S T A T E O F N E W Y O R K

3057

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. BENJAMIN, WALKER, ALFANO, BARRA -- Multi-Sponsored by -- M. of A. HOOPER, MILLER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to criminal use of a mobile camera telephone

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

Section 1. The penal law is amended by adding a new article 243 to read as follows:

ARTICLE 243

OFFENSES INVOLVING MOBILE CAMERA TELEPHONES

SECTION 243.00 OFFENSES INVOLVING MOBILE CAMERA TELEPHONES; DEFINITION OF TERMS.

243.10 CRIMINAL USE OF A MOBILE CAMERA TELEPHONE.

243.20 OFFENSES INVOLVING MOBILE CAMERA TELEPHONES; DEFENSES.

S 243.00 OFFENSES INVOLVING MOBILE CAMERA TELEPHONES; DEFINITION OF TERMS.

THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS CHAPTER EXCEPT WHERE DIFFERENT MEANINGS ARE EXPRESSLY SPECIFIED:

1. "MOBILE CAMERA TELEPHONE" MEANS A SINGLE UNIT OR ANY COMBINATION OF ELECTRONIC EQUIPMENT WITH IMMEDIATE PHOTOGRAPH TAKING AND TRANSMITTING CAPABILITY.

2. "PERSONAL PRIVACY" MEANS THE REALM OF HUMAN PHYSICAL SPACE OR INTERACTION WITH ANOTHER THAT THE DISCLOSURE OR DISPLAY OF WHICH WOULD CAUSE EMBARRASSMENT OR EMOTIONAL DISTRESS TO A REASONABLE PERSON OF ORDINARY SENSITIVITY.

3. "PORNOGRAPHY" MEANS AN IMAGE OR MATERIAL DEPICTING ACTS OF SEXUAL INTERCOURSE OR ACTS OF SEXUAL PERVERSION.

4. "TRANSMIT" MEANS TO DISSEMINATE BY ANY MEANS, WHETHER COMMERCIAL OR PERSONAL, TO ONE OR MORE LOCATIONS.

S 243.10 CRIMINAL USE OF A MOBILE CAMERA TELEPHONE.

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

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A PERSON IS GUILTY OF CRIMINAL USE OF A MOBILE CAMERA TELEPHONE WHEN, WITH INTENT TO INTRUDE OR INVADE UPON ANOTHER'S PERSONAL PRIVACY FOR PORNOGRAPHIC PURPOSES, SUCH PERSON TAKES:

1. AN UNAUTHORIZED PHOTOGRAPHIC IMAGE OF AN ADULT, OR

2. A PHOTOGRAPHIC IMAGE OF A CHILD; AND TRANSMITS SUCH PICTURE TO ANOTHER PERSON'S MOBILE CAMERA TELEPHONE, PERSONAL COMPUTER, OR AN INTERNET WEBSITE. THIS SECTION SHALL NOT BE CONSTRUED AS APPLYING TO BONA FIDE MEDICAL PHOTOGRAPHS OR MATERIALS.

CRIMINAL USE OF A MOBILE CAMERA TELEPHONE IS A CLASS E FELONY.

S 243.20 OFFENSES INVOLVING MOBILE CAMERA TELEPHONES; DEFENSES.

IN ANY PROSECUTION UNDER THIS ARTICLE, IT SHALL BE A DEFENSE THAT THE DEFENDANT HAD REASONABLE GROUNDS TO BELIEVE:

1. HE OR SHE HAD AUTHORIZATION TO TAKE THE PICTURE; OR

2. HE OR SHE HAD THE RIGHT TO COPY, REPRODUCE OR DUPLICATE IN ANY MANNER THE PHOTOGRAPHIC IMAGE; EXCEPT IN THE CASE OF A PHOTOGRAPHIC IMAGE DEPICTING A CHILD IN VIOLATION OF THIS ARTICLE.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.