STATE OF NEW YORK

4936

2021-2022 Regular Sessions

IN SENATE

February 18, 2021

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law, the family court act, and the domestic relations law, in relation to sex offenses

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

Section 1. Subdivision 1 of section 130.00 of the penal law is amended to read as follows:

1. "[~~Sexual intercourse~~] **Vaginal sexual contact**" [~~has its ordinary meaning and occurs upon any penetration, however slight~~] **means conduct between persons consisting of contact between the penis and the vagina or vulva**.

§ 2. Section 130.25 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 130.25 Rape in the third degree.

A person is guilty of rape in the third degree when:

1. He or she engages in [~~sexual intercourse~~] **vaginal sexual contact** with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;

2. Being twenty-one years old or more, he or she engages in [~~sexual intercourse~~] **vaginal sexual contact** with another person less than seventeen years old; or

3. He or she engages in [~~sexual intercourse~~] **vaginal sexual contact** with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

§ 3. Section 130.30 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 130.30 Rape in the second degree.

A person is guilty of rape in the second degree when:

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

LBD02448-02-1

1. being eighteen years old or more, he or she engages in [~~sexual intercourse~~] **vaginal sexual contact** with another person less than fifteen years old; or

2. he or she engages in [~~sexual intercourse~~] **vaginal sexual contact** with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of rape in the second degree 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 act.

Rape in the second degree is a class D felony.

§ 4. Section 130.35 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 130.35 Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in [~~sexual intercourse~~] **vaginal sexual contact** with another person:

1. By forcible compulsion; or

2. Who is incapable of consent by reason of being physically helpless; 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.

Rape in the first degree is a class B felony.

§ 5. Subdivision 1 of section 210.16 of the criminal procedure law, as added by chapter 571 of the laws of 2007, is amended to read as follows:

1. (a) In a case where an indictment or a superior court information has been filed with a superior court which charges the defendant with a felony offense enumerated in any section of article one hundred thirty of the penal law where an act of "[~~sexual intercourse~~] **vaginal sexual contact**", "oral sexual conduct" or "anal sexual conduct," as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court shall, upon a request of the victim within six months of the date of the crimes charged, order that the defendant submit to human immunodeficiency virus (HIV) related testing. Testing of a defendant shall be ordered when the result would provide medical benefit to the victim or a psychological benefit to the victim. Medical benefit shall be found when the following elements are satisfied: (i) a decision is pending about beginning, continuing, or discontinuing a medical intervention for the victim; and (ii) the result of an HIV test of the accused could affect that decision, and could provide relevant information beyond that which would be provided by an HIV test of the victim. If testing the defendant would provide medical benefit to the victim or a psychological benefit to the victim, then the testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the defendant and the victim named in the order in accordance with the provisions of section twenty-seven hundred eighty-five-a of the public health law.

(b) For the purposes of this section, the terms "victim" and "applicant" mean the person with whom the defendant is charged to have engaged in an act of "[~~sexual intercourse~~] **vaginal sexual contact**", "oral sexual conduct" or "anal sexual conduct", as those terms are defined in section 130.00 of the penal law, where such conduct with such victim was the basis for charging the defendant with an offense specified in paragraph (a) of this subdivision.

§ 6. Subdivision 1 of section 390.15 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

1. (a) In any case where the defendant is convicted of a felony offense enumerated in any section of article one hundred thirty of the penal law, or any subdivision of section 130.20 of such law, where an act of "[~~sexual intercourse~~] **vaginal sexual contact**", "oral sexual conduct" or "anal sexual conduct," as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court must, upon a request of the victim, order that the defendant submit to human immunodeficiency (HIV) related testing. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the defendant and the victim named in the order in accordance with the provisions of section twenty-seven hundred eighty-five-a of the public health law, but such results and disclosure need not be completed prior to the imposition of sentence.

