

# 2000 Legislative Review

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## INTRODUCTION

The 2000 Regular Session of the New York State Legislature has been hailed as one of the most "productive" in recent memory. Because the budget was passed in a relatively timely manner this year (a mere 35 days late), the Senate and Assembly had ample time to reach agreement on a wide variety of issues in anticipation of the November elections. A total of 681 bills passed both houses and will be presented to the Governor for approval or veto this year.

In the area of criminal justice, the Legislature passed the "Sexual Assault Reform Act," which, among other things, drastically increases sentences for certain sex offenders and countermands the *per se* reversible error rule for *Rosario* violations [*People v Ranghelle*, 69 NY2d 56 (1986)].

The Legislature also enacted a "hate crimes" bill, stiffened sentences for crimes committed against cab drivers, legalized the sale and possession of hypodermic instruments, and authorized the Division of Criminal Justice Services (DCJS) to post information about Level 3 sexually violent offenders on the Internet. Summarized below are the bills affecting public defense work that passed the Senate and Assembly this year; vetoed bills are also noted. The complete text of all bills and chapter laws can be found on the New York State Senate and Assembly web sites ([www.senate.state.ny.us](http://www.senate.state.ny.us) and [www.assembly.state.ny.us](http://www.assembly.state.ny.us)). These sites can also be accessed on the Research Links page of NYSDA's web site ([www.nysda.org](http://www.nysda.org)).

[Ed. note: Statute citations preceded by > are quoted verbatim in part or in full; statute cites preceded by ► are summarized.]

## SEXUAL ASSAULT REFORM ACT

Chap. 1 (S.8238-A. 11538) (Sexual Assault Reform Act). Eff.: Feb. 1, 2001

### a. New Criminal Offenses Including Date Rape

The Sexual Assault Reform Act establishes new "date rape" offenses (rape 3rd degree/sodomy 3rd degree), which

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are committed by engaging in sexual intercourse or deviate sexual intercourse with another person without his or her consent. The Act also creates new crimes relating to forcible touching and the use of so-called "date rape" drugs; it upgrades offense levels for certain repeat misdemeanor offenders and for sex offenses committed against mentally disabled and incapacitated persons. The Act criminalizes otherwise "consensual" sexual contact between health care providers and their patients, and increases the age limits of victims in numerous instances. Finally, the Act decreases from 12 to 9 the age at which children are presumed capable of testifying under oath.

#### > Penal Law §130.25 Rape in the third degree

A person is guilty of rape in third degree when:

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(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.

#### > Penal Law §130.40 Sodomy in the third degree

A person is guilty of sodomy in the third degree when:

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(3) He or she engages in deviate 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.

#### > Penal Law §130.05 Lack of consent

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2. Lack of consent results from:

[Existing]

(a) Forcible compulsion; or

(b) Incapacity to consent; or

(c) Where the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct

[newly added] or

(d) where the offense charged is [rape in the third degree or sodomy in the third degree], in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse or deviate sexual intercourse, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.

**Not a lesser-included offense:** The legislation adds a new subdivision (6) to CPL § 300.50 to specify that neither rape in the third degree, nor sodomy in the third degree as defined above shall be considered lesser-included offenses of the first degree crimes, unless (1) there is a reasonable view of the evidence that the defendant committed the lesser grade crime but not the greater, and (2) both parties consent to its submission.

➤ Penal Law §130.52 Forcible Touching

A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person:

1. for the purpose of degrading or abusing such person; or
2. for the purpose of gratifying the actor's sexual desire.

For the purposes of this section, forcible touching includes the squeezing, grabbing or pinching of such other person's sexual or other intimate parts.

(Class A misdemeanor)

➤ Penal Law §130.53 Persistent sexual abuse

A person is guilty of persistent sexual abuse when he or she *stands convicted* of 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, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of 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 [emphasis added].

(Class E felony) [Note: An indictment charging this unfortunately named crime would presumably be subject to the pleading restrictions specified in CPL §200.60.]

➤ Penal Law 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 and administers such substance to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article [P.L. Art. 130]; and
2. commits or attempts to commit such conduct.

(Class D felony)

When a defendant is convicted of facilitating a sex offense with a controlled substance, the court may impose a sentence to run consecutively to the underlying felony sex offense [New Penal Law § 70.25 (2-f)].

➤ Penal Law § 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 or rectum of another person and the other person is incapable of consent by rea-

son of some factor other than being less than seventeen years old; or

- (b) He or she inserts a finger in the vagina, urethra, penis or rectum 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.

(Class E felony)

**Offense Level Upgrades for Sexual Conduct with Mentally Disabled or Mentally Incapacitated Persons**

Sexual intercourse or deviate sexual intercourse with a mentally disabled or mentally incapacitated person has been upgraded from rape or sodomy in the third degree (Class E felonies) to rape or sodomy in the second degree under Penal Law § 130.45 (Class D felonies). That the defendant "did not know of the facts and conditions responsible for such [person's] incapacity to consent" continues to be an affirmative defense.

A new subdivision pertaining to mentally disabled or mentally incapacitated persons has been added to Aggravated sexual abuse in the third degree:

➤ Penal Law § 130.66 Aggravated sexual abuse in the third degree

- (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 or rectum 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.

