# 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:**

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

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

**(k) a member or adherent of an organized church or religious group and the actor is a member of the clergy or other minister of any religion or duly accredited Christian science practitioner charged with rape in the third degree as defined in section 130.25 of this article, aggravated sexual abuse in the fourth degree as defined in section 130.65-a 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 the provision of pastoral counseling services within the context of his or her ministerial charge or obligation.**

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

4. In any prosecution under this article in which the victim's lack of consent is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled, a client or 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.

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**an organized church or religious group and the actor is a member of the clergy or other minister of any religion or duly accredited Christian science practitioner,** detained or otherwise in custody of law enforcement under the circumstances described in paragraph (j) of subdivision three of section 130.05 of this article, or committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital and the actor is an employee, it shall be a defense that the defendant was married to the victim as defined in subdivision four of section 130.00 of this article.

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