

5560

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the correction law, the criminal procedure law, the civil rights law, the mental hygiene law and the vehicle and traffic law, in relation to creating the crime of sexual exploitation of a child

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The penal law is amended by adding a new section 130.98 to
2 read as follows:
3 S 130.98 SEXUAL EXPLOITATION OF A CHILD.
4 A PERSON IS GUILTY OF SEXUAL EXPLOITATION OF A CHILD WHEN:
5 1. BEING EIGHTEEN YEARS OF AGE OR MORE HE OR SHE EMPLOYS, USES,
6 PERSUADES, INDUCES, ENTICES, OR COERCES ANY MINOR TO ENGAGE IN, OR WHO
7 HAS A MINOR ASSIST ANY OTHER PERSON TO ENGAGE IN, OR WHO TRANSPORTS ANY
8 MINOR WITHIN THE STATE, WITH THE INTENT THAT SUCH MINOR ENGAGE IN, ANY
9 SEXUALLY EXPLICIT CONDUCT FOR THE PURPOSE OF PRODUCING ANY VISUAL
10 DEPICTION OF SUCH CONDUCT OR FOR THE PURPOSE OF TRANSMITTING A LIVE
11 VISUAL DEPICTION OF SUCH CONDUCT.
12 2. BEING EIGHTEEN YEARS OF AGE OR MORE HE OR SHE KNOWINGLY MAKES,
13 PRINTS, OR PUBLISHES, OR CAUSES TO BE MADE, PRINTED, OR PUBLISHED, ANY
14 NOTICE OR ADVERTISEMENT SEEKING OR OFFERING:
15 A. TO RECEIVE, EXCHANGE, BUY, PRODUCE, DISPLAY, DISTRIBUTE, OR
16 REPRODUCE, ANY VISUAL DEPICTION, IF THE PRODUCTION OF SUCH VISUAL
17 DEPICTION INVOLVES THE USE OF A MINOR ENGAGING IN SEXUALLY EXPLICIT
18 CONDUCT AND SUCH VISUAL DEPICTION IS OF SUCH CONDUCT; OR
19 B. PARTICIPATION IN ANY ACT OF SEXUALLY EXPLICIT CONDUCT BY OR WITH
20 ANY MINOR FOR THE PURPOSE OF PRODUCING A VISUAL DEPICTION OF SUCH
21 CONDUCT.
22 SEXUAL EXPLOITATION OF A CHILD IS A CLASS B FELONY.

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

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1 S 2. Section 60.13 of the penal law, as added by chapter 7 of the laws
2 of 2007, is amended to read as follows:

3 S 60.13 Authorized dispositions; felony sex offenses.

4 When a person is to be sentenced upon a conviction for any felony
5 defined in article one hundred thirty of this chapter, including a sexu-
6 ally motivated felony, or patronizing a prostitute in the first degree
7 as defined in section 230.06 of this chapter, SEXUAL EXPLOITATION OF A
8 CHILD AS DEFINED IN SECTION 130.98 OF THIS CHAPTER, incest in the second
9 degree as defined in section 255.26 of this chapter, or incest in the
10 first degree as defined in section 255.27 of this chapter, or a felony
11 attempt or conspiracy to commit any of these crimes, the court must
12 sentence the defendant in accordance with the provisions of section
13 70.80 of this title.

14 S 3. Paragraph (a) of subdivision 1 of section 70.80 of the penal law,
15 as added by chapter 7 of the laws of 2007, is amended to read as
16 follows:

17 (a) For the purposes of this section, a "felony sex offense" means a
18 conviction of any felony defined in article one hundred thirty of this
19 chapter, including a sexually motivated felony, or patronizing a prosti-
20 tute in the first degree as defined in section 230.06 of this chapter,
21 SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 130.98 OF THIS
22 CHAPTER, incest in the second degree as defined in section 255.26 of
23 this chapter, or incest in the first degree as defined in section 255.27
24 of this chapter, or a felony attempt or conspiracy to commit any of the
25 above.

26 S 4. Subparagraph (i) of paragraph (a) of subdivision 2 of section
27 168-a of the correction law, as amended by chapter 405 of the laws of
28 2008, is amended to read as follows:

29 (i) a conviction of or a conviction for an attempt to commit any of
30 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,
31 130.45, 130.60, 130.98, 230.34, 250.50, 255.25, 255.26 and 255.27 or
32 article two hundred sixty-three of the penal law, or section 135.05,
33 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses,
34 provided the victim of such kidnapping or related offense is less than
35 seventeen years old and the offender is not the parent of the victim, or
36 section 230.04, where the person patronized is in fact less than seven-
37 teen years of age, 230.05 or 230.06, or subdivision two of section
38 230.30, or section 230.32 or 230.33 of the penal law, or (ii) a
39 conviction of or a conviction for an attempt to commit any of the
40 provisions of section 235.22 of the penal law, or (iii) a conviction of
41 or a conviction for an attempt to commit any provisions of the foregoing
42 sections committed or attempted as a hate crime defined in section
43 485.05 of the penal law or as a crime of terrorism defined in section
44 490.25 of such law or as a sexually motivated felony defined in section
45 130.91 of such law; or

46 S 5. Subdivision 6 of section 380.50 of the criminal procedure law, as
47 amended by chapter 320 of the laws of 2006, is amended to read as
48 follows:

49 6. Regardless of whether the victim requests to make a statement with
50 regard to the defendant's sentence, where the defendant is sentenced for
51 a violent felony offense as defined in section 70.02 of the penal law or
52 a felony defined in article one hundred twenty-five of such law or any
53 of the following provisions of such law sections 130.25, 130.30, 130.40,
54 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10,
55 135.25, 130.98, 230.05, 230.06, subdivision two of section 230.30 or
56 230.32, the prosecutor shall, within sixty days of the imposition of

1 sentence, provide the victim with a form on which the victim may indi-
2 cate a demand to be informed of any petition to change the name of such
3 defendant. Such forms shall be maintained by such prosecutor. Upon
4 receipt of a notice of a petition to change the name of any such defend-
5 ant, pursuant to subdivision two of section sixty-two of the civil
6 rights law, the prosecutor shall promptly notify the victim at the most
7 current address or telephone number provided by such victim in the most
8 reasonable and expedient possible manner of the time and place such
9 petition will be presented to the court.

10 S 6. Subdivision 2 of section 61 of the civil rights law, as amended
11 by section 54 of subpart B of part C of chapter 62 of the laws of 2011,
12 is amended to read as follows:

13 2. If the petitioner stands convicted of a violent felony offense as
14 defined in section 70.02 of the penal law or a felony defined in article
15 one hundred twenty-five of such law or any of the following provisions
16 of such law sections 130.25, 130.30, 130.40, 130.45, 130.98, 255.25,
17 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05,
18 230.06, subdivision two of section 230.30 or 230.32, and is currently
19 confined as an inmate in any correctional facility or currently under
20 the supervision of the department of corrections and community super-
21 vision or a county probation department as a result of such conviction,
22 the petition shall for each such conviction specify such felony
23 conviction, the date of such conviction or convictions, and the court in
24 which such conviction or convictions were entered.

25 S 7. Subdivision 2 of section 62 of the civil rights law, as amended
26 by section 55 of subpart B of part C of chapter 62 of the laws of 2011,
27 is amended to read as follows:

28 2. If the petition be to change the name of a person currently
29 confined as an inmate in any correctional facility or currently under
30 the supervision of the department of corrections and community super-
31 vision or a county probation department as a result of a conviction for
32 a violent felony offense as defined in section 70.02 of the penal law or
33 a felony defined in article one hundred twenty-five of such law or any
34 of the following provisions of such law sections 130.25, 130.30, 130.40,
35 130.45, 130.98, 255.25, 255.26, 255.27, article two hundred sixty-three,
36 135.10, 135.25, 230.05, 230.06, subdivision two of section 230.30 or
37 230.32, notice of the time and place when and where the petition will be
38 presented shall be served, in like manner as a notice of a motion upon
39 an attorney in an action, upon the district attorney of every county in
40 which such person has been convicted of such felony and upon the court
41 or courts in which the sentence for such felony was entered. Unless a
42 shorter period of time is ordered by the court, said notice shall be
43 served upon each such district attorney and court or courts not less
44 than sixty days prior to the date on which such petition is noticed to
45 be heard.

46 S 8. The closing paragraph of section 64 of the civil rights law, as
47 separately amended by chapters 258, 320 and 481 of the laws of 2006, is
48 amended to read as follows:

49 Upon compliance with the order and the filing of the affidavit of the
50 publication, as provided in this section, the clerk of the court in
51 which the order has been entered shall certify that the order has been
52 complied with; and, if the petition states that the petitioner stands
53 convicted of a violent felony offense as defined in section 70.02 of the
54 penal law or a felony defined in article one hundred twenty-five of such
55 law or any of the following provisions of such law sections 130.25,
56 130.30, 130.40, 130.45, 130.98, 255.25, 255.26, 255.27, article two

1 hundred sixty-three, 135.10, 135.25, 230.05, 230.06, subdivision two of
2 section 230.30 or 230.32, such clerk (1) shall deliver, by first class
3 mail, a copy of such certified order to the division of criminal justice
4 services at its office in the county of Albany and (2) upon the clerk of
5 the court reviewing the petitioner's application for name change and
6 subsequent in-court inquiry, may, in the clerk's discretion, deliver, by
7 first class mail, the petitioner's new name with such certified order to
8 the court of competent jurisdiction which imposed the orders of support.
9 Such certification shall appear on the original order and on any certi-
10 fied copy thereof and shall be entered in the clerk's minutes of the
11 proceeding.

12 S 9. Subdivision (p) of section 10.03 of the mental hygiene law, as
13 added by chapter 7 of the laws of 2007, is amended to read as follows:

14 (p) "Sex offense" means an act or acts constituting: (1) any felony
15 defined in article one hundred thirty of the penal law, including a
16 sexually motivated felony; (2) patronizing a prostitute in the first
17 degree as defined in section 230.06 of the penal law, incest in the
18 second degree as defined in section 255.26 of the penal law, SEXUAL
19 EXPLOITATION OF A CHILD AS DEFINED IN SECTION 130.98 OF THE PENAL LAW,
20 or incest in the first degree as defined in section 255.27 of the penal
21 law; (3) a felony attempt or conspiracy to commit any of the foregoing
22 offenses set forth in this subdivision; or (4) a designated felony, as
23 defined in subdivision (f) of this section, if sexually motivated and
24 committed prior to the effective date of this article.

25 S 10. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
26 and traffic law, as amended by chapter 400 of the laws of 2011, is
27 amended to read as follows:

28 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
29 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
30 of this section that result in disqualification for a period of five
31 years shall include a conviction under sections 100.10, 105.13, 115.05,
32 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,
33 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 130.98, 135.10, 135.55,
34 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06,
35 220.09, 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55,
36 230.00, 230.05, 230.06, 230.20, 235.05, 235.06, 235.07, 235.21, 240.06,
37 245.00, 260.10, subdivision two of section 260.20 and sections 260.25,
38 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35 of the penal law
39 or an attempt to commit any of the aforesaid offenses under section
40 110.00 of the penal law, or any similar offenses committed under a
41 former section of the penal law, or any offenses committed under a
42 former section of the penal law which would constitute violations of the
43 aforesaid sections of the penal law, or any offenses committed outside
44 this state which would constitute violations of the aforesaid sections
45 of the penal law.

46 S 11. This act shall take effect on the ninetieth day after it shall
47 have become a law.