(Class D felony)

**"Consensual" Sexual Contact Between Health Care Providers and Patients**

The Sexual Assault Reform Act criminalizes otherwise consensual sexual contact between health care or mental health care providers and their patients during a treatment session, as it deems patients legally incapable of consenting to sexual contact with treating professionals. Under Penal Law §130.05, health care and mental health care providers are defined as:

. . . any person who is or is required to be licensed or registered or holds himself or herself out to be licensed or registered, or provides services as if he or she were licensed or registered in the profession of **medicine, chiropractic, dentistry, podiatry, psychology, and social work.**

As a result, health care and mental health care providers are now subject to prosecution under any Penal Law provision that criminalizes sexual contact with a person who is incapable of consent: **Rape in the third degree** (Penal Law

§130.25); **Sodomy in the third degree** (Penal Law §130.40), **Aggravated sexual abuse in the fourth degree** (Penal Law §130.65-A), and **Sexual abuse in the third degree** (Penal Law §130.55).

The legislation specifies that conduct performed for a valid medical reason or mental health care purpose does not constitute a violation of law. It also provides an affirmative defense that the patient consented to such sexual contact “after having been expressly advised by the health care or mental health care provider that such conduct was not performed for a valid medical purpose.”

Finally, persons committed or placed with the **Office of Children and Families** (formerly Division for Youth) have now been deemed legally incapable of consenting to sexual contact with employees of the State agency.

**Public Health Law Scheduled Controlled Substance**

► Public Health Law §3306

Adds Gamma Hydroxybutyric acid to controlled substance Schedule 1.

**b. Repealed Provisions**

► Penal Law §130.38 Consensual sodomy

See *People v Onofre*, 51 NY2d 476 (1980); *Bowers v Hardwick*, 478 US 186 (1986).

► Penal Law §§130.25, 130.30 [Marital Exemption only]

Both existing Penal Law Article 130 sexual offense sections that are expressly limited to conduct committed against persons who are “not married to the actor” have been amended to eliminate this restrictive language. However, the definition of “female” in Penal Law §130.00 (4) has been retained. It continues to define a female as a person “who is not married to the actor.” See *People v Liberta*, 64 NY2d 152 (1984). Therefore, the current status of the marital exemption is somewhat unclear.

**c. Age Changes Pertaining to Victims, Defendants and Witnesses**

► Penal Law §263.05 Use of a child in a sexual performance;

► Penal Law §263.10 Promoting an obscene sexual performance by a child;

► Penal Law §263.15 Promoting a sexual performance by a child:

Age of victim increased to less than 17 years old (from 16).

► Penal Law §130.30 Rape in the second degree;

► Penal Law §130.45 Sodomy in the second degree:

Age of victim increased to less than 15 years old (from 14).

NOTE: Current law requires the prosecution to prove the defendant was over the age of 18. The amended section establishes an affirmative defense that

the defendant was less than four years older than the victim.

► Penal Law §130.35 Rape in the first degree;

► Penal Law §130.50 Sodomy in the first degree;

► Penal Law §130.75 Course of Sexual Conduct against a child in the first degree;

► Penal Law §130.80 Course of sexual conduct against a child in the second degree:

When the defendant is 18 or older, age of victim increased to under 13 (from 11). When the defendant is under 18, victim must be under 11 for charge of rape in the first degree.

► Criminal Procedure Law §60.20 Testimonial Capacity

Decreases the age at which children are presumed capable of testifying under oath from 12 to 9 years old. The legislation also defines testimonial capacity: “A witness understands the nature of the oath if he or she appreciates the difference between truth and falsehood, the necessity for telling the truth, and that fact that a witness who testifies falsely may be punished.”

**d. Sentencing Provisions**

**Second Child Sexual Assault Felony Offenders**

► Penal Law § 70.07 Sentence of imprisonment for second child sexual assault felony offender

The Sexual Assault Reform Act drastically increases sentences for “second child sexual assault felony offenders.” This category is defined as persons who presently stand convicted of a felony sex offense (Penal Law Articles 130, 263 or section 255.25) involving a victim under the age of 15, and who, within the preceding 15 years (exclusive of time in jail or prison), were previously convicted of a felony sex offense involving a victim under the age of 15. A “sexual assault against a child” is broadly defined as “a felony offense (a) the essential elements of which include the commission or attempted commission of sexual conduct [as defined in Penal Law § 130.00 (10)], [which was] (b) committed or attempted to be committed against a child less than 15 years old.”

Present Conviction	Predicate Conviction	New Sentence Range
• Class B	Class B or C felony	15–25 to life (Indeterminate)
• Class B	Class D or E felony	12–30 (Determinate)
• Class C	Class B or C felony	12–30 (Determinate) or 15–25 to life (Indeterminate)
• Class C	Class D or E felony	10–25 (Determinate)
• Class D	Any degree felony	5–15 (Determinate)
• Class E	Any degree felony	4–12 (Determinate)

**Procedure for determining whether defendant is a second child sexual assault felony offender**

**Current Offense**—Whenever the victim’s age is not an element of the crime, the District Attorney may file a special information alleging that the victim was under the age of 15 at the time of the commission of the offense. The defendant must be arraigned on the special information outside the presence of the jury, and may admit, deny or stand mute. If the defendant admits the allegation, the victim’s underage status will be deemed established for all purposes, including possible enhanced sentencing under Penal Law §70.07. Otherwise, the People may seek to establish the victim’s age by proof beyond a reasonable doubt at trial. The jury will be directed to deliberate on the special information only after returning a guilty verdict on the charge or charges included in the indictment.

