

STATE OF NEW YORK

8939--A

2005-2006 Regular Sessions

IN ASSEMBLY

June 20, 2005

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Silver, Lentol, Abbate, Alessi, Bradley, Brennan, Canestrari, Clark, Colton, Cusick, Cymbrowitz, Destito, DiNapoli, Eddington, Espaillat, Fields, Galef, Gianaris, Greene, Gunther, Karben, Koon, Lafayette, Latimer, Lavelle, Lavine, Lifton, Lupardo, Magee, Markey, Morelle, Ortiz, Pfeffer, Pretlow, Ramos, Reilly, Schroeder, Seminerio, Tonko, Weisenberg) -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the correction law, in relation to predatory sexual assault

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

- 1 Section 1. The penal law is amended by adding a new section 130.95 to
2 read as follows:
3 § 130.95 Predatory sexual assault.
4 A person is guilty of predatory sexual assault when he or she commits
5 the crime of rape in the first degree, criminal sexual act in the first
6 degree, aggravated sexual abuse in the first degree, or course of sexual
7 conduct against a child in the first degree, as defined in this article,
8 and when:
9 1. In the course of the commission of the crime or the immediate
10 flight therefrom, he or she:
11 (a) Causes serious physical injury to the victim of such crime; or
12 (b) Uses or threatens the immediate use of a dangerous instrument; or
13 2. He or she has engaged in conduct constituting the crime of rape in
14 the first degree, criminal sexual act in the first degree, aggravated
15 sexual abuse in the first degree, or course of sexual conduct against a
16 child in the first degree, as defined in this article, against one or
17 more additional persons; or

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

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1 3. He or she has previously been subjected to a conviction for a felony
2 defined in this article, incest as defined in section 255.25 of this
3 chapter or use of a child in a sexual performance as defined in section
4 263.05 of this chapter.

5 Predatory sexual assault is a class A-II felony.

6 § 2. The penal law is amended by adding a new section 130.96 to read
7 as follows:

8 § 130.96 Predatory sexual assault against a child.

9 A person is guilty of predatory sexual assault against a child when,
10 being eighteen years old or more, he or she commits the crime of rape in
11 the first degree, criminal sexual act in the first degree, aggravated
12 sexual abuse in the first degree, or course of sexual conduct against a
13 child in the first degree, as defined in this article, and the victim is
14 less than thirteen years old.

15 Predatory sexual assault against a child is a class A-II felony.

16 § 3. Paragraph (a) of subdivision 3 of section 70.00 of the penal law,
17 as amended by chapter 738 of the laws of 2004, subparagraph (i) as
18 amended by chapter 765 of the laws of 2005, is amended to read as
19 follows:

20 (a) In the case of a class A felony, the minimum period shall be fixed
21 by the court and specified in the sentence.

22 (i) For a class A-I felony, such minimum period shall not be less than
23 fifteen years nor more than twenty-five years; provided, however, that
24 (A) where a sentence, other than a sentence of death or life imprison-
25 ment without parole, is imposed upon a defendant convicted of murder in
26 the first degree as defined in section 125.27 of this chapter such mini-
27 mum period shall be not less than twenty years nor more than twenty-five
28 years, and, (B) where a sentence is imposed upon a defendant convicted
29 of murder in the second degree as defined in subdivision five of section
30 125.25 of this chapter or convicted of aggravated murder as defined in
31 section 125.26 of this chapter, the sentence shall be life imprisonment
32 without parole, and, (C) where a sentence is imposed upon a defendant
33 convicted of attempted murder in the first degree as defined in article
34 one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of
35 paragraph (a) of subdivision one and paragraph (b) of subdivision one of
36 section 125.27 of this chapter or attempted aggravated murder as defined
37 in article one hundred ten of this chapter and section 125.26 of this
38 chapter such minimum period shall be not less than twenty years nor more
39 than forty years.

40 (ii) For a class A-II felony, such minimum period shall not be less
41 than three years nor more than eight years four months, except that for
42 the class A-II felony of predatory sexual assault as defined in section
43 130.95 of this chapter or the class A-II felony of predatory sexual
44 assault against a child as defined in section 130.96 of this chapter,
45 such minimum period shall be not less than ten years nor more than twen-
46 ty-five years.

47 § 4. Paragraph (a) of subdivision 4 of section 70.06 of the penal law,
48 as amended by chapter 410 of the laws of 1979, is amended to read as
49 follows:

50 (a) The minimum period of imprisonment for a second felony offender
51 convicted of a class A-II felony must be fixed by the court at no less
52 than six years and not to exceed twelve and one-half years and must be
53 specified in the sentence, except that for the class A-II felony of
54 predatory sexual assault as defined in section 130.95 of this chapter or
55 the class A-II felony of predatory sexual assault against a child as

1 defined in section 130.96 of this chapter, such minimum period shall be
2 not less than ten years nor more than twenty-five years.

3 § 5. Paragraphs (a) and (b) of subdivision 4 of section 70.07 of the
4 penal law, paragraph (b) as amended by chapter 264 of the laws of 2003,
5 are amended to read as follows:

6 (a) where the defendant stands convicted of such sexual assault
7 against a child and such conviction is for a class A-II or class B felo-
8 ny offense, and the predicate conviction for such sexual assault against
9 a child is for a class A-II, class B or class C felony offense, the
10 court shall impose an indeterminate sentence of imprisonment, the maxi-
11 mum term of which shall be life and the minimum period of which shall be
12 at least fifteen years and no more than twenty-five years;

13 (b) where the defendant stands convicted of such sexual assault
14 against a child and the conviction is for a class C felony offense, and
15 the predicate conviction for such sexual assault against a child is for
16 a class A-II, class B or class C felony offense, the court shall impose
17 a determinate sentence of imprisonment, the term of which must be at
18 least twelve years and must not exceed thirty years; provided however,
19 that if the court determines that a longer sentence is warranted, the
20 court shall set forth on the record the reasons for such determination
21 and, in lieu of imposing such sentence of imprisonment, may impose an
22 indeterminate sentence of imprisonment, the maximum term of which shall
23 be life and the minimum period of which shall be at least fifteen years
24 and no more than twenty-five years;

25 § 6. Paragraph (a) of subdivision 1 of section 70.08 of the penal law,
26 as added by chapter 481 of the laws of 1978, is amended to read as
27 follows:

28 (a) A persistent violent felony offender is a person who stands
29 convicted of a violent felony offense as defined in subdivision one of
30 section 70.02 or the offense of predatory sexual assault as defined in
31 section 130.95 of this chapter or the offense of predatory sexual
32 assault against a child as defined in section 130.96 of this chapter,
33 after having previously been subjected to two or more predicate violent
34 felony convictions as defined in paragraph (b) of subdivision one of
35 section 70.04 of this article.

36 § 7. Subdivision 3 of section 70.08 of the penal law, as amended by
37 chapter 3 of the laws of 1995, is amended to read as follows:

38 3. Minimum period of imprisonment. The minimum period of imprisonment
39 under an indeterminate life sentence for a persistent violent felony
40 offender must be fixed by the court as follows:

41 (a) For the class A-II felony of predatory sexual assault as defined
42 in section 130.95 of this chapter or the class A-II felony of predatory
43 sexual assault against a child as defined in section 130.96 of this
44 chapter, the minimum period must be twenty-five years;

45 (a-1) For a class B felony, the minimum period must be at least twenty
46 years and must not exceed twenty-five years;

47 (b) For a class C felony, the minimum period must be at least sixteen
48 years and must not exceed twenty-five years;

49 (c) For a class D felony, the minimum period must be at least twelve
50 years and must not exceed twenty-five years.

51 § 8. Subdivision 3 of section 70.08 of the penal law, as added by
52 chapter 481 of the laws of 1978, is amended to read as follows:

53 3. Minimum period of imprisonment. The minimum period of imprisonment
54 under an indeterminate life sentence for a persistent violent felony
55 offender must be fixed by the court as follows:

1 (a) For the class A-II felony of predatory sexual assault as defined
 2 in section 130.95 of this chapter or the class A-II felony of predatory
 3 sexual assault against a child as defined in section 130.96 of this
 4 chapter, the minimum period must be twenty-five years;

5 (a-1) For a class B felony, the minimum period must be at least ten
 6 years and must not exceed twenty-five years;

7 (b) For a class C felony, the minimum period must be at least eight
 8 years and must not exceed twenty-five years;

9 (c) For a class D felony, the minimum period must be at least six
 10 years and must not exceed twenty-five years.

11 § 9. Paragraph (a) of subdivision 3 of section 168-a of the correction
 12 law, as amended by chapter 11 of the laws of 2002, is amended to read as
 13 follows:

14 (a) (i) a conviction of or a conviction for an attempt to commit any
 15 of the provisions of sections 130.35, 130.50, 130.65, 130.66, 130.67,
 16 130.70, 130.75 ~~and~~, 130.80, 130.95 and 130.96 of the penal law, or
 17 (ii) a conviction of or a conviction for an attempt to commit any of the
 18 provisions of sections 130.53, 130.65-a and 130.90 of the penal law, or
 19 (iii) a conviction of or a conviction for an attempt to commit any
 20 provisions of the foregoing sections committed or attempted as a hate
 21 crime defined in section 485.05 of the penal law or as a crime of
 22 terrorism defined in section 490.25 of such law; or

23 § 10. This act shall take effect immediately, provided, however, that
 24 the amendments to subdivision 3 of section 70.08 of the penal law made
 25 by section seven of this act shall be subject to the expiration and
 26 reversion of such subdivision pursuant to subdivision d of section 74 of
 27 chapter 3 of the laws of 1995, as amended, when upon such date the
 28 provisions of section eight of this act shall take effect.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A8939A

SPONSOR: Rules (Silver)

TITLE OF BILL:

An act to amend the penal law and the correction law, in relation to predatory sexual assault

PURPOSE OR GENERAL IDEA OF BILL:

To significantly increase penalties for certain serious sex crimes by providing a life maximum sentence for such crimes.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 of the bill amends the penal law to create the crime of "predatory sexual assault," which is defined as committing any of one of four class B violent felonies in article 130 of the penal law along with anyone of four aggravating factors which include: (1) causing serious physical injury to the victim while committing the crime; (2) using or threatening the immediate use of a dangerous instrument while committing

the crime; (3) committing any of the four class B violent sex felonies against more than one person; and (4) having been previously convicted of any felony defined in article 130 of the penal law, incest or the use of a child in a sexual performance.

Section 2 of the bill amends the penal law by creating the crime of "Predatory Sexual Assault Against a Child". This crime increases from a class B felony to a class A-II felony, with a required life sentence and minimum term of at least ten and up to twenty-five years in prison, commission of a class B felony sex offense by a person more than eighteen years of age against a child less than thirteen years of age.

Section 3 of the bill amends the penal law to provide that the minimum sentence of imprisonment for a felony offender convicted of the crime of Predatory Sexual Assault or Predatory Sexual Assault Against a Child would be no less than ten years to life and up to 25 years to life.

Sections 4 and 5 of the bill amend the penal law to provide that persons convicted of these new crimes and who are classified as second felony offenders, based on a previous Class B or class C felony conviction, or have previously been convicted of a specified felony offense against a child, shall receive a mandatory life sentence with a minimum term of between 15 and 25 years.

Sections 6, 7 and 8 of the bill amend the penal law to provide that those who are convicted of the new crime and are classified as "persistent violent felony" offenders must serve a term of 25 years to life in prison.

Section 9 of the bill amends the correction law to add the crimes Predatory Sexual Assault and Predatory Sexual Assault Against a Child to the list of offenses which require registration under the Sexual Offender Registration Act ("Megan's Law").

JUSTIFICATION:

New York's enactment of the Sexual Assault Reform Act of 2000 ("SARA") along with subsequent amendments to SARA in 2003, the enactment of the Sex Offender Registration Act ("SORA", also known as Megan's Law) and the continuing strengthening of that landmark legislation have given this state a package of tough laws to combat sexual assault. Despite this latticework of tough penalties, mandatory registration and ongoing monitoring of sex offenders, more needs to be done. This bill, by providing life maximum sentences for first time offenders who commit egregious acts of sexual assault, would increase penalties to further deter and punish these heinous crimes.

PRIOR LEGISLATIVE HISTORY:

None.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Immediately.