STATE OF NEW YORK

1606

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

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

AN ACT to amend the penal law, in relation to establishing the crime of forcible touching of a correction officer, and to increase criminal penalties for certain sexual offenses committed against correction officers

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 130.52-a to read as follows:

§ 130.52-a Forcible touching of a correction officer.

A person is guilty of forcible touching of a correction officer when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of a correction officer for the purpose of degrading or abusing such officer, or for the purpose of gratifying the actor's sexual desire, when such correction officer is acting in the course of their employment.

For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching of a correction officer is a class E felony.

§ 2. Section 130.20 of the penal law, as amended by chapter 1 of the laws of 2000, subdivision 2 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

§ 130.20 Sexual misconduct.

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or

2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or

3. He or she engages in sexual conduct with an animal or a dead human body.

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

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Sexual misconduct is a class A misdemeanor**, provided, however, that when a person is guilty of sexual misconduct against a correction officer when such correction officer is acting in the course of their employment, sexual misconduct is a class E felony**.

§ 3. 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 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 with another person less than seventeen years old; or

3. He or she engages in sexual intercourse 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**, provided, however, that when a person is guilty of rape in the third degree against a correction officer when such correction officer is acting in the course of their employment, rape in the third degree is a class D felony**.

§ 4. 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:

1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or

2. he or she engages in sexual intercourse 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**, provided, however, that when a person is guilty of rape in the second degree against a correction officer when such correction officer is acting in the course of their employment, rape in the second degree is a class C felony**.

§ 5. 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 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**, provided, however, that when a person is guilty of rape in the first degree against a correction officer when such correction officer is acting in the course of their employment, rape in the first degree is a class A-II felony**.

§ 6. Section 130.40 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

§ 130.40 Criminal sexual act in the third degree.

A person is guilty of criminal sexual act in the third degree when:

1. He or she engages in oral sexual conduct or anal sexual conduct with a 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 oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or

3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony**, provided, however, that when a person is guilty of criminal sexual act in the third degree against a correction officer when such correction officer is acting in the course of their employment, criminal sexual act in the third degree is a class D felony**.

§ 7. Section 130.45 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

§ 130.45 Criminal sexual act in the second degree.

A person is guilty of criminal sexual act in the second degree when:

1. being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or

2. he or she engages in oral sexual conduct or anal sexual conduct 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 criminal sexual act 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.

Criminal sexual act in the second degree is a class D felony**, provided, however, that when a person is guilty of criminal sexual act in the second degree against a correction officer when such correction officer is acting in the course of their employment, criminal sexual act in the second degree is a class C felony**.

§ 8. Section 130.50 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

§ 130.50 Criminal sexual act in the first degree.

A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct 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.

Criminal sexual act in the first degree is a class B felony**, provided, however, that when a person is guilty of criminal sexual act in the first degree against a correction officer when such correction officer is acting in the course of their employment, criminal sexual act in the first degree is a class A-II felony**.

§ 9. Section 130.53 of the penal law, as amended by chapter 192 of the laws of 2014, is amended to read as follows:

§ 130.53 Persistent sexual abuse.

A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55

of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten year period, excluding any time during which such person was incarcerated for any reason, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

Persistent sexual abuse is a class E felony**, provided, however, that when a person is guilty of persistent sexual abuse against a correction officer when such correction officer is acting in the course of their employment, persistent sexual abuse is a class D felony**.

§ 10. Section 130.55 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 130.55 Sexual abuse in the third degree.

A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor**, provided, however, that when a person is guilty of sexual abuse in the third degree against a correction officer when such correction officer is acting in the course of their employment, sexual abuse in the third degree is a class A misdemeanor**.

§ 11. Section 130.60 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 130.60 Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or

2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor**, provided, however, that when a person is guilty of sexual abuse in the second degree against a correction officer when such correction officer is acting in the course of their employment, sexual abuse in the second degree is a class E felony**.

§ 12. Section 130.65 of the penal law, as amended by chapter 26 of the laws of 2011, is amended to read as follows:

§ 130.65 Sexual abuse in the first degree.

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or

2. When the other person is incapable of consent by reason of being physically helpless; or

3. When the other person is less than eleven years old; or

4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse in the first degree is a class D felony**, provided, however, that when a person is guilty of sexual abuse in the first degree against a correction officer when such correction officer is acting in**

the course of their employment, sexual abuse in the first degree is a class C felony.

§ 13. Section 130.65-a of the penal law, as added by chapter 1 of the laws of 2000, subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

§ 130.65-a Aggravated sexual abuse in the fourth degree.

1. A person is guilty of aggravated sexual abuse in the fourth degree when:

(a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or

(b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old.