**Predicate Offenses**—In most cases, the victim’s age will not be apparent from the elements of the predicate felony conviction, and the People will be required to prove at a hearing that the victim of the predicate offense was under the age of 15 at the time of the crime. When information available to the prosecution indicates that a defendant may be a second child sexual assault offender, it may file a statement at any time *prior to trial* setting forth the date and place of each alleged predicate felony conviction that involved a victim under the age of 15. If the defendant controverts any of the allegations, a hearing must be held following a guilty plea or verdict. The hearing will be governed by the rules of evidence “applicable to a trial on the issue of guilt.” The court must base its finding on proof beyond a reasonable doubt. If the court finds the defendant is a second child sexual assault offender, it must pronounce sentence pursuant to Penal Law §70.07.

A defendant may plead guilty to the underlying indictment, but nevertheless contest the allegations concerning the age of the victim in the current offense and/or predicate offense. In these circumstances, the court must conduct a hearing to determine whether the defendant is a second child sexual assault felony offender.

**Probation Terms Doubled**

- Penal Law § 65.00 (3)

Amendments double the period of probation for a felony sexual assault (any Penal Law Article 130, 263 offense or incest), to 10 years. The period of probation for a misdemeanor sexual assault has been doubled to 6 years.

**Restrictions on Entering School Grounds**

- Penal Law §65.10 subd. (4-a)

This new subdivision of the Penal Law applies when a defendant is sentenced to probation or a conditional discharge for a sexual assault involving a victim who was under the age of 18. The court shall require, as a mandatory condition of such sentence, that the defendant “refrain from knowingly entering into or upon any school grounds [as defined in Penal Law §220(14-a)] or any other facility or

institution primarily used for the care or treatment of persons under the age of eighteen while [such minors] are present.” The legislation provides an exception for a registered student, family member of a student, or employee of such a facility, who may enter the premises with the written authorization of a probation officer or the court, and with the permission of the chief administrator of the facility.

- Executive Law §259-c subd. (14);
- Correction Law §272 subd. (9)

The above restriction must also be imposed as a mandatory condition of parole, conditional release, or post-release supervision for inmates whose underlying sexual assault conviction involved a victim under the age of 18.

**e. Bail Restrictions**

- Criminal Procedure Law §530.40 (3);
- Criminal Procedure Law §530.45 (1);

Amendments provide that there be **no bail** or recognizance *after* conviction of Class B or C Article 130 sex offense committed or attempted to be committed against a person less than 18 years old.

- Criminal Procedure Law §530.50

Amendments provide **no bail** pending appeal upon conviction of an Article 130 sex offense committed or attempted to be committed against a person less than 18 years old (except Class D or E felonies).

**f. Raghelle Countermanded**

- Criminal Procedure Law §240.75 Discovery; certain violations

*The failure of the prosecutor or any agent of the prosecutor to disclose statements that are required to be disclosed under subdivision one of section 240.44 or paragraph (a) of subdivision one of section 240.45 of this article shall not constitute grounds for any court to order a new pre-trial hearing or set aside a conviction, or reverse, modify or vacate a judgment of conviction in the absence of a showing by the defendant that there is a reasonable possibility that the non-disclosure materially contributed to the result of the trial or other proceeding; provided, however, that nothing in this section shall affect or limit any right the defendant may have to a re-opened pre-trial hearing when such statements were disclosed before the close of evidence at trial.*

**HATE CRIMES ACT OF 2000**

**Chap. 107 (S.4691-A, A.30002) (Hate Crimes Act of 2000). Eff.: Oct. 8, 2000**

Elevates a crime one grade level or provides for an increased sentence when the defendant commits a “specified offense” and either intentionally selected the victim or intentionally committed the acts constituting the crime based, in whole or in substantial part, on a belief or perception about the victim’s race, color, national origin, ancestry, gender,

religion, religious practice, age, disability or sexual orientation, regardless of whether such belief or perception is correct.

➤ Penal Law § 485.05 Hate Crimes

1. A person commits a hate crime when he or she commits a specified offense and either:
  - (a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or
  - (b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.
- (2) Proof of race, color, national origin, ancestry, gender, religion age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people’s burden under paragraph (a) or (b) of subdivision one of this section.
- (3) A “specified offense” is . . . [see list below]
- (4) For the purposes of this section:
  - (a) The term “age” means sixty years old or more
  - (b) The term “disability” means a physical or mental impairment that substantially limits a major life activity.

**Hate Crime Specified Offenses**

Assault in the first degree	P.L. §120.10
Assault in the second degree	P.L. §120.05
Assault in the third degree	P.L. §120.00
Aggravated assault upon a person less than 11 years old	P.L. §120.12
Menacing in the first degree	P.L. §120.13
Menacing in the second degree	P.L. §120.14
Menacing in the third degree	P.L. §120.15
Reckless endangerment in the first degree	P.L. §120.25
Reckless endangerment in the second degree	P.L. §120.20
Manslaughter in the second degree	P.L. §125.15 (1)
Manslaughter in the first degree	P.L. §125.20 (1) (2) (4)
Murder in the second degree	P.L. §125.25
Rape in the first degree	P.L. §130.35 (1)
Sodomy in the first degree	P.L. §130.50 (1)

Sexual abuse in the first degree	P.L. §130.65 (1)
Aggravated sexual abuse in the second degree	P.L. §130.67 (1-a)
Aggravated sexual abuse in the first degree	P.L. §130.70 (1-a)
Unlawful imprisonment in the second degree	P.L. §135.05
Unlawful imprisonment in the first degree	P.L. §135.10
Kidnapping in the second degree	P.L. §135.25
Kidnapping in the first degree	P.L. §135.25
Coercion in the second degree	P.L. §135.60
Coercion in the first degree	P.L. §135.65
Criminal trespass in the third degree	P.L. §140.10
Criminal trespass in the second degree	P.L. §140.15
Criminal trespass in the first degree	P.L. §140.17
Burglary in the third degree	P.L. §140.20
Burglary in the second degree	P.L. §140.25
Burglary in the first degree	P.L. §140.30
Criminal mischief in the fourth degree	P.L. §145.00
Criminal mischief in the third degree	P.L. §145.05
Criminal mischief in the second degree	P.L. §145.10
Criminal mischief in the first degree	P.L. §145.12
Arson in the fourth degree	P.L. §150.05
Arson in the third degree	P.L. §150.10
Arson in the second degree	P.L. §150.15
Arson in the first degree	P.L. §150.20
Petit larceny	P.L. §155.25
Grand larceny in the fourth degree	P.L. §155.30
Grand larceny in the third degree	P.L. §155.35
Grand larceny in the second degree	P.L. §155.40
Grand larceny in the first degree	P.L. §155.42
Robbery in the third degree	P.L. §160.05
Robbery in the second degree	P.L. §160.10
Robbery in the first degree	P.L. §160.15
Harassment in the first degree	P.L. §240.25
Aggravated harassment in the second degree	P.L. §240.30 (1) (2) (4)

Or any attempt or conspiracy to commit any of the foregoing offenses

**Hate Crime Offense Level Upgrades**

➤ Penal Law § 485.10 Sentencing

1. When a person is convicted of a hate crime pursuant to this article, and the specified offense is a violent felony offense, as defined in section 70.02 of this chapter, the hate crime shall be deemed a violent felony offense.

2. When a person is convicted of a hate crime pursuant to this article and the specified offense is a misdemeanor or a Class C, D, or E felony, the hate crime shall be deemed one category higher than the specified offense the defendant committed, or attempted or conspired to commit.

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**Increased Sentences for Class B and A-I felonies**

When the specified hate crime offense is a Class B felony, the following minimum sentences apply:

<b>Specified Offense is:</b>	<b>Minimum Sentence:</b>
Class B non-violent	Indeterminate Maximum = 6 years (e.g. 2-6)
Class B violent (first felony P.L. §70.02)	Determinate = 8 years (up from 5)
Class B non-violent (second felony P.L. §70.06)	Determinate = 10 years (up from 8)
Class B violent (second violent P.L. §70.04)	Determinate = 12 years (up from 10)
Class B (juvenile offender P.L. §70.05)	Indeterminate Maximum = 4 years

When the specified offense is an A-I felony, the minimum sentence is 20 years to life.

**Harassment**

- Penal Law §240.30 (3);
- Penal Law §240.31

The legislation also amends the elements of aggravated harassment in the first and second degrees to apply to acts committed “because of a belief or perception regarding [a victim’s] race, color, religion, national origin, ancestry, gender, religion, age disability, or sexual orientation, regardless of whether the belief or perception is correct.”

**PENAL LAW**

**Chap. 181 (S.8236) (Assault on a School Employee or Student). Eff.: Nov. 1, 2000**

Adds a new subdivision pertaining to assaults against employees and students committed on “school grounds” as the term is broadly defined in Penal Law §220 (14).

- Penal Law §120.05 Assault in the second degree  
A person is guilty of assault in the second degree when:  
\* \* \*
- (10) Acting at a place the person knows, or reasonably should know, is on school grounds and with intent to cause physical injury, he or she:
  - (a) causes such injury to an employee of a school or public school district; or
  - (b) not being a student of such school or public school district causes physical injury to another, and such other person is a student of such school who is attending or present for educational purposes.

(Class D felony)

- Criminal Procedure Law §380.90 [new];
- Criminal Procedure Law §720.35 [amended]
- Family Court Act §§ 301.2, 380.1.

In addition, the legislation requires criminal courts and family courts to report the conviction or non-criminal adju-

dication of a student who is under 19 years old to a designated official in the student’s school district. The school district must keep records pertaining to the court matter separate from regular school records, and destroy them when the student is no longer enrolled.

**Chap. 148 (S.8232) (Crimes against livery drivers – Enhanced penalties). Eff.: Nov. 1, 2000**

- Penal Law § 60.07 Authorized disposition; criminal attack on operators of for-hire vehicles.

Authorizes a court to impose an enhanced sentence when a defendant is convicted of a “specified offense” against a livery cab driver. The minimum term of an indeterminate sentence or determinate sentence otherwise authorized pursuant to Penal Law Article 70 must be 3 to 5 years greater when the victim was operating a “for-hire vehicle in the course of providing for-hire vehicle services” at the time of the commission of the offense. A court may decline to impose the additional term on the ground that an enhanced sentence would be unduly harsh given the nature and circumstances of the crime and the history and character of the defendant

**Livery Cab Enhancement Specified Offenses**

Attempted murder in the second degree	Attempted assault in the first degree
Gang assault in the first or second degrees	Manslaughter in the first or second degrees
Attempted gang assault in the first degree	Attempted manslaughter in the first degree
Assault in the first degree	Robbery in the first or second degrees Attempted robbery in the first degree

Vehicles covered by the new law are described as follows:

The term ‘for-hire vehicle’ shall mean a vehicle designed to carry not more than five passengers for compensation and such vehicle is a taxicab, as defined in [VTL § 148-a], a livery [as defined in VTL §121-e], or a ‘black car’. . . [which shall mean] a for-hire vehicle dispatched from a central facility, which has certified to the satisfaction of the department of state pursuant to article six-f of the executive law that more than ninety percent of the central facility’s for-hire business is on a payment basis other than direct cash payment by a passenger.

