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

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 6, 2009

Introduced by M. of A. SCOZZAFAVA, McDONOUGH, SPANO -- Multi-Sponsored by -- M. of A. ALFANO, BARCLAY, BARRA, BURLING, CALHOUN, CONTE, CROUCH, ERRIGO, FINCH, FITZPATRICK, GIGLIO, HAYES, KOLB, MILLER, OAKS, O'MARA, QUINN, RAIA, SALADINO, SAYWARD, TEDISCO, THIELE, TOWNSEND, WALKER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crimes of attempting to lure or entice a minor

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 section 135.17 to read as follows:

S 135.17 ATTEMPTING TO LURE OR ENTICE A MINOR.

1. A PERSON IS GUILTY OF ATTEMPTING TO LURE OR ENTICE A MINOR WHEN: (A) BEING EIGHTEEN OR MORE YEARS OLD HE OR SHE ATTEMPTS TO LURE OR ENTICE A MINOR INTO A MOTOR VEHICLE, AIRCRAFT, WATERCRAFT, BUILDING OR ISOLATED AREA FOR THE PURPOSE OF COMMITTING A CRIMINAL OFFENSE WITH OR AGAINST SUCH MINOR; OR

(B) BEING EIGHTEEN YEARS OLD OR MORE AND WITH INTENT TO LURE, ENTICE, PERSUADE, CONVINCE, HARASS, