

STATE OF NEW YORK

6277--B

Cal. No. 18

IN SENATE

(Prefiled)

January 4, 2006

Introduced by Sens. VOLKER, RATH, ALESI, DeFRANCISCO, FLANAGAN, FUSCHILLO, GOLDEN, HANNON, JOHNSON, LARKIN, LEIBELL, LIBOUS, MALTESE, MAZIARZ, MEIER, PADAVAN, ROBACH, SALAND, SAVINO, SEWARD, SKELOS, SPANO, TRUNZO, WRIGHT, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, the correction law, the criminal procedure law, the civil rights law, the executive law, the family court act and the social services law, in relation to the crime of incest

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

1 Section 1. Section 255.25 of the penal law, as amended by chapter 649
2 of the laws of 1984 and the first undesignated paragraph as amended by
3 chapter 264 of the laws of 2003, is amended and two new sections 255.26
4 and 255.27 are added to read as follows:

5 § 255.25 Incest in the third degree.

6 A person is guilty of incest in the third degree when he or she
7 marries or engages in sexual intercourse, oral sexual conduct or anal
8 sexual conduct with a person whom he or she knows to be related to him
9 or her, [~~either legitimately or out of wedlock~~] whether through marriage
10 or not, as an ancestor, descendant, brother or sister of either the
11 whole or the half blood, uncle, aunt, nephew or niece.

12 Incest in the third degree is a class E felony.

13 § 255.26 Incest in the second degree.

14 A person is guilty of incest in the second degree when he or she
15 commits the crime of rape in the second degree, as defined in section
16 130.30 of this part, or criminal sexual act in the second degree, as
17 defined in section 130.45 of this part, against a person whom he or she

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

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1 knows to be related to him or her, whether through marriage or not, as
2 an ancestor, descendant, brother or sister of either the whole or the
3 half blood, uncle, aunt, nephew or niece.

4 Incest in the second degree is a class D felony.

5 § 255.27 Incest in the first degree.

6 A person is guilty of incest in the first degree when he or she
7 commits the crime of rape in the first degree, as defined in subdivision
8 three or four of section 130.35 of this part, or criminal sexual act in
9 the first degree, as defined in subdivision three or four of section
10 130.50 of this part, against a person whom he or she knows to be related
11 to him or her, whether through marriage or not, as an ancestor, descend-
12 ant, brother or sister of either the whole or half blood, uncle, aunt,
13 nephew or niece.

14 Incest in the first degree is a class B felony.

15 § 2. Paragraph (b) of subdivision 1 of section 60.35 of the penal law,
16 as amended by section 1 of part E of chapter 56 of the laws of 2004, is
17 amended to read as follows:

18 (b) When the felony or misdemeanor conviction in subparagraphs (i),
19 (ii) or (iv) of paragraph (a) of this subdivision results from an
20 offense contained in article one hundred thirty of this chapter, incest
21 in the third, second or first degree as defined in [~~section~~] sections
22 255.25, 255.26 and 255.27 of this chapter or an offense contained in
23 article two hundred sixty-three of this chapter, the person convicted
24 shall pay a supplemental sex offender victim fee of one thousand dollars
25 in addition to the mandatory surcharge and any other fee.

26 § 3. The closing paragraph of subdivision 3 of section 65.00 of the
27 penal law, as amended by chapter 264 of the laws of 2003, is amended to
28 read as follows:

29 For the purposes of this section, the term "sexual assault" means an
30 offense defined in article one hundred thirty or two hundred sixty-
31 three, or in section 255.25, 255.26 or 255.27 of this chapter, or an
32 attempt to commit any of the foregoing offenses.

33 § 4. Subdivision 4-a of section 65.10 of the penal law, as amended by
34 chapter 544 of the laws of 2005, is amended to read as follows:

35 4-a. Mandatory condition for sex offenders. When imposing a sentence
36 of probation or conditional discharge upon a person convicted of an
37 offense defined in article one hundred thirty, two hundred thirty-five
38 or two hundred sixty-three of this chapter, or section 255.25, 255.26 or
39 255.27 of this chapter, and the victim of such offense was under the age
40 of eighteen at the time of such offense or such person has been desig-
41 nated a level three sex offender pursuant to subdivision six of section
42 168-1 of the correction law, the court shall require, as a mandatory
43 condition of such sentence, that such sentenced offender shall refrain
44 from knowingly entering into or upon any school grounds, as that term is
45 defined in subdivision fourteen of section 220.00 of this chapter, or
46 any other facility or institution primarily used for the care or treat-
47 ment of persons under the age of eighteen while one or more of such
48 persons under the age of eighteen are present, provided however, that
49 when such sentenced offender is a registered student or participant or
50 an employee of such facility or institution or entity contracting there-
51 with or has a family member enrolled in such facility or institution,
52 such sentenced offender may, with the written authorization of his or
53 her probation officer or the court and the superintendent or chief
54 administrator of such facility, institution or grounds, enter such
55 facility, institution or upon such grounds for the limited purposes
56 authorized by the probation officer or the court and superintendent or

1 chief officer. Nothing in this subdivision shall be construed as
2 restricting any lawful condition of supervision that may be imposed on
3 such sentenced offender.

4 § 5. Paragraph (a) of subdivision 1 of section 70.02 of the penal law,
5 as separately amended by chapters 764 and 765 of the laws of 2005, is
6 amended to read as follows:

7 (a) Class B violent felony offenses: an attempt to commit the class
8 A-I felonies of murder in the second degree as defined in section
9 125.25, kidnapping in the first degree as defined in section 135.25, and
10 arson in the first degree as defined in section 150.20; manslaughter in
11 the first degree as defined in section 125.20, aggravated manslaughter
12 in the first degree as defined in section 125.22, rape in the first
13 degree as defined in section 130.35, criminal sexual act in the first
14 degree as defined in section 130.50, aggravated sexual abuse in the
15 first degree as defined in section 130.70, course of sexual conduct
16 against a child in the first degree as defined in section 130.75;
17 assault in the first degree as defined in section 120.10, kidnapping in
18 the second degree as defined in section 135.20, burglary in the first
19 degree as defined in section 140.30, arson in the second degree as
20 defined in section 150.15, robbery in the first degree as defined in
21 section 160.15, incest in the first degree as defined in section 255.27,
22 criminal possession of a weapon in the first degree as defined in
23 section 265.04, criminal use of a firearm in the first degree as defined
24 in section 265.09, criminal sale of a firearm in the first degree as
25 defined in section 265.13, aggravated assault upon a police officer or a
26 peace officer as defined in section 120.11, gang assault in the first
27 degree as defined in section 120.07, intimidating a victim or witness in
28 the first degree as defined in section 215.17, hindering prosecution of
29 terrorism in the first degree as defined in section 490.35, criminal
30 possession of a chemical weapon or biological weapon in the second
31 degree as defined in section 490.40, and criminal use of a chemical
32 weapon or biological weapon in the third degree as defined in section
33 490.47.

34 § 6. Paragraph b of subdivision 5 of section 120.40 of the penal law,
35 as added by chapter 635 of the laws of 1999, is amended to read as
36 follows:

37 b. a crime defined in section 130.20, 130.25, 130.30, 130.40, 130.45,
38 130.55, 130.60, 130.70 [~~or~~], 255.25, 255.26 or 255.27;

39 § 7. Subdivision 5 of section 125.25 of the penal law, as added by
40 chapter 459 of the laws of 2004, is amended to read as follows:

41 5. Being eighteen years old or more, while in the course of committing
42 rape in the first, second or third degree, criminal sexual act in the
43 first, second or third degree, sexual abuse in the first degree, aggra-
44 vated sexual abuse in the first, second, third or fourth degree, or
45 incest [~~as defined in section 255.25 of this chapter~~] in the first,
46 second or third degree, against a person less than fourteen years old,
47 he or she intentionally causes the death of such person.

48 § 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section
49 168-a of the correction law, as amended by chapter 69 of the laws of
50 2003, is amended to read as follows:

51 (i) a conviction of or a conviction for an attempt to commit any of
52 the provisions of sections 130.20, 130.25, 130.30, 130.40, 130.45,
53 130.60, 250.50 [~~and~~], 255.25, 255.26 and 255.27 or article two hundred
54 sixty-three of the penal law, or section 135.05, 135.10, 135.20 or
55 135.25 of such law relating to kidnapping offenses, provided the victim
56 of such kidnapping or related offense is less than seventeen years old

1 and the offender is not the parent of the victim, or sections 230.04,
2 where the person patronized is in fact less than seventeen years of age,
3 230.05 or 230.06 or subdivision two of section 230.30, section 230.32 of
4 the penal law, or

5 § 9. The opening paragraph of subdivision 2 of section 851 of the
6 correction law, as amended by section 1 of chapter 252 of the laws of
7 2005, is amended to read as follows:

8 "Eligible inmate" means: a person confined in an institution who is
9 eligible for release on parole or who will become eligible for release
10 on parole or conditional release within two years. Provided, however,
11 that a person under sentence for an offense defined in paragraphs (a)
12 and (b) of subdivision one of section 70.02 of the penal law, where such
13 offense involved the use or threatened use of a deadly weapon or danger-
14 ous instrument shall not be eligible to participate in a work release
15 program until he or she is eligible for release on parole or who will be
16 eligible for release on parole or conditional release within eighteen
17 months. Provided, further, however, that a person under a determinate
18 sentence as a second felony drug offender for a class B felony offense
19 defined in article two hundred twenty of the penal law, who was
20 sentenced pursuant to section 70.70 of such law, shall not be eligible
21 to participate in a temporary release program until the time served
22 under imprisonment for his or her determinate sentence, including any
23 jail time credited pursuant to the provisions of article seventy of the
24 penal law, shall be at least eighteen months. In the case of a person
25 serving an indeterminate sentence of imprisonment imposed pursuant to
26 the penal law in effect after September one, nineteen hundred sixty-sev-
27 en, for the purposes of this article parole eligibility shall be upon
28 the expiration of the minimum period of imprisonment fixed by the court
29 or where the court has not fixed any period, after service of the mini-
30 mum period fixed by the state board of parole. If an inmate is denied
31 release on parole, such inmate shall not be deemed an eligible inmate
32 until he or she is within two years of his or her next scheduled appear-
33 ance before the state parole board. In any case where an inmate is
34 denied release on parole while participating in a temporary release
35 program, the department shall review the status of the inmate to deter-
36 mine if continued placement in the program is appropriate. No person
37 convicted of any escape or absconding offense defined in article two
38 hundred five of the penal law shall be eligible for temporary release.
39 Further, no person under sentence for aggravated harassment of an
40 employee by an inmate as defined in section 240.32 of the penal law for,
41 any homicide offense defined in article one hundred twenty-five of the
42 penal law, for any sex offense defined in article one hundred thirty of
43 the penal law, or for an offense defined in section 255.25, 255.26 or
44 255.27 of the penal law shall be eligible to participate in a work
45 release program as defined in subdivision three of this section. Nor
46 shall any person under sentence for any sex offense defined in article
47 one hundred thirty of the penal law be eligible to participate in a
48 community services program as defined in subdivision five of this
49 section. Notwithstanding the foregoing, no person who is an otherwise
50 eligible inmate who is under sentence for a crime involving: (a)
51 infliction of serious physical injury upon another as defined in the
52 penal law or (b) any other offense involving the use or threatened use
53 of a deadly weapon may participate in a temporary release program with-
54 out the written approval of the commissioner. The commissioner shall
55 promulgate regulations giving direction to the temporary release commit-

1 tee at each institution in order to aid such committees in carrying out
2 this mandate.

3 § 10. Paragraph (f) of subdivision 3 of section 30.10 of the criminal
4 procedure law, as added by chapter 122 of the laws of 1996, is amended
5 to read as follows:

6 (f) For purposes of a prosecution involving a sexual offense as
7 defined in article one hundred thirty of the penal law committed against
8 a child less than eighteen years of age, incest in the first, second or
9 third degree as defined in [~~section~~] sections 255.27, 255.26 and 255.25
10 of the penal law committed against a child less than eighteen years of
11 age, or use of a child in a sexual performance as defined in section
12 263.05 of the penal law, the period of limitation shall not begin to run
13 until the child has reached the age of eighteen or the offense is
14 reported to a law enforcement agency or statewide central register of
15 child abuse and maltreatment, whichever occurs earlier.

16 § 11. Section 60.44 of the criminal procedure law, as added by chapter
17 358 of the laws of 1986, is amended to read as follows:

18 § 60.44 Use of anatomically correct dolls.

19 Any person who is less than sixteen years old may in the discretion of
20 the court and where helpful and appropriate, use an anatomically correct
21 doll in testifying in a criminal proceeding based upon conduct prohibit-
22 ed by article one hundred thirty, article two hundred sixty or section
23 255.25, 255.26 or 255.27 of the penal law.

24 § 12. Subdivision 1 of section 65.00 of the criminal procedure law, as
25 amended by chapter 362 of the laws of 2004, is amended to read as
26 follows:

27 1. "Child witness" means a person fourteen years old or less who is or
28 will be called to testify in a criminal proceeding, other than a grand
29 jury proceeding, concerning an offense defined in article one hundred
30 thirty of the penal law or section 255.25, 255.26 or 255.27 of such law
31 which is the subject of such criminal proceeding.

32 § 13. Subdivision 6 of section 65.20 of the criminal procedure law, as
33 added by chapter 505 of the laws of 1985, is amended to read as follows:

34 6. Notwithstanding any other provision of law, the child witness who
35 is alleged to be vulnerable may not be compelled to testify at such
36 hearing or to submit to any psychological or psychiatric examination.
37 The failure of the child witness to testify at such hearing shall not be
38 a ground for denying a motion made pursuant to subdivision one of this
39 section. Prior statements made by the child witness relating to any
40 allegations of conduct constituting an offense defined in article one
41 hundred thirty of the penal law or incest as defined in section 255.25,
42 255.26 or 255.27 of such law or to any allegation of words or conduct
43 constituting an attempt to prevent, impede or deter the child witness
44 from cooperating in the investigation or prosecution of the offense
45 shall be admissible at such hearing, provided, however, that a declara-
46 tion that a child witness is vulnerable may not be based solely upon
47 such prior statements.

48 § 14. Paragraph (k) of subdivision 9 of section 65.20 of the criminal
49 procedure law, as added by chapter 505 of the laws of 1985, is amended
50 to read as follows:

51 (k) The child witness has previously been the victim of an offense
52 defined in article one hundred thirty of the penal law or incest as
53 defined in section 255.25, 255.26 or 255.27 of such law.

54 § 15. Subdivision 2 of section 160.45 of the criminal procedure law,
55 as amended by chapter 78 of the laws of 1990, is amended to read as
56 follows:

1 2. As used in this section, "victim of a sexual assault crime" means
2 any person alleged to have sustained an offense under article one
3 hundred thirty or section 255.25, 255.26 or 255.27 of the penal law.

4 § 16. Paragraph (h) of subdivision 3 of section 190.25 of the criminal
5 procedure law, as amended by chapter 613 of the laws of 1987, is amended
6 to read as follows:

7 (h) A social worker, rape crisis counselor, psychologist or other
8 professional providing emotional support to a child witness twelve years
9 old or younger who is called to give evidence in a grand jury proceeding
10 concerning a crime defined in article one hundred thirty, article two
11 hundred sixty, section 120.10, 125.10, 125.15, 125.20, 125.25, 125.27
12 [~~or~~], 255.25, 255.26 or 255.27 of the penal law provided that the
13 district attorney consents. Such support person shall not provide the
14 witness with an answer to any question or otherwise participate in such
15 proceeding and shall first take an oath before the grand jury that he or
16 she will keep secret all matters before such grand jury within his or
17 her knowledge.

18 § 17. Subdivision 1 of section 190.32 of the criminal procedure law,
19 as added by chapter 804 of the laws of 1984, is amended to read as
20 follows:

21 1. Definitions. As used in this section:

22 (a) "Child witness" means a person twelve years old or less whom the
23 people intend to call as witness in a grand jury proceeding to give
24 evidence concerning any crime defined in article one hundred thirty or
25 two hundred sixty or section 255.25, 255.26 or 255.27 of the penal law
26 of which the person was a victim.