‘For-hire vehicle services’ shall mean: (i) with respect to a taxicab, the transport of passengers pursuant to a license or permit issued by a local authority by a person duly authorized to operate such taxicab; (ii) with respect to a livery, the transport of passengers by a livery operator while affiliated with a livery car base; or (iii) with respect to a ‘black car’, the transport of passengers by a ‘black car operator’ pursuant to dispatches from or by a central dispatch facility regardless of where the pick-up

and discharge occurs and, with respect to dispatches from or by a central dispatch facility located outside the state, all dispatches involving a pick-up in the state, regardless of where the discharge occurs.”

**Procedure for charging a defendant with committing a “specified offense” against a for-hire vehicle operator**

In addition to filing an indictment charging the underlying specified offense, the prosecution must file a special information, alleging that the victim was operating a for-hire vehicle in the course of providing for-hire vehicle services at the time of the crime. The defendant must be arraigned on the special information, and may admit the allegation, deny it or stand mute. If the defendant admits the allegation concerning the status of the victim, that allegation alone shall be deemed established for sentencing purposes in the event of a conviction. Otherwise, the prosecution may seek to establish the allegation by proof beyond a reasonable doubt at trial. The jury will be required to deliberate and return a verdict on the special information only after returning a guilty verdict on the charge or charges included in the indictment.

**Chapter 189 (S.8234) (Assault Weapons — Trigger Locks — Ballistic Database). Eff.: Nov. 1, 2000 (Penal Law amendments)**

Requires trigger locks to be included with all sales of rifles, shotguns and firearms; establishes a “ballistic fingerprint” identification databank for all new pistols and revolvers sold in the state for purposes of later comparison with bullets and shell casings recovered from crime scenes; requires criminal background checks of gun buyers at gun shows; and enacts new laws concerning assault weapons.

The legislation includes detailed definitions of “**assault weapons**” [Penal Law §265.00 (22)] and “**large capacity ammunition feeding devices**” (Penal Law §265.00 (23)), which have been added to the list of weapons specified in Penal Law §265.02 (Criminal possession of a weapon in the third degree) (Class D violent felonies). (The criminal liability exemption regarding possession of a loaded firearm in one’s home or place of business does not apply to assault weapons.) The legislation also amends Penal Law §265.10 (Manufacture, transport, disposition and defacement of weapons) and Penal Law §265.11 (Criminal sale of a firearm in the third degree) by adding provisions relating to assault weapons and large capacity ammunition feeding devices.

The legislation also creates a new offense:

➤ Penal Law §265.17 Criminal Purchase of a weapon

A person is guilty of criminal purchase of a weapon when:

(1) knowing that he or she is prohibited by law from possessing a firearm, rifle or shotgun because of a prior conviction or because of some other disability which would render him or her ineligible to lawfully possess a firearm, rifle or shotgun in this state, such person attempts to purchase a firearm, rifle or shotgun from another person; or

(2) knowing that it would be unlawful for another person to possess a firearm, rifle or shotgun, he or she purchases a firearm, rifle or shotgun for, on behalf of, or for the use of such other person.

(Class A misdemeanor)

The legislation also restricts the availability of a handgun license to persons 21 or older, unless the applicant is an honorably discharged veteran of one of the armed services [Penal Law §400 (1)].

**Chap. 489 (S.8231) (Money Laundering). Eff.: Nov. 1, 2000**

Enacts comprehensive amendments to Penal Law Article 470 to facilitate state-level prosecutions of money laundering offenses. The current money laundering statute is divided into three degrees, ranging from a Class A misdemeanor to a Class D felony. The amended statute will now include four degrees of money laundering, from a Class E to a Class B felony. The offense levels are differentiated by the defendant’s intent, the type of criminal activity from which the proceeds are derived, and the total value of property involved in the financial transactions. The top charge of money laundering in the first degree will be reserved for transactions over \$1 million (\$500,000 for drug-related proceeds). The legislation includes amendments that have long been sought by prosecutors; including elimination of the requirement that the defendant exchange criminal proceeds for “equivalent property,” and allowing for the aggregation of value in all transactions that arise out of a single underlying criminal transaction. The definition of a financial “transaction” has been greatly expanded, and will now encompass such minor conduct as storage of criminal proceeds in a safe deposit box. However, the legislation expressly provides that payments to attorneys for legal representation are not financial “transactions” within the meaning of the money laundering statute.

**Chap. 156 (S.6688-c) (Abandonment of a child — Endangering the Welfare of a child — Affirmative Defenses). Eff.: July 18, 2000**

➤ Penal Law §§260.03, 260.15

Establishes an affirmative defense to the charge of abandonment of a child and endangering the welfare of a child when the defendant left the newborn (no more than 5 days-old), “with the intent that the child be safe from physical injury and cared for in an appropriate manner . . . with an appropriate person or in a suitable location and promptly notified an appropriate person of the child’s location.”

**Chap. 57 (S.6294-a) (Increase in Mandatory Surcharges / Crime Victims Assistance Fees). Eff.: Apr. 1, 2000**

Increases mandatory surcharges and crime victims assistance fees according to the following schedule: Mandatory Surcharges –Felony (including DWI): \$200 (up from \$150); misdemeanor (including DWI): \$110 (up from \$85); violation: \$ 50 (up from \$40); traffic infractions: \$30 (up from \$25); equipment violations: \$20 (up from \$15).

VTL violations in Town and Village Courts — \$5 extra to above amounts [VTL §§1809 (a) (b)].

