33 A person is guilty of sexual assault against a child by a person in a  
34 position of trust in the second degree when he or she subjects a child  
35 less than fourteen years old to sexual contact and when such person is a  
36 person in a position of trust with respect to such child.

37 Sexual assault against a child by a person in a position of trust in  
38 the second degree is a class E felony.

39 § 130.99 Sexual assault against a child by a person in a position of  
40 trust in the third degree.

41 A person is guilty of sexual assault against a child by a person in a  
42 position of trust in the third degree when he or she subjects a child  
43 less than eighteen years old to sexual contact and when such person is a  
44 person in a position of trust with respect to such child.

45 Sexual assault against a child by a person in a position of trust in  
46 the third degree is a class A misdemeanor.

47 § 4. This act shall take effect on the first of November next succeed-  
48 ing the date on which it shall have become a law.