



1 or inpatients; provided, however, that the provisions of this paragraph  
2 shall only apply to a consultant, contractor or volunteer providing  
3 services pursuant to a contractual arrangement with the agency operating  
4 the residential facility or, in the case of a volunteer, a written  
5 agreement with such facility, provided that the person received written  
6 notice concerning the provisions of this paragraph; provided further,  
7 however, "employee" shall not include a person with a developmental  
8 disability who is or was receiving services and is also an employee of a  
9 service provider and who has sexual contact with another service recipi-  
10 ent who is a consenting adult who has consented to such contact[.]; or  
11 (j) detained or otherwise in the custody of a police officer, peace  
12 officer, or other law enforcement official and the actor is a police  
13 officer, peace officer or other law enforcement official who either: (i)  
14 is detaining or maintaining custody of such person; or (ii) knows, or  
15 reasonably should know, that at the time of the offense, such person was  
16 detained or in custody.

17 § 2. Subdivision 4 of section 130.10 of the penal law, as amended by  
18 chapter 205 of the laws of 2011, is amended to read as follows:

19 4. In any prosecution under this article in which the victim's lack of  
20 consent is based solely on his or her incapacity to consent because he  
21 or she was less than seventeen years old, mentally disabled, a client or  
22 patient and the actor is a health care provider, detained or otherwise  
23 in custody of law enforcement under the circumstances described in para-  
24 graph (j) of subdivision three of section 130.05 of this article, or  
25 committed to the care and custody or supervision of the state department  
26 of corrections and community supervision or a hospital and the actor is  
27 an employee, it shall be a defense that the defendant was married to the  
28 victim as defined in subdivision four of section 130.00 of this article.

1     § 3. This act shall take effect on the thirtieth day after it shall  
2 have become a law.