Crime Victims Assistance Fee — \$10 in all cases (up from \$5)

**Chap. 533 (A.1578-B) (Trespassing / Loitering — summer camps and day camps). Eff.: Oct. 4, 2000**

Adds provisions relating to trespassing and loitering on property used as a children's overnight camp or day camp:

- Penal Law §140.10(b) — Criminal trespass in the third degree (Class B misdemeanor)
- Penal Law §240.35 (5) — Loitering (Violation)

**Chap. 422 (S.809) (Aggravated harassment of an employee by an inmate — probation employees). Eff.: Nov. 1, 2000**

Add employees of a county probation department to the list of persons who may be considered victims under Penal Law §240.32 (Aggravated harassment of an employee by an inmate).

**Chap. 441 (S.6703) (Aggravated harassment of an employee by an inmate — police officers). Eff.: Nov. 1, 2000**

Adds police officers to the list of persons who may be considered victims under Penal Law §240.32 (Aggravated harassment of an employee by an inmate).

➤ **VETOED (S.7559) (Possession of a Gambling Device— Slot Machines — Affirmative Defense)**

Would have amended Penal Law §225.32 to provide an affirmative defense to possession of a gambling device (Penal Law §225.30) when the machine is possessed for amusement purposes in the home and is more than 20 years old (decreased from 30 years).

**Chap. 434 (S.6173-B) (Stalking — technical amendments). Eff.: Oct. 20, 2000**

Makes a technical correction to the elements of stalking in the first degree (Penal Law §120.60) to clarify that the aggravated offense applies to defendants previously convicted of either stalking in the third or *second* degrees.

**CRIMINAL PROCEDURE LAW**

**Chap. 67 (A.10921) ( Drug Courts — Transfer of actions from lower criminal courts). Eff.: Nov. 1, 2000**

Amends CPL § 170.15 (4) to authorize lower criminal courts outside of New York City to transfer cases, upon motion of the defendant and with the consent of the prosecution, to other local criminal courts in the same county that have been designated as drug courts. (The section was previously limited to Rockland, Suffolk and Tompkins counties.)

➤ **VETOED (S.6492) (Drug Courts — Transfer of actions in Genesee County)**

Would have amended CPL §170.15 (4) to authorize local criminal courts in Genesee County to transfer cases, upon motion of the defendant and with the consent of the prosecution,

to another local criminal court that has been designated as a drug court. This legislation was rendered superfluous by Chapter 67 (A.10921).

**Chap. 8 (CPL § 440.30 — DNA testing — Appeal deadline). Eff.: Mar. 6, 2000**

In 1999, the legislature amended the Criminal Procedure Law to give defendants a right to appeal from a trial court order denying a post-judgment motion for DNA testing of evidence. *See* L. 1999, ch. 560, amending CPL 450.10; *People v Rae Kellar*, 89 NY2d 948 (1997). The right to appeal was made retroactive to any motion for forensic DNA testing brought and determined since CPL 440.30 (1-a) was enacted in 1994. The legislature has now established Sept. 1, 2000 (or 30 days from notice of entry, whichever is later) as the final date for the filing of a notice of appeal from such an order entered between 1994 and Dec. 1, 1999.

The legislation also makes a technical amendment to the DNA databank law [Executive Law § 995 (7)(b)] to clarify that defendants convicted of grand larceny in the fourth degree under Penal Law § 155.30 (5) (larceny from the person) on or after Dec. 1, 1999 will be subject to mandatory DNA blood testing.

**Chap. 514 (S.6922-A) (Audio-Visual Court Appearances): Eff.: Oct. 4, 2000**

Amends CPL §182.20 to add Montgomery, Clinton and Rensselaer counties to the list of jurisdictions authorized to participate in the experimental program of audio-visual arraignments and court appearances via two-way closed-circuit television.

**Chap. 497 (S.6225) (Written instructions to grand jurors). Eff.: Nov. 1, 2000**

Authorizes a court to provide a grand jury with written or oral instructions "relating to the proper performance of their duties." [Amends CPL §190.20 (5)]

**VETOED (S.6250-C) (Expungement — Erroneous Arrests).**

Would have enacted a new CPL § 160.56 to provide for expungement of all records of an arrest when the arresting agency had, *prior to the filing of an accusatory instrument*, determined that "the wrong person has been arrested." The legislation also would have enacted a new CPL §160.57 to provide a retroactive right to expungement when the petitioning party would have been entitled to relief under §160.56 if the erroneous arrest had occurred after the effective date of the section.

**Chap. 506 (S.6647) (Accusatory Instruments — Dismissal for Insufficiency). Eff.: Nov. 1, 2000**

CPL §120.20 and §130.30 authorize lower criminal courts to issue a warrant or summons when an accusatory instrument is sufficient on its face as prescribed in CPL§100.40. This legislation requires lower criminal courts to dismiss accusatory instruments when they are found to be facially insufficient and when the court is "satisfied that on the basis of the available facts and evidence it would be impossible to

draw and file an accusatory instrument that is sufficient on its face.”

**(Various Bills on Peace Officer Status) Eff.: Upon Governor’s signature — Amends CPL § 2.10 to confer peace office status on:**

**VETOED (S.1620-A)** code enforcement officers for the Town of East Hampton.

**VETOED (S.3057-A)** uniformed employees of the fire marshal’s office, uniformed court officers of the Town Court, and animal control officers of the Town of Riverhead.

