

# STATE OF NEW YORK

2982

2019-2020 Regular Sessions

## IN SENATE

January 31, 2019

Introduced by Sens. FUNKE, RITCHIE -- 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 increasing the penalties  
for the rape or sexual assault of a child

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

1 Section 1. Paragraph (a) of subdivision 3 of section 70.02 of the  
2 penal law, as amended by chapter 765 of the laws of 2005, is amended to  
3 read as follows:

4 (a) For a class B felony, the term must be at least five years and  
5 must not exceed twenty-five years, provided, however, that the term must  
6 be: (i) at least ten years and must not exceed thirty years where the  
7 sentence is for the crime of aggravated assault upon a police officer or  
8 peace officer as defined in section 120.11 of this chapter; ~~[and]~~ (ii)  
9 at least ten years and must not exceed thirty years where the sentence  
10 is for the crime of aggravated manslaughter in the first degree as  
11 defined in section 125.22 of this chapter; and (iii) at least twelve and  
12 one-half years and must not exceed twenty-five years where the sentence  
13 is for the crime of rape in the first degree as defined in section  
14 130.35 of this chapter where the victim was a child five years of age or  
15 less;

16 § 2. Subdivisions 1, 3 and 4 of section 70.07 of the penal law, subdivi-  
17 sions 1 and 3 as amended by chapter 264 of the laws of 2003, subdivi-  
18 sion 4 as added by chapter 1 of the laws of 2000 and paragraphs (a) and  
19 (b) of subdivision 4 as amended by chapter 107 of the laws of 2006, are  
20 amended and a new subdivision 2-a is added to read as follows:

21 1. A person who stands convicted of a felony offense for a sexual  
22 assault against a child or for a sexual assault against a child five  
23 years of age or less, having been subjected to a predicate felony  
24 conviction for a sexual assault against a child or for a sexual assault

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

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1 against a child five years of age or less, must be sentenced in accord-  
2 ance with the provisions of subdivision four or five of this section.

3 2-a. A "sexual assault against a child five years of age or less"  
4 means a felony offense, other than persistent sexual abuse as defined in  
5 section 130.53 of this chapter, (a) the essential elements of which  
6 include the commission or attempted commission of sexual conduct, as  
7 defined in subdivision ten of section 130.00 of this chapter, (b)  
8 committed or attempted to be committed against a child five years of age  
9 or less.

10 3. For purposes of determining whether a person has been subjected to  
11 a predicate felony conviction under this section, the criteria set forth  
12 in paragraph (b) of subdivision one of section 70.06 shall apply  
13 provided however that for purposes of this subdivision, the terms "ten  
14 year" or "ten years", as provided in subparagraphs (iv) and (v) of para-  
15 graph (b) of subdivision one of such section 70.06, shall be "fifteen  
16 year" or "fifteen years". The provisions of section 400.19 of the crimi-  
17 nal procedure law shall govern the procedures that must be followed to  
18 determine whether a person who stands convicted of a sexual assault  
19 against a child or a sexual assault against a child five years of age or  
20 less has been previously subjected to a predicate felony conviction for  
21 such a sexual assault and whether such offender was eighteen years of  
22 age or older at the time of the commission of the predicate felony.

23 4. Where the court has found pursuant to subdivision three of this  
24 section that a person who stands convicted of a felony offense defined  
25 in article one hundred thirty of this chapter for the commission or  
26 attempted commission of a sexual assault against a child has been  
27 subjected to a predicate felony conviction for a sexual assault against  
28 a child, the court shall sentence the defendant as follows:

29 (a) where the defendant stands convicted of such sexual assault  
30 against a child and such conviction is for a class A-II or class B felo-  
31 ny offense, and the predicate conviction for such sexual assault against  
32 a child is for a class A-II, class B or class C felony offense, the  
33 court shall impose an indeterminate sentence of imprisonment, the maxi-  
34 mum term of which shall be life and the minimum period of which shall be  
35 at least fifteen years and no more than twenty-five years;

36 (a-1) where the defendant stands convicted of such sexual assault  
37 against a child five years of age or less, and the predicate conviction  
38 for such sexual assault against a child five years of age or less is a  
39 class B or class C felony offense, the court shall impose an indetermi-  
40 nate sentence of imprisonment, the maximum of which shall be life and  
41 the minimum of which shall be at least thirty years;

42 (b) where the defendant stands convicted of such sexual assault  
43 against a child and the conviction is for a class C felony offense, and  
44 the predicate conviction for such sexual assault against a child is for  
45 a class A-II, class B or class C felony offense, the court shall impose  
46 a determinate sentence of imprisonment, the term of which must be at  
47 least twelve years and must not exceed thirty years; provided however,  
48 that if the court determines that a longer sentence is warranted, the  
49 court shall set forth on the record the reasons for such determination  
50 and, in lieu of imposing such sentence of imprisonment, may impose an  
51 indeterminate sentence of imprisonment, the maximum term of which shall  
52 be life and the minimum period of which shall be at least fifteen years  
53 and no more than twenty-five years;

54 (c) where the defendant stands convicted of such sexual assault  
55 against a child and the conviction is for a class B felony offense, and  
56 the predicate conviction for such sexual assault against a child is for

1 a class D or class E felony offense, the court shall impose a determi-  
2 nate sentence of imprisonment, the term of which must be at least twelve  
3 years and must not exceed thirty years;

4 (d) where the defendant stands convicted of such sexual assault  
5 against a child and the conviction is for a class C felony offense, and  
6 the predicate conviction for such sexual assault against a child is for  
7 a class D or class E felony offense, the court shall impose a determi-  
8 nate sentence of imprisonment, the term of which must be at least ten  
9 years and must not exceed twenty-five years;

10 (e) where the defendant stands convicted of such sexual assault  
11 against a child and the conviction is for a class D felony offense, and  
12 the predicate conviction for such sexual assault against a child is for  
13 a felony offense, the court shall impose a determinate sentence of  
14 imprisonment, the term of which must be at least five years and must not  
15 exceed fifteen years; and

16 (f) where the defendant stands convicted of such sexual assault  
17 against a child and the conviction is for a class E felony offense, and  
18 the predicate conviction for such sexual assault against a child is for  
19 a felony offense, the court shall impose a determinate sentence of  
20 imprisonment, the term of which must be at least four years and must not  
21 exceed twelve years.

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