STATE OF NEW YORK

3748

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. BYRNE, ASHBY, BLANKENBUSH, BRABENEC, DeSTEFANO, J. M. GIGLIO, MANKTELOW, McDONOUGH, MIKULIN, B. MILLER, MORINELLO, REILLY, SALKA, SAYEGH, SCHMITT, SMULLEN, WALCZYK -- Multi-Sponsored by -- M. of A. BYRNES, TAGUE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the executive law, in relation to enacting the "Jessica Lunsford act" relating to predatory sexual assault against a child

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

Section 1. Short title. This act shall be known and may be cited as the "Jessica Lunsford act".

§ 2. Subparagraph (ii) of paragraph (a) of subdivision 3 of section 70.00 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(ii) For a class A-II felony, such minimum period shall not be less than three years nor more than eight years four months, except that for the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter [~~or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter~~], such minimum period shall be not less than ten years nor more than twenty-five years**, and except that for the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter, such minimum period shall be twenty-five years**.

§ 3. Paragraph (a) of subdivision 4 of section 70.06 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(a) The minimum period of imprisonment for a second felony offender convicted of a class A-II felony must be fixed by the court at no less than six years and not to exceed twelve and one-half years and must be specified in the sentence, except that for the class A-II felony of

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

LBD06295-01-1

predatory sexual assault as defined in section 130.95 of this chapter [~~or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter~~], such minimum period shall be not less than ten years nor more than twenty-five years**, and except that for the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter, such minimum period shall be twenty-five years**.

§ 4. Section 130.96 of the penal law, as added by chapter 107 of the laws of 2006, is amended to read as follows:

§ 130.96 Predatory sexual assault against a child.

A person is guilty of predatory sexual assault against a child when, being eighteen years old or more, he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, [~~and the victim is less than thirteen years old.~~] **when:**

1. The victim of such crime is a child less than thirteen years old; or

2. The victim of such crime is a child not less than thirteen years old, nor more than sixteen years old, and

(a) the actor is related to such victim by blood or affinity to the third degree, or

(b) the actor has supervisory or disciplinary authority over such victim by virtue of his or her legal, professional or occupational status, or

(c) the actor is the parent or guardian of such victim, or in a position of loco parentis to such victim; or

3. The victim of such crime is a child less than eighteen years old, and such crime is committed, acting alone or with one or more persons, during the commission or attempted commission of burglary, robbery, arson, kidnapping, criminal escape or a sex offense; or

4. The victim of such crime is a child less than eighteen years old, and the actor during the course of such crime is armed with a weapon, or dangerous instrument, or displays what appears to the victim to be a weapon or dangerous instrument, or threatens the use of a weapon or dangerous instrument; or

5. The victim of such crime is a child less than eighteen years old, and the actor, aided or abetted by one or more persons, uses physical force or threatens the use of physical force against the victim; or

6. The victim of such crime is a child less than eighteen years old who sustains serious physical injury during the course of such crime; or

7. The victim of such crime is a child less than eighteen years old who is mentally disabled, mentally incapacitated or physically helpless, and the actor knew or should have known that such victim was mentally disabled, mentally incapacitated or physically helpless.

Predatory sexual assault against a child is a class A-II felony.

§ 5. Section 259-c of the executive law is amended by adding a new subdivision 14-a to read as follows:

14-a. notwithstanding any other provision of law to the contrary, where a person serving a sentence for predatory sexual assault against a child, as defined in section 130.96 of the penal law, is released on parole or conditionally released pursuant to subdivision one or two of this section, the board shall require, as a mandatory condition of such release, that such person submit to the use of an electronic monitoring or global position satellite tracking device monitored by the board

throughout the period of such release or such person's life, whichever shall terminate earlier.

§ 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.