**Chap. 381 (S.4483a)** uniformed marine patrol officers appointed by the Livingston County sheriff (Eff. 8/30/00).

**VETOED (S.4910)** code enforcement officers in the Village of East Hampton.

**Chap. 385 (S.5767-A)** uniformed court officers of the town court of the Town of Newburgh (Eff. 8/30/00).

**VETOED (S.6323)** members of the security force of Ithaca College.

**VETOED (S.6398)** full-time fire inspectors in the county of Nassau.

**Chap. 393 (S.6682)** court security officers employed by the Chautauqua County sheriff’s office (Eff. 8/30/00).

**VETOED (S.6962)** members of the New York National Guard when designated as peace officers under military regulations and acting as military policemen or air security personnel pursuant to orders issued by appropriate military authority

**Chap. 599 (S.7438)** police officer status for water-supply police employed by the City of New York (Eff. 12/20/00)

**VETOED (S.7466-a)** Level III and Level IV traffic enforcement agents employed by the City of New York.

**Chap. 404 (A.768-A)** parole revocation specialists employed by the Division of Parole (Eff. 8/30/00).

**VETOED (A.2820-A)** animal shelter supervisors employed by the Town of East Hampton.

**Chap. 168 (A.8527-A)** state inspector general and investigators employed by her (Eff. 7/8/00).

**VETOED (S.7705) (Peace Officers)**

Would have amended CPL §2.10 (57-a) to provide that seasonal park rangers of the Westchester County Department of Public Safety must be under the immediate supervision of a sworn police officer holding the rank of sergeant or above who is employed by the Department.

**Chap. 227 (S.6701) (Peace Officers) (Eff.: Aug. 16, 2000)**

Amends CPL §2.10 (68) to provide that dog control officers of the Town of Arcadia may be designated as constables for the purpose of enforcing article twenty-six of the Agriculture and Markets law and for the purpose of issuing appearance tickets permitted under article seven of such law. (Eff. 8/16/00)

**SEX OFFENDER REGISTRATION ACT**

**Chap. 490 (S.972-a) (Sex Offender Registration Act — Internet Access for Level 3 Subdirectory). Eff.: Jan. 21, 2001**

Authorizes and requires DCJS to publish the Level 3 sexually violent predator subdirectory (including names and exact street addresses of offenders) on its Internet web page.

**Chap. 1 (S.8238) (Disclosure of Internet Accounts and “Screen Names”). Eff.: Feb. 1, 2001**

Requires sex offenders subject to the Sex Offender Registration Act to supply information to DCJS about any Internet accounts they maintain and any screen names they use. [Amends Correction Law §168-b]

**Chap. 608 (S.6764) (Sex Offender Registration Act — 900 number charges). Eff.: Apr. 28, 2001**

Establishes a charge of 50 cents for a call to the Sex Offender Registration 900 number hotline. [Amends Correction Law §168-p]

**FAMILY COURT PRACTICE**

**Chap. 475 (A.7162-A) (Family Court Act — Support and Paternity Proceedings — Telephone or Audio-Visual testimony). Eff.: Dec. 19, 2000**

Authorizes Family Court judges to permit testimony and depositions by telephone, audio-visual or other electronic means in support and paternity cases when (1) the party or witness lives outside the county (New York City considered one county), or (2) is incarcerated on the date of the hearing and is not expected to be released within a reasonable time of such date, or (3) where the court determines it would be an undue hardship for the party or witness to testify or be deposed at the Family Court where the case is pending. [Amends FCA §433 (c) (d); Adds FCA §531-A.]

**Chap. 596 (S.674-B) (Persons in Need of Supervision — 16 and 17 year-olds). Eff.: Nov. 1, 2000**

Increases the age limit for PINS proceedings from persons under the age of 16 to those under age 18. The former statutory scheme was limited to males under the age of 16 and females under the age of 18, a sex-based distinction that was struck down by the Court of Appeals in 1972 but never addressed by the Legislature. *Matter of Patricia A.*, 31 NY2d 83 (1972). The new scheme applies to both males and females under the age of 18. [Amends FCA §712 (a); SSL § 371 (6)]

Due to concerns about inadequate funding, it is unlikely that this bill will be forwarded to the Governor for his approval or veto this year.

**VETOED (S.7725-a) (Appointment of Law Guardian — Adoptions from Authorized Agencies).**

Would have amended Family Court Act §249 (1-a) to provide for the appointment of a law guardian in adoption proceedings from authorized agencies under Article 7 of the Domestic Relations Law; adds a new subdivision (9) to Domestic Relations Law §112 concerning representation of a child in an adoption proceeding by the same law guardian

who was assigned to represent the child in a prior child protective or termination of parental rights proceeding.

#### **PRISONS AND PAROLE**

##### **VETOED (S.3941) (Work Release Eligibility — Victims of Domestic Violence).**

Would have authorized the Commissioner of the Department of Correctional Services to grant temporary release (including work release) to otherwise ineligible inmates convicted of homicide and assault offenses “who can demonstrate to the commissioner that he or she was a victim of substantial physical, sexual or psychological abuse by the victim of such homicide or assault and such abuse was a substantial factor in causing the inmate to commit such homicide or assault.” [Amends Correction Law §851 (2)]

##### **VETOED (S.7882) (Conditional Release from a Definite Sentence — Terminally Ill Inmates).**

Would have authorized local conditional release commissions to grant release at any time to terminally ill inmates serving definite sentences in excess of 90 days (eliminating 60 day minimum jail stay requirement). [Amends Penal Law §70.40; Correction Law §§273 (1)(4)]

##### **VETOED (A.9008-A) (Private Prisons and Jails Prohibited).**

Would have provided that the supervision and custody of persons confined by the Department of Correctional Services shall be performed by peace officers or police officers as defined in the CPL; would have prohibited the delegation of such authority to others (with exceptions for drug treatment programs, temporary release, and state-ready contracts with local correctional facilities); expressly prohibits private ownership or operation of correctional facilities in New York, except where authorized by federal law.