27 (b) "Special witness" means a person whom the people intend to call as
28 a witness in a grand jury proceeding and who is either:

29 (i) Unable to attend and testify in person in the grand jury proceed-
30 ing because the person is either physically ill or incapacitated; or

31 (ii) More than twelve years old and who is likely to suffer very
32 severe emotional or mental stress if required to testify in person
33 concerning any crime defined in article one hundred thirty or two
34 hundred sixty or section 255.25, 255.26 or 255.27 of the penal law to
35 which the person was a witness or of which the person was a victim.

36 (c) "Operator" means a person employed by the district attorney who
37 operates the video camera to record the examination of a child witness
38 or a special witness.

39 § 18. Subdivision 6 of section 380.50 of the criminal procedure law,
40 as added by chapter 549 of the laws of 2000, is amended to read as
41 follows:

42 6. Regardless of whether the victim requests to make a statement with
43 regard to the defendant's sentence, where the defendant is sentenced for
44 a violent felony offense as defined in section 70.02 of the penal law or
45 a felony defined in article one hundred twenty-five of such law or any
46 of the following provisions of such law sections 130.25, 130.30, 130.40,
47 130.45, 255.25, 255.26, 255.27, article [~~263~~] two hundred sixty-three,
48 135.10, 135.25, 230.05, 230.06, subdivision two of section 230.30 or
49 230.32, the prosecutor shall, within sixty days of the imposition of
50 sentence, provide the victim with a form on which the victim may indi-
51 cate a demand to be informed of any petition to change the name of such
52 defendant. Such forms shall be maintained by such prosecutor. Upon
53 receipt of a notice of a petition to change the name of any such defend-
54 ant, pursuant to subdivision two of section sixty-two of the civil
55 rights law, the prosecutor shall promptly notify the victim at the most
56 current address or telephone number provided by such victim in the most

1 reasonable and expedient possible manner of the time and place such
2 petition will be presented to the court.

3 § 19. Subdivision 1 of section 50-b of the civil rights law, as
4 amended by chapter 643 of the laws of 1999, is amended to read as
5 follows:

6 1. The identity of any victim of a sex offense, as defined in article
7 one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law,
8 or of an offense involving the alleged transmission of the human immuno-
9 deficiency virus, shall be confidential. No report, paper, picture,
10 photograph, court file or other documents, in the custody or possession
11 of any public officer or employee, which identifies such a victim shall
12 be made available for public inspection. No such public officer or
13 employee shall disclose any portion of any police report, court file, or
14 other document, which tends to identify such a victim except as provided
15 in subdivision two of this section.

16 § 20. Subdivision 2 of section 61 of the civil rights law, as added by
17 chapter 549 of the laws of 2000, is amended to read as follows:

18 2. If the petitioner stands convicted of a violent felony offense as
19 defined in section 70.02 of the penal law or a felony defined in article
20 one hundred twenty-five of such law or any of the following provisions
21 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
22 255.27, article [~~263~~] two hundred sixty-three, 135.10, 135.25, 230.05,
23 230.06, subdivision two of section 230.30 or 230.32, and is currently
24 confined as an inmate in any correctional facility or currently under
25 the supervision of the state division of parole or a county probation
26 department as a result of such conviction, the petition shall for each
27 such conviction specify such felony conviction, the date of such
28 conviction or convictions, and the court in which such conviction or
29 convictions were entered.

30 § 21. Subdivision 2 of section 62 of the civil rights law, as added by
31 chapter 549 of the laws of 2000, is amended to read as follows:

32 2. If the petition be to change the name of a person currently
33 confined as an inmate in any correctional facility or currently under
34 the supervision of the state division of parole or a county probation
35 department as a result of a conviction for a violent felony offense as
36 defined in section 70.02 of the penal law or a felony defined in article
37 one hundred twenty-five of such law or any of the following provisions
38 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
39 255.27, article [~~263~~] two hundred sixty-three, 135.10, 135.25, 230.05,
40 230.06, subdivision two of section 230.30 or 230.32, notice of the time
41 and place when and where the petition will be presented shall be served,
42 in like manner as a notice of a motion upon an attorney in an action,
43 upon the district attorney of every county in which such person has been
44 convicted of such felony and upon the court or courts in which the
45 sentence for such felony was entered. Unless a shorter period of time
46 is ordered by the court, said notice shall be served upon each such
47 district attorney and court or courts not less than sixty days prior to
48 the date on which such petition is noticed to be heard.

49 § 22. The second undesignated paragraph of section 64 of the civil
50 rights law, as amended by chapter 549 of the laws of 2000, is amended to
51 read as follows:

52 Upon compliance with the order and the filing of the affidavit of the
53 publication, as provided in this section, the clerk of the court in
54 which the order has been entered shall certify that the order has been
55 complied with; and, if the petition states that the petitioner stands
56 convicted of a violent felony offense as defined in section 70.02 of the

1 penal law or a felony defined in article one hundred twenty-five of such
2 law or any of the following provisions of such law sections 130.25,
3 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article [~~263~~] two
4 hundred sixty-three, 135.10, 135.25, 230.05, 230.06, subdivision two of
5 section 230.30 or 230.32, such clerk shall deliver, by first class mail,
6 a copy of such certified order to the division of criminal justice
7 services at its office in the county of Albany. Such certification shall
8 appear on the original order and on any certified copy thereof and shall
9 be entered in the clerk's minutes of the proceeding.

10 § 23. Subdivision 14 of section 259-c of the executive law, as amended
11 by chapter 544 of the laws of 2005, is amended to read as follows:

12 14. notwithstanding any other provision of law to the contrary, where
13 a person serving a sentence for an offense defined in article one
14 hundred thirty, one hundred thirty-five or two hundred sixty-three of
15 the penal law or section 255.25, 255.26 or 255.27 of the penal law and
16 the victim of such offense was under the age of eighteen at the time of
17 such offense or such person has been designated a level three sex offen-
18 der pursuant to subdivision six of section [~~168-1~~] one hundred sixty-
19 eight-1 of the correction law, is released on parole or conditionally
20 released pursuant to subdivision one or two of this section, the board
21 shall require, as a mandatory condition of such release, that such
22 sentenced offender shall refrain from knowingly entering into or upon
23 any school grounds, as that term is defined in subdivision fourteen of
24 section 220.00 of the penal law, or any other facility or institution
25 primarily used for the care or treatment of persons under the age of
26 eighteen while one or more of such persons under the age of eighteen are
27 present, provided however, that when such sentenced offender is a regis-
28 tered student or participant or an employee of such facility or institu-
29 tion or entity contracting therewith or has a family member enrolled in
30 such facility or institution, such sentenced offender may, with the
31 written authorization of his or her parole officer and the superinten-
32 dent or chief administrator of such facility, institution or grounds,
33 enter such facility, institution or upon such grounds for the limited
34 purposes authorized by the parole officer and superintendent or chief
35 officer. Nothing in this subdivision shall be construed as restricting
36 any lawful condition of supervision that may be imposed on such
37 sentenced offender.

38 § 24. Subdivision 1 of section 631 of the executive law, as amended by
39 chapter 408 of the laws of 2005, is amended to read as follows:

40 1. No award shall be made unless the board or board member, as the
41 case may be, finds that (a) a crime was committed, (b) such crime
42 directly resulted in personal physical injury to or the exacerbation of
43 a preexisting disability, or condition, or death of, the victim, and (c)
44 criminal justice agency records show that such crime was promptly
45 reported to the proper authorities; and in no case may an award be made
46 where the criminal justice agency records show that such report was made
47 more than one week after the occurrence of such crime unless the board,
48 for good cause shown, finds the delay to have been justified; provided,
49 however, in cases involving an alleged sex offense as contained in arti-
50 cle one hundred thirty of the penal law or incest as defined in section
51 255.25, 255.26 or 255.27 of the penal law or an offense chargeable as a
52 family offense as described in section eight hundred twelve of the fami-
53 lial court act or section 530.11 of the criminal procedure law, the crimi-
54 nal justice agency report need only be made within a reasonable time
55 considering all the circumstances, including the victim's physical,
56 emotional and mental condition and family situation. For the purposes of

1 this subdivision, "criminal justice agency" shall include, but not be
2 limited to, a police department, a district attorney's office, and any
3 other governmental agency having responsibility for the enforcement of
4 the criminal laws of the state provided, however, that in cases involv-
5 ing such sex offense a criminal justice agency shall also mean a family
6 court, a governmental agency responsible for child and/or adult protec-
7 tive services pursuant to title six of article six of the social
8 services law and/or title one of article nine-B of the social services
9 law, and any medical facility established under the laws of the state
10 that provides a forensic physical examination for victims of rape and
11 sexual assault.

12 § 25. Paragraph (a) of subdivision 2-a of section 642 of the executive
13 law, as amended by chapter 301 of the laws of 1991, is amended to read
14 as follows:

15 (a) All police departments, as that term is defined in subdivision a
16 of section eight hundred thirty-seven-c of this chapter, district attor-
17 neys' offices and presentment agencies, as that term is defined in
18 subdivision twelve of section 301.2 of the family court act, shall
19 provide a private setting for interviewing victims of a crime defined in
20 article one hundred thirty or section 255.25, 255.26 or 255.27 of the
21 penal law. For purposes of this subdivision, "private setting" shall
22 mean an enclosed room from which the occupants are not visible or other-
23 wise identifiable, and whose conversations cannot be heard, from outside
24 such room. Only (i) those persons directly and immediately related to
25 the interviewing of a particular victim, (ii) the victim, (iii) a social
26 worker, rape crisis counselor, psychologist or other professional
27 providing emotional support to the victim, unless the victim objects to
28 the presence of such person and requests the exclusion of such person
29 from the interview, and (iv) where appropriate, the parent or parents of
30 the victim, if requested by the victim, shall be present during the
31 interview of the victim.

32 § 26. Paragraph (a) of subdivision 7 of section 995 of the executive
33 law, as separately amended by section 13 of part A of chapter 1 and
34 chapter 576 of the laws of 2004, is amended to read as follows:

35 (a) sections 120.05, 120.10, and 120.11, relating to assault; sections
36 125.15 through 125.27 relating to homicide; sections 130.25, 130.30,
37 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to
38 sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to
39 escape and other offenses, where the offender has been convicted within
40 the previous five years of one of the other felonies specified in this
41 subdivision; or ~~section~~ sections 255.25, 255.26 and 255.27, relating
42 to incest, a violent felony offense as defined in subdivision one of
43 section 70.02 of the penal law, attempted murder in the first degree, as
44 defined in section 110.00 and section 125.27 of the penal law, kidnap-
45 ping in the first degree, as defined in section 135.25 of the penal law,
46 arson in the first degree, as defined in section 150.20 of the penal
47 law, burglary in the third degree, as defined in section 140.20 of the
48 penal law, attempted burglary in the third degree, as defined in section
49 110.00 and section 140.20 of the penal law, a felony defined in article
50 four hundred ninety of the penal law relating to terrorism or any
51 attempt to commit an offense defined in such article relating to terror-
52 ism which is a felony; or

53 § 27. Subdivision 4 of section 343.1 of the family court act, as
54 amended by chapter 362 of the laws of 2004, is amended to read as
55 follows:

1 4. A child witness may give testimony in accordance with the
2 provisions of article sixty-five of the criminal procedure law, provided
3 such child is declared vulnerable in accordance with subdivision one of
4 section 65.10 of such law. A child witness means a person fourteen years
5 old or less who is or will be called to testify in any proceeding
6 concerning an act defined in article one hundred thirty of the penal law
7 or section 255.25, 255.26 or 255.27 of such law, which act would consti-
8 tute a crime if committed by an adult. The provisions of this subdivi-
9 sion shall expire and be deemed repealed on the same date as article
10 sixty-five of the criminal procedure law expires and is deemed repealed
11 pursuant to section five of chapter five hundred five of the laws of
12 nineteen hundred eighty-five, as from time to time, amended.

13 § 28. Paragraph (iii) of subdivision (e) of section 1012 of the family
14 court act, as amended by chapter 7 of the laws of 1999, is amended to
15 read as follows:

16 (iii) commits, or allows to be committed an offense against such child
17 defined in article one hundred thirty of the penal law; allows, permits
18 or encourages such child to engage in any act described in sections
19 230.25, 230.30 and 230.32 of the penal law; commits any of the acts
20 described in [~~section~~] sections 255.25, 255.26 and 255.27 of the penal
21 law; or allows such child to engage in acts or conduct described in
22 article two hundred sixty-three of the penal law provided, however, that
23 (a) the corroboration requirements contained in the penal law and (b)
24 the age requirement for the application of article two hundred sixty-
25 three of such law shall not apply to proceedings under this article.

26 § 29. Paragraph (c) of subdivision 8 of section 412 of the social
27 services law, as added by chapter 32 of the laws of 1992, is amended to
28 read as follows:

29 (c) commits, promotes or knowingly permits the commission of a sex
30 offense against such child, as described in article one hundred thirty
31 of the penal law; allows, permits or encourages such child to engage in
32 any act described in article two hundred thirty of the penal law;
33 commits any of the acts described in section 255.25, 255.26 or 255.27
34 of the penal law; or allows or promotes or uses such child to engage in
35 acts or conduct described in article two hundred sixty-three of the
36 penal law, provided, however, that (i) the corroboration requirements in
37 the penal law and (ii) the age requirements for the application of arti-
38 cles one hundred thirty, two hundred thirty and two hundred sixty-three
39 of such law and any age based element of any crime described therein
40 shall not apply to the provisions of this title; or

41 § 30. This act shall take effect on the first of November next
42 succeeding the date on which it shall have become a law, provided,
43 however, that the amendments to the opening paragraph of subdivision 2
44 of section 851 of the correction law made by section nine of this act
45 shall not affect the expiration of such paragraph and shall be deemed to
46 expire therewith; provided further, that the amendments to subdivision 1
47 of section 65.00 and to subdivisions 6 and 9 of section 65.20 of the
48 criminal procedure law made by sections twelve, thirteen and fourteen of
49 this act, respectively, shall not affect the repeal of such sections and
50 shall be deemed repealed therewith; and provided further, that the
51 amendment to subdivision 4 of section 343.1 of the family court act made
52 by section twenty-seven of this act shall be deemed repealed on the same
53 date as such subdivision repeals.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S6277B

SPONSOR: VOLKER

TITLE OF BILL:

An act to amend the penal law, the correction law, the criminal procedure law, the civil rights law, the executive law, the family court act and the social services law, in relation to the crime of incest

PURPOSE:

This legislation will close a loophole in current law which permits certain child sexual offenders to obtain a lenient, non violent disposition for child sexual assault.

SUMMARY OF PROVISIONS:

This bill would amend the current law relating to incest to provide that engaging in sex with a child under the age of 11, regardless of how closely related to the child the perpetrator is, would be a class B felony, and a violent felony offense, subjecting the perpetrator to a maximum term of imprisonment of 25 years and not allowing such a child perpetrator to be sentenced to probation. In addition, the bill would provide that engaging in sex with a child less than 15 years of age would be a class D violent felony offense. Finally incest by an adult would be a class E violent felony offense.

EXISTING LAW:

In New York, sex with a child under the age of 11 is ordinarily a Class B felony, punishable by up to 25 years in prison. Sex with a child under the age of 15 is ordinarily a class D felony. If however, the sexually abused child is closely related to the perpetrator, state law currently permits the child sexual offender to be charges with incest, a class E non-violent felony, for which even a convicted offender may be granted probation.

JUSTIFICATION:

Child molestation is one of the foulest crimes imaginable. Current New York law allows the possibility of exceptionally lenient treatment far child sexual offenders who are closely related to the child. Indeed, under current New York law a person who rapes or engages an other criminal sexual activity with his or her own child or a closely related relative can be granted probation and not be required to serve any jail time. Under current law, this activity is considered a nonviolent crime. In truth, Incest is, most typically, rape by extortion, with parents abusing their positions to induce compliance from innocent and helpless victims, whose every aspect of life is under the perpetrators' control. It is indefensible that current law permits a virtual get-out-of-jail-free card to be granted these offenders.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None.

LOCAL FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

November first next succeeding the day it shall become a law.
