STATE OF NEW YORK

1787

2019-2020 Regular Sessions

IN SENATE

January 16, 2019

Introduced by Sen. LANZA -- 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 making certain sex offenses committed against a child or a mentally disabled person class A-I felonies for which a sentence of life imprisonment without parole shall be imposed; and to repeal certain provisions of such law relating to sex offenses committed against children or the mentally disabled

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

1 Section 1. Section 60.06 of the penal law, as amended by chapter 482 of the laws of 2009, is amended to read as follows: 2 3 § 60.06 Authorized disposition; murder in the first degree offenders; aggravated murder offenders; certain murder in the second degree offenders; certain sex offenders; certain terrorism 4 5 б offenders; criminal possession of a chemical weapon or biolog-7 ical weapon offenders; criminal use of a chemical weapon or 8 biological weapon offenders. 9 When a defendant is convicted of murder in the first degree as defined 10 in section 125.27 of this chapter, the court shall, in accordance with 11 the provisions of section 400.27 of the criminal procedure law, sentence the defendant to death, to life imprisonment without parole in accord-12 ance with subdivision five of section 70.00 of this title, or to a term 13 of imprisonment for a class A-I felony other than a sentence of life 14 imprisonment without parole, in accordance with subdivisions one through 15 16 three of section 70.00 of this title. When a person is convicted of 17 murder in the second degree as defined in subdivision five of section 18 125.25 of this chapter or of the crime of aggravated murder as defined 19 in subdivision one of section 125.26 of this chapter, the court shall 20 sentence the defendant to life imprisonment without parole in accordance 21 with subdivision five of section 70.00 of this title. When a defendant

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

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S. 1787

is convicted of aggravated rape as defined in section 130.36 of this 1 chapter, aggravated criminal sexual act as defined in section 130.51 of 2 this chapter or course of sexual conduct against a child in the first 3 4 degree as defined in section 130.75 of this chapter, the court shall 5 sentence the defendant to life imprisonment without parole in accordance б with subdivision five of section 70.00 of this title. When a defendant 7 is convicted of the crime of terrorism as defined in section 490.25 of 8 this chapter, and the specified offense the defendant committed is a 9 class A-I felony offense, or when a defendant is convicted of the crime 10 of criminal possession of a chemical weapon or biological weapon in the 11 first degree as defined in section 490.45 of this chapter, or when a defendant is convicted of the crime of criminal use of a chemical weapon 12 13 or biological weapon in the first degree as defined in section 490.55 of 14 this chapter, the court shall sentence the defendant to life imprison-15 ment without parole in accordance with subdivision five of section 70.00 16 of this title; provided, however, that nothing in this section shall 17 preclude or prevent a sentence of death when the defendant is also convicted of murder in the first degree as defined in section 125.27 of 18 this chapter. When a defendant is convicted of aggravated murder as 19 20 defined in subdivision two of section 125.26 of this chapter, the court 21 shall sentence the defendant to life imprisonment without parole or to a term of imprisonment for a class A-I felony other than a sentence of 22 life imprisonment without parole, in accordance with subdivisions one 23 24 through three of section 70.00 of this title.

25 § 2. Subdivision 5 of section 70.00 of the penal law, as amended by 26 section 40-a of part WWW of chapter 59 of the laws of 2017, is amended 27 to read as follows:

28 5. Life imprisonment without parole. Notwithstanding any other 29 provision of law, a defendant sentenced to life imprisonment without 30 parole shall not be or become eligible for parole or conditional 31 release. For purposes of commitment and custody, other than parole and 32 conditional release, such sentence shall be deemed to be an indetermi-33 nate sentence. A defendant may be sentenced to life imprisonment without 34 parole upon conviction for the crime of murder in the first degree as 35 defined in section 125.27 of this chapter and in accordance with the 36 procedures provided by law for imposing a sentence for such crime. A 37 defendant who was eighteen years of age or older at the time of the 38 commission of the crime must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 39 40 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a 41 42 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 chemi-43 cal weapon or biological weapon in the first degree as defined in 44 45 section 490.55 of this chapter; provided, however, that nothing in this 46 subdivision shall preclude or prevent a sentence of death when the 47 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 seven-48 teen years of age or younger at the time of the commission of the crime 49 50 may be sentenced, in accordance with law, to the applicable indeterminate sentence with a maximum term of life imprisonment. A defendant must 51 52 be sentenced to life imprisonment without parole upon conviction for the 53 crime of murder in the second degree as defined in subdivision five of 54 125.25 of this chapter or for the crime of aggravated murder as section 55 defined in subdivision one of section 125.26 of this chapter. A defend-56 ant may be sentenced to life imprisonment without parole upon conviction