#### **VEHICLE AND TRAFFIC LAW**

##### **Chap. 140 (S.7365) (Vehicle and Traffic Law — Possession of an Open Container — Elimination of Intent to Consume element). Eff.: Apr. 10, 2000**

Eliminates the “intent to consume” element from the law prohibiting possession of an open container of an alcoholic beverage in an automobile. [VTL §1227 (1)]

##### **Chap. 287 (S.971) (DWI — Suspensions — Out-of-State Convictions / Adjudications) Eff.: Nov. 1, 2000**

Requires a one-year license suspension for persons under age 21 who have been convicted or adjudicated for driving while under the influence of alcohol in another state. [Amending VTL §1193 (2)(b)]

#### **MISCELLANEOUS**

##### **Chap. 56 (Part G) (S.6293-a / A.9293-a) (Hypodermic Needles — Sale and Possession). Eff.: Jan. 1, 2001 — Scheduled to Sunset: Mar. 31, 2003**

Amends Public Health Law §3381 to authorize pharmacies, licensed health care facilities and health care practitioners

to sell or furnish up to 10 hypodermic syringes or hypodermic needles to persons over the age of 18, who are now statutorily authorized to possess hypodermic instruments without a prescription. Although the legislation does not expressly amend Penal Law §220.45 (Criminal possessing a hypodermic instrument), the Penal Law section applies to *unlawful* possession of a hypodermic instrument as defined in the Public Health Law. Thus, a charge of criminal possession will no longer lie when the syringes or needles have been legally purchased or obtained from authorized sources.

##### **Chap. 555 (S.1469) (Statewide Child Abuse Register — Expungement of Unfounded Reports). Eff.: Nov. 1, 2000**

Authorizes the Office of Children and Family Services to expunge an unfounded report from the statewide central register of child abuse when the person who made the report has been convicted of falsely reporting an incident [Penal Law §240.55 (3)] in connection with the matter, or when the “subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse and mistreatment.” [Amends Social Services Law §422 (5)]

##### **VETOED (S.8071) (Compulsory school attendance age raised to 17).**

Would have amended the Education Law to raise the age of compulsory school attendance from 16 to 17 years old.

##### **Chap. 546 S.6153-A (Name change applications by certain felons). Eff.: Jan. 24, 2001**

Amends Civil Rights Law §61 to add special notice provisions for name change applications by persons convicted of a violent felony, homicide offense, and certain kidnapping and felony sex offenses when the applicant is incarcerated or under supervision at the time he or she petitions for a name change.

##### **Chap. 562 (A.1432) (Bail enforcement agents — licensing and qualifications). Eff.: Apr. 1, 2001**

Amends the General Business Law to subject bail enforcement agents (bounty hunters) to licensing requirements; requires bail enforcement agents to give written notice to local law enforcement agencies prior to attempting to take a person into custody; and authorizes local law enforcement agents to accompany bounty hunters upon entry into “what is believed to be an occupied structure.”

##### **Chap. 406 (A.4919-B) (General Obligations Law — Drug Dealer Liability Act). Eff.: Sept. 29, 2000**

Enacts intricate provisions establishing a civil cause of action by persons affected by drug use against convicted “drug traffickers” who have “knowingly participated in a drug market” in New York State (General Obligations Law Article 12).

##### **Chap. 262 (S.8177) (Unlawful Shipment or Transport of Cigarettes). Eff.: Nov. 14, 2000**

Amends the Public Health Law to provide for new criminal offenses, including felony offenses for certain re-

peat violations, concerning the unlawful shipment or transport of cigarettes.

**Chap. 48 (A.9596-A) (Agriculture & Markets Law — Forfeiture of Abused Animals). Eff.: June 6, 2000**

Amends the Agriculture and Markets Law § 374 (5) to provide that persons convicted of aggravated cruelty to animals under “Buster’s Law” (§ 353-a) may be required to forfeit the animal to a society for the prevention of cruelty to animals or humane society following a forfeiture hearing.

**SUNSET CLAUSE EXTENDED**

**Chap. 16 (Sunset Extended — Medical Parole — Executive Law § 259-r). Sunset Extended to Sept. 1, 2001**

Extends the sunset provision of the medical parole law [Executive Law §259-r] to Sept. 1, 2001

**Chap. 449 (S.7137) (Sunset Extender — Closed-Circuit testimony of child witnesses). Sunset Extended to Sept. 1, 2001**

Extends the sunset clause of CPL Article 65 relating to the closed-circuit testimony of certain child-witnesses to Sept. 1, 2001

**Chap. 42 (S.6802) (Sunset Extended — Arts and Cultural Affairs Law — Ticket Scalping) Sunset Extended to June 1, 2001**

Extends the sunset clause of New York’s anti-scalping laws (Arts and Cultural Affairs Law Article 25) to June 1, 2001

**Chap. 4 (S.6362) (Sunset Extender — Elimination of Mandatory Sequestration). Eff.: Feb. 1, 2000**

In 1995, mandatory jury sequestration was eliminated for misdemeanor and lower level felony trials (L.1995, ch. 83). The sunset provision of this law has been extended to Apr. 1, 2001

**Chap. 447 (S.7030-a) (Sunset Extender — Driver’s License Suspension after Drug Conviction). Sunset Extended to Oct. 1, 2001**

In 1993, the Legislature passed a law requiring a 6-month suspension of the driver’s license, or a 6-month delay in eligibility to receive a license, of any person convicted of a misdemeanor or felony drug offense, including juvenile and youthful offender adjudications (L. 1993, ch. 533). The sunset provision of the law has been extended to Oct. 1, 2001 ♪