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

Aggravated sexual abuse in the fourth degree is a class E felony**, provided, however, that when a person is guilty of aggravated sexual abuse in the fourth degree against a correction officer when such correction officer is acting in the course of their employment, aggravated sexual abuse in the fourth degree is a class D felony**.

§ 14. Section 130.66 of the penal law, as added by chapter 181 of the laws of 1996, subdivision 1 as amended by chapter 647 of the laws of 2022, subdivision 2 as amended by chapter 485 of the laws of 2009, and subdivision 3 as renumbered by chapter 1 of the laws of 2000, is amended to read as follows:

§ 130.66 Aggravated sexual abuse in the third degree.

1. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object or a finger in the vagina, urethra, penis, rectum or anus of another person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless;

(c) When the other person is less than eleven years old; or

(d) When the other person is less than thirteen years old and the actor is eighteen years of age or older.

2. A person is guilty of aggravated sexual abuse in the third 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 and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

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

Aggravated sexual abuse in the third degree is a class D felony**, provided, however, that when a person is guilty of aggravated sexual abuse in the third degree against a correction officer when such correction officer is acting in the course of their employment, aggravated sexual abuse in the third degree is a class C felony**.

§ 15. Section 130.67 of the penal law, as added by chapter 450 of the laws of 1988, the opening paragraph of subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

§ 130.67 Aggravated sexual abuse in the second degree.

1. A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger 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.

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

Aggravated sexual abuse in the second degree is a class C felony, **provided, however, that when a person is guilty of aggravated sexual abuse in the second degree against a correction officer when such correction officer is acting in the course of their employment, aggravated sexual abuse in the second degree is a class B felony**.

§ 16. Section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, the opening paragraph of subdivision 1 as amended by chapter 485 of the laws of 2009, is amended to read as follows:

§ 130.70 Aggravated sexual abuse in the first degree.

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.

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

Aggravated sexual abuse in the first degree is a class B felony, **provided, however, that when a person is guilty of aggravated sexual abuse in the first degree against a correction officer when such correction officer is acting in the course of their employment, aggravated sexual abuse in the first degree is a class A-II felony**.

§ 17. Section 130.85 of the penal law, as added by chapter 618 of the laws of 1997, is amended to read as follows:

§ 130.85 Female genital mutilation.

1. A person is guilty of female genital mutilation when:

(a) a person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not reached eighteen years of age; or

(b) being a parent, guardian or other person legally responsible and charged with the care or custody of a child less than eighteen years old, he or she knowingly consents to the circumcision, excision or infibulation of whole or part of such child's labia majora or labia minora or clitoris.

2. Such circumcision, excision, or infibulation is not a violation of this section if such act is:

(a) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(b) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

3. For the purposes of paragraph (a) of subdivision two of this section, no account shall be taken of the effect on the person on whom such procedure is to be performed of any belief on the part of that or

any other person that such procedure is required as a matter of custom or ritual.

Female genital mutilation is a class E felony**, provided, however, that when a person is guilty of female genital mutilation against a correction officer when such correction officer is acting in the course of their employment, female genital mutilation is a class D felony**.

§ 18. Section 130.90 of the penal law, as added by chapter 1 of the laws of 2000, subdivisions 1 and 2 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

§ 130.90 Facilitating a sex offense with a controlled substance.

A person is guilty of facilitating a sex offense with a controlled substance when he or she:

1. knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and

2. commits or attempts to commit such conduct constituting a felony defined in this article.

Facilitating a sex offense with a controlled substance is a class D felony**, provided, however, that when a person is guilty of facilitating a sex offense with a controlled substance against a correction officer when such correction officer is acting in the course of their employment, facilitating a sex offense with a controlled substance is a class C felony**.

§ 19. Section 130.95 of the penal law, as added by chapter 107 of the laws of 2006, is amended to read as follows:

§ 130.95 Predatory sexual assault.

A person is guilty of predatory sexual assault when 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 when:

1. In the course of the commission of the crime or the immediate flight therefrom, he or she:

(a) Causes serious physical injury to the victim of such crime; or

(b) Uses or threatens the immediate use of a dangerous instrument; or

2. He or she has engaged in conduct constituting 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, against one or more additional persons; or

3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this [~~chapter~~] **part** or use of a child in a sexual performance as defined in section 263.05 of this [~~chapter~~] **part**.

Predatory sexual assault is a class A-II felony**, provided, however, that when a person is guilty of predatory sexual assault against a correction officer when such correction officer is acting in the course of their employment, predatory sexual assault is a class A-I felony**.

§ 20. This act shall take effect immediately.