S. 1787

1	for the crime of aggravated murder as defined in subdivision two of
2	section 125.26 of this chapter. A defendant must be sentenced to life
3	imprisonment without parole upon conviction of the crime of aggravated
4	rape as defined in section 130.36 of this chapter, aggravated criminal
5	sexual act as defined in section 130.51 of this chapter, or course of
6	sexual conduct against a child in the first degree as defined in section
7	130.75 of this chapter.
8	§ 3. Section 130.30 of the penal law is REPEALED.
9	§ 4. Section 130.35 of the penal law, as amended by chapter 1 of the
10	laws of 2000, is amended to read as follows:
11	§ 130.35 Rape in the first degree.
12	A person is guilty of rape in the first degree when he or she engages
13	in sexual intercourse with another person:
14	1. By forcible compulsion; or
15	2. Who is incapable of consent by reason of being physically help-
16	less[; or
17	3. Who is less than eleven years old; or
18	4. Who is less than thirteen years old and the actor is eighteen years
19	old or more].
20	
	Rape in the first degree is a class B felony.
21	§ 5. The penal law is amended by adding a new section 130.36 to read
22	as follows:
23	§ 130.36 Aggravated rape.
24	A person is guilty of aggravated rape when:
25	1. being eighteen years or more, he or she engages in sexual inter-
26	course with another person less than fifteen years old; or
27	2. he or she engages in sexual intercourse with another person who is
28 29	incapable of consent by reason of being mentally disabled or mentally
	incapacitated; or
30	3. he or she engages in sexual intercourse with another person who is
30 31	3. he or she engages in sexual intercourse with another person who is less than thirteen years old.
30 31 32	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape
30 31 32 33	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was
30 31 32 33 34	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense.
30 31 32 33 34 35	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony.
30 31 32 33 34 35 36	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED.
30 31 32 33 34 35 36 37	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. Section 130.50 of the penal law, as amended by chapter 264 of the
30 31 32 33 34 35 36 37 38	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. Section 130.50 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:
30 31 32 33 34 35 36 37 38 39	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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.
30 31 32 33 34 35 36 37 38 39 40	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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
30 31 32 33 34 35 36 37 38 39 40 41	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth-
30 31 32 33 34 35 36 37 38 39 40 41 42	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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:
30 31 32 33 34 35 36 37 38 39 40 41 42 43	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically help-</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically help- less[; or</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically help- less[; or 3. Who is less than eleven years old; or</pre>
30 31 32 33 35 36 37 38 39 40 41 42 43 445 46 47	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 help-less[; or 3. Who is less than eleven years old; or 4. Who is less than thirteen years old and the actor is eighteen years
30 31 32 33 35 36 37 38 39 40 41 42 43 445 46 47 48	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 helppless[, or 4. 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].
30 31 32 33 35 36 37 38 39 40 41 42 43 445 46 47 48 49	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically help- less[; or 3. Who is less than eleven years old; or 4. Who is less than thirteen years old and the actor is eighteen years eld or more]. Criminal sexual act in the first degree is a class B felony.</pre>
30 31 32 33 35 36 37 38 40 41 42 43 45 46 47 48 49 50	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically help- less[; 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. § 8. The penal law is amended by adding a new section 130.51 to read</pre>
30 31 32 33 35 36 37 38 40 41 42 43 45 46 47 48 49 51	3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 helppless[; or 4. 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. § 8. The penal law is amended by adding a new section 130.51 to read as follows:
30 312 33 35 36 37 39 412 43 45 467 489 512 52	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: By forcible compulsion; or Who is incapable of consent by reason of being physically help- less[; or A. Who is less than thirteen years old; or A. 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. § 8. The penal law is amended by adding a new section 130.51 to read as follows: § 130.51 Aggravated criminal sexual act.</pre>
30 312 333 35 36 3739 412 434 45678 490 512 52 53	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically help- less[; 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. § 8. The penal law is amended by adding a new section 130.51 to read as follows: § 130.51 Aggravated criminal sexual act. A person is guilty of aggravated criminal sexual act. A person is guilty of aggravated criminal sexual act. </pre>
30 312 333 35 36 3739 4123445678901234 55125354	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically help- less[; or 3. Who is less than eleven years old and the actor is eighteen years eld or more]. Criminal sexual act in the first degree is a class B felony. § 8. The penal law is amended by adding a new section 130.51 to read as follows: § 130.51 Aggravated criminal sexual act. A person is quilty of aggravated criminal sexual act when: 1. being eighteen years or more, he or she engages in oral sexual</pre>
30 312 33 35 36 37 39 412 43 45 47 490 512 53	<pre>3. he or she engages in sexual intercourse with another person who is less than thirteen years old. It shall be an affirmative defense to the offense of aggravated rape as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the offense. Aggravated rape is a class A-I felony. § 6. Section 130.45 of the penal law is REPEALED. § 7. 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 anoth- er person: 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically help- less[; 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. § 8. The penal law is amended by adding a new section 130.51 to read as follows: § 130.51 Aggravated criminal sexual act. A person is guilty of aggravated criminal sexual act. A person is guilty of aggravated criminal sexual act. </pre>

S. 1787

1	2. he or she engages in oral sexual conduct or anal sexual conduct
2	with another person who is incapable of consent by reason of being
3	mentally disabled or mentally incapacitated; or
4	3. he or she engages in oral sexual conduct or anal sexual conduct
5	with another person who is less than thirteen years old.
б	It shall be an affirmative defense to the offense of aggravated crimi-
7	nal sexual act as defined in subdivision one of this section that the
8	defendant was less than four years older than the victim at the time of
9	the offense.
10	<u>Aggravated criminal sexual act is a class A-I felony.</u>
10 11	Aggravated criminal sexual act is a class A-I felony. § 9. The closing paragraph of section 130.75 of the penal law, as
11	§ 9. The closing paragraph of section 130.75 of the penal law, as
11 12	§ 9. 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:
11 12 13	§ 9. 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
11 12 13 14	§ 9. 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] <u>A-I</u> felony.
11 12 13 14 15	§ 9. 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] <u>A-I</u> felony. § 10. Section 130.96 of the penal law is REPEALED.