STATE OF NEW YORK

8172

IN SENATE

January 11, 2024

Introduced by Sen. WALCZYK -- 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 creating the crime of attempt to engage in sexual conduct with a person incapable of consent; and to amend the correction law, in relation to designating individuals convicted of such offense as sex offenders

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

Section 1. The penal law is amended by adding a new section 130.99 to read as follows:

§ 130.99 Attempt to engage in sexual conduct with a person incapable of consent.

In addition to any other crime of attempt under article one hundred ten of this part, a person is guilty of attempt to engage in sexual conduct with a person incapable of consent when he or she engages in the following conduct for the purpose of committing a sexual act to which the victim is deemed incapable of consent under subdivision three of section 130.05 of this article:

1. Communicating to the victim, or a representative of the victim, his or her intent to engage in sexual conduct with the victim; and

2. Engaging in conduct which would tend to further effect the commission of such sexual conduct, including but not limited to, meeting with the victim or a representative of the victim with the explicit intent to plan or otherwise effectuate his or her engagement in sexual conduct with the victim.

An attempt to engage in sexual conduct with a person incapable of consent is a:

1. Class C felony when:

(a) The victim is less than eleven years old; or

(b) The victim is less than thirteen years old and the actor is eighteen years old or more;

2. Class E felony when:

(a) The victim is less than fifteen years old and the actor is eighteen years old or more; or

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

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(b) The victim is incapable of consent by reason of being mentally disabled or mentally incapacitated; or

3. Class A misdemeanor when the victim is less than seventeen years old and the actor is twenty-one years old or more.

For the purposes of this section, the following terms shall have the following meanings:

1. "Representative of the victim" means a person who claims to act as an intermediary between the actor and the victim, or a person acting as a decoy or stand-in for the victim.

2. "Decoy" means a police officer as defined by section 1.20 of the criminal procedure law, or a person or persons acting under the direction of such police officer, where the victim is not a real person.

§ 2. Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 189 of the laws of 2018, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, **130.99,** 230.34, 230.34-a, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05, 230.06, 230.11, 230.12, 230.13, subdivision two of section 230.30, section 230.32, 230.33, or 230.34 of the penal law, or section 230.25 of the penal law where the person prostituted is in fact less than seventeen years old, or

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