

# STATE OF NEW YORK

5745

2021-2022 Regular Sessions

## IN SENATE

March 17, 2021

Introduced by Sens. HOYLMAN, MAY -- 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 amending sex offenses and consent involving members of the clergy

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

1 Section 1. Paragraph (j) of subdivision 3 of section 130.05 of the  
2 penal law, as added by section 1 of part JJ of chapter 55 of the laws of  
3 2018, is amended and a new paragraph (k) is added to read as follows:

4 (j) detained or otherwise in the custody of a police officer, peace  
5 officer, or other law enforcement official and the actor is a police  
6 officer, peace officer or other law enforcement official who either: (i)  
7 is detaining or maintaining custody of such person; or (ii) knows, or  
8 reasonably should know, that at the time of the offense, such person was  
9 detained or in custody[-]; or

10 (k) a member or adherent of an organized church or religious group and  
11 the actor is a member of the clergy or other minister of any religion or  
12 duly accredited Christian science practitioner charged with rape in the  
13 third degree as defined in section 130.25 of this article, aggravated  
14 sexual abuse in the fourth degree as defined in section 130.65-a of this  
15 article, or sexual abuse in the third degree as defined in section  
16 130.55 of this article, and the act of sexual conduct occurs during the  
17 provision of pastoral counseling services within the context of his or  
18 her ministerial charge or obligation.

19 § 2. Subdivision 4 of section 130.10 of the penal law, as amended by  
20 section 2 of part JJ of chapter 55 of the laws of 2018, is amended to  
21 read as follows:

22 4. In any prosecution under this article in which the victim's lack of  
23 consent is based solely on his or her incapacity to consent because he  
24 or she was less than seventeen years old, mentally disabled, a client or  
25 patient and the actor is a health care provider, a member or adherent of

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

LBD04811-01-1

1 an organized church or religious group and the actor is a member of the  
2 clergy or other minister of any religion or duly accredited Christian  
3 science practitioner, detained or otherwise in custody of law enforce-  
4 ment under the circumstances described in paragraph (j) of subdivision  
5 three of section 130.05 of this article, or committed to the care and  
6 custody or supervision of the state department of corrections and commu-  
7 nity supervision or a hospital and the actor is an employee, it shall be  
8 a defense that the defendant was married to the victim as defined in  
9 subdivision four of section 130.00 of this article.

10 § 3. This act shall take effect on the thirtieth day after it shall  
11 have become a law.