STATE OF NEW YORK

6491

2023-2024 Regular Sessions

IN ASSEMBLY

April 12, 2023

Introduced by M. of A. BUTTENSCHON -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the correction law, in relation to establishing certain sex offenses and criminal sentencing for defendants convicted of certain sex offenses; to repeal subdivision 3 of section 130.35 of the penal law, relating to rape of a child less than 11 years old; and to repeal subdivision 3 of section 130.50 of the penal law, relating to a criminal sexual act with a child less than 11 years old

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 "Kimberly's law".

§ 2. The penal law is amended by adding a new section 130.36 to read as follows:

§ 130.36 Aggravated rape.

A person is guilty of aggravated rape when he or she engages in sexual intercourse with another person:

1. With intent to cause serious physical injury; and

2. Such person is armed with a deadly weapon or dangerous instrument, or any object used in a manner to lead the victim to reasonably believe such object to be a deadly weapon or dangerous instrument; and

(a) By forcible compulsion; or

(b) Such victim is incapable of consent by reason of being physically helpless; or

(c) Such victim is less than eleven years old; or

(d) Such victim is less than thirteen years old and the actor is eighteen years old or more.

Aggravated rape is a class A felony.

§ 3. Section 70.80 of the penal law is amended by adding a new subdivision 10 to read as follows:

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

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10. Sentence of imprisonment for an offender of certain felony sex offenses. An offender convicted of rape in the first degree pursuant to section 130.35 of this chapter or an offender convicted of aggravated rape pursuant to section 130.36 of this chapter shall not be released pursuant to section 70.40 of this article until such minimum sentence shall have been served.

§ 4. Subparagraph (i) 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:

(i) For a class A-I felony, such minimum period shall not be less than fifteen years nor more than twenty-five years; provided, however, that (A) where a sentence, other than a sentence of death or life imprisonment without parole, is imposed upon a defendant convicted of murder in the first degree as defined in section 125.27 of this chapter such minimum period shall be not less than twenty years nor more than twenty-five years, and, (B) where a sentence is imposed upon a defendant convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or convicted of aggravated murder as defined in section 125.26 of this chapter, the sentence shall be life imprisonment without parole, and, (C) where a sentence is imposed upon a defendant convicted of attempted murder in the first degree as defined in article one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a) of subdivision one and paragraph (b) of subdivision one of section 125.27 of this chapter or attempted aggravated murder as defined in article one hundred ten of this chapter and section 125.26 of this chapter such minimum period shall be not less than twenty years nor more than forty years**, and, (D) where a sentence is imposed upon a defendant convicted of rape of a child as defined in section 130.37, criminal sexual act against a child as defined in section 130.51, aggravated sexual abuse of a child as defined in section 130.71 or aggravated course of sexual conduct against a child as defined in section 130.81 of this chapter such minimum period shall be twenty years**.

§ 5. Subdivision 5 of section 125.25 of the penal law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

5. Being eighteen years old or more, while in the course of committing rape in the first, second or third degree, criminal sexual act in the first, second or third degree, sexual abuse in the first degree, **rape of a child, criminal sexual act against a child, aggravated sexual abuse of a child, aggravated course of sexual conduct against a child,** aggravated sexual abuse in the first, second, third or fourth degree, or incest in the first, second or third degree, against a person less than fourteen years old, he or she intentionally causes the death of such person.

§ 6. Subdivision 3 of section 130.35 of the penal law is REPEALED.

§ 7. The penal law is amended by adding a new section 130.37 to read as follows:

§ 130.37 Rape of a child.

A person is guilty of rape of a child when:

1. he or she engages in sexual intercourse with another person who is less than twelve years old; or

2. being twenty-one years old or more, he or she engages in sexual intercourse with another person less than fourteen years old.

Rape of a child is a class A-I felony.

§ 8. Subdivision 3 of section 130.50 of the penal law is REPEALED.

§ 9. The penal law is amended by adding a new section 130.51 to read as follows:

§ 130.51 Criminal sexual act against a child.

A person is guilty of criminal sexual act against a child when:

1. he or she engages in oral sexual conduct or anal sexual conduct with another person who is less than twelve years old; or

2. being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person who is less than fourteen years old.

Criminal sexual act against a child is a class A-I felony.

§ 10. Subdivision 1 of section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, the opening paragraph 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 inserts a 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 less than eleven years old~~].

§ 11. The penal law is amended by adding a new section 130.71 to read as follows:

§ 130.71 Aggravated sexual abuse of a child.

1. A person is guilty of aggravated sexual abuse of a child when:

(a) he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person when such other person is less than twelve years old; or

(b) being twenty-one years old or more, he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person when such other person is less than fourteen years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse of a child is a class A-I felony.

§ 12. Subdivision 1 of section 130.75 of the penal law, as amended by chapter 1 of the laws of 2000, paragraphs (a) and (b) as amended by chapter 264 of the laws of 2003, is amended to read as follows:

1. A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration[~~:~~

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

§ 13. The penal law is amended by adding a new section 130.81 to read as follows:

§ 130.81 Aggravated course of sexual conduct against a child.

1. A person is guilty of aggravated course of sexual conduct against a child when, over a period of time not less than three months in duration:

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

(b) he or she, being twenty-one years old or more, engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than fourteen years old.

2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Aggravated course of sexual conduct against a child is a class A-I felony.

§ 14. Subparagraph (i) of paragraph (a) of subdivision 3 of section 168-a of the correction law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.35, **130.36, 130.37,** 130.50, **130.51,** 130.65, 130.66, 130.67, 130.70, **130.71,** 130.75, 130.80, **130.81,** 130.95 and 130.96 of the penal law, or

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