

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the penal law, in relationship to establishing
incapacity to consent when a person is under arrest, in
detention, or otherwise in actual custody (Part);

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

1 PART ____

2 Section 1. Paragraph (i) of subdivision 3 of section 130.05 of the
3 penal law, as added by section 2 of part G of chapter 501 of the laws of
4 2012, is amended and a new paragraph (j) is added to read as follows:

5 (i) a resident or inpatient of a residential facility operated,
6 licensed or certified by (i) the office of mental health; (ii) the
7 office for people with developmental disabilities; or (iii) the office
8 of alcoholism and substance abuse services, and the actor is an employee
9 of the facility not married to such resident or inpatient. For purposes
10 of this paragraph, "employee" means either: an employee of the agency
11 operating the residential facility, who knows or reasonably should know
12 that such person is a resident or inpatient of such facility and who
13 provides direct care services, case management services, medical or
14 other clinical services, habilitative services or direct supervision of
15 the residents in the facility in which the resident resides; or an offi-
16 cer or other employee, consultant, contractor or volunteer of the resi-
17 dential facility, who knows or reasonably should know that the person is
18 a resident of such facility and who is in direct contact with residents

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.