STATE OF NEW YORK

8898

IN SENATE

April 27, 2022

Introduced by Sen. STAVISKY -- 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 aggravated sexual abuse against children under age thirteen; and to repeal section 130.65-a of the penal law relating to aggravated sexual abuse in the fourth degree

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 Section 130.65-a of the penal law is REPEALED.

§ 2. Section 130.66 of the penal law, as added by chapter 181 of the laws of 1996, subdivisions 1 and 2 as amended by chapter 485 of the laws of 2009, and subdivision 3 as renumbered by chapter 1 of the laws of 2000, is amended to read as follows:

§ 130.66 Aggravated sexual abuse in the third degree.

[~~1. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person:~~

~~(a) By forcible compulsion; or~~

~~(b) When the other person is incapable of consent by reason of being physically helpless; or~~

~~(c) When the other person is less than eleven years old.~~

~~2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object 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 being mentally disabled or mentally incapacitated.~~

~~3. Conduct performed for a valid medical purpose does not violate the provisions of this section~~] **A person is guilty of aggravated sexual abuse in the third degree when such person intentionally, and for no legitimate purpose, touches the vagina, vulva, penis, rectum, or anus of another person using a finger, hand, or foreign object for the purpose of degrading or abusing such person, or for the purpose of gratifying the actor's sexual desire, when such other person is under the age of thirteen**.

Aggravated sexual abuse in the third degree is a class [~~D~~] **E** felony.

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

LBD15151-01-2

§ 3. Subdivision 1 and the closing paragraph of section 130.67 of the penal law, as added by chapter 450 of the laws of 1988, the opening paragraph of subdivision 1 as amended by chapter 485 of the laws of 2009, are amended to read as follows:

1. A person is guilty of aggravated sexual abuse in the second degree when [~~he or she~~] **such person** inserts a finger**, hand, or foreign object** in the vagina, urethra, penis, rectum or anus of another person [~~causing physical injury to such person~~]:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) **When the other person is incapable of consent by reason of being mentally disabled or mentally incapacitated; or**

(d) When the other person is less than eleven years old**; or**

(e) When the other person is less than thirteen years old and the actor is eighteen years old or older.

Aggravated sexual abuse in the second degree is a class [~~C~~] **D** felony.

§ 4. Subdivision 1 of section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, the opening paragraph of subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

1. A person is guilty of aggravated sexual abuse in the first degree when [~~he or she~~] **such person** inserts a **finger, hand, or** foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) **When the other person is incapable of consent by reason of being mentally disabled or mentally incapacitated; or**

(d) When the other person is less than eleven years old**; or**

(e) When the other person is less than thirteen years old and the actor is eighteen years old or older.

§ 5. Paragraph (h) of subdivision 3 of section 130.05 of the penal law, as amended by section 2 of part G of chapter 501 of the laws of 2012, is amended to read as follows:

(h) a client or patient and the actor is a health care provider or mental health care provider charged with rape in the third degree as defined in section 130.25 **of this article**, criminal sexual act in the third degree as defined in section 130.40 **of this article**, aggravated sexual abuse in the [~~fourth~~] **third** degree as defined in section [~~130.65-a~~] **130.66 of this article**, or sexual abuse in the third degree as defined in section 130.55 **of this article**, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination; or

§ 6. Subdivision 3 of section 130.10 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

3. In any prosecution for the crime of rape in the third degree as defined in section 130.25 **of this article**, criminal sexual act in the third degree as defined in section 130.40 **of this article**, aggravated sexual abuse in the [~~fourth~~] **third** degree as defined in section [~~130.65-a~~] **130.66 of this article**, or sexual abuse in the third degree as defined in section 130.55 **of this article** in which incapacity to consent is based on the circumstances set forth in paragraph (h) of subdivision three of section 130.05 of this article it shall be an affirmative defense that the client or patient consented to such conduct

charged after having been expressly advised by the health care or mental health care provider that such conduct was not performed for a valid medical purpose.

§ 7. This act shall take effect immediately.