(b) For the purposes of this section, the terms "defendant", "conviction" and "sentence" mean and include, respectively, an "eligible youth," a "youthful offender finding" and a "youthful offender sentence" as those terms are defined in section 720.10 of this chapter. The term "victim" means the person with whom the defendant engaged in an act of "[~~sexual intercourse~~] **vaginal sexual contact**", "oral sexual conduct" or "anal sexual conduct", as those terms are defined in section 130.00 of the penal law, where such conduct with such victim was the basis for the defendant's conviction of an offense specified in paragraph (a) of this subdivision.

§ 7. Subdivision 1 of section 347.1 of the family court act, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

1. (a) In any proceeding where the respondent is found pursuant to section 345.1 or 346.1 of this article, to have committed a felony offense enumerated in any section of article one hundred thirty of the penal law, or any subdivision of section 130.20 of such law, for which an act of "[~~sexual intercourse~~] **vaginal sexual contact**", "oral sexual conduct" or "anal sexual conduct", as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court must, upon a request of the victim, order that the respondent submit to human immunodeficiency (HIV) related testing. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the respondent and the victim named in the order in accordance with the provisions of section twenty-seven hundred eighty-five-a of the public health law.

(b) For the purposes of this section, the term "victim" means the person with whom the respondent engaged in an act of "[~~sexual intercourse~~] **vaginal sexual contact**", "oral sexual conduct" or "anal sexual conduct", as those terms are defined in section 130.00 of the penal law, where such conduct with such victim was the basis for the court's finding that the respondent committed acts constituting one or more of the offenses specified in paragraph (a) of this subdivision.

§ 8. Subdivision (a) of section 130.16 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(a) Establish that an attempt was made to engage the victim in [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct, anal sexual

conduct, or sexual contact, as the case may be, at the time of the occurrence; and

§ 9. Subdivision 1 of section 130.20 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

1. He or she engages in [~~sexual intercourse~~] **vaginal sexual contact** with another person without such person's consent; or

§ 10. Paragraphs (a) and (b) of subdivision 1 of section 130.75 of the penal law, as amended by chapter 264 of the laws of 2003, are amended to read as follows:

(a) he or she engages in two or more acts of sexual conduct, which includes at least one act of [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than eleven years old; or

(b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old.

§ 11. Subdivision 1 of section 235.00 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

1. "Obscene." Any material or performance is "obscene" if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: [~~sexual intercourse~~] **vaginal sexual contact**, criminal sexual act, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other [~~specially~~] **especially** susceptible audience.

§ 12. Subdivision 2 of section 235.22 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

2. by means of such communication he importunes, invites or induces a minor to engage in [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct or anal sexual conduct, or sexual contact with him, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his benefit.

§ 13. Section 255.25 of the penal law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

§ 255.25 Incest in the third degree.

A person is guilty of incest in the third degree when he or she marries or engages in [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

Incest in the third degree is a class E felony.

§ 14. Subdivision 3 of section 263.00 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

3. "Sexual conduct" means actual or simulated [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct, anal sexual conduct, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

§ 15. Subdivision 3 of section 60.42 of the criminal procedure law, as amended by section 1 of part R of chapter 55 of the laws of 2019, is amended to read as follows:

3. rebuts evidence introduced by the people of the victim's failure to engage in [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct, anal sexual conduct or sexual contact during a given period of time; or

§ 16. Subdivision 3 of section 344.4 of the family court act, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

3. rebuts evidence introduced by the presentment agency of the victim's failure to engage in [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct, anal sexual conduct or sexual contact during a given period of time; or

§ 17. Subdivision 4 of section 170 of the domestic relations law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(4) The commission of an act of adultery, provided that adultery for the purposes of articles ten, eleven, and eleven-A of this chapter, is hereby defined as the commission of an act of [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct or anal sexual conduct, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal sexual conduct include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision three of section 130.20 of the penal law.

§ 18. Subdivision 4 of section 200 of the domestic relations law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

4. The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce, provided that adultery for the purposes of this subdivision is hereby defined as the commission of an act of [~~sexual intercourse~~] **vaginal sexual contact**, oral sexual conduct or anal sexual conduct, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal sexual conduct include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision three of section 130.20 of the penal law.

§ 19. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to any offense on or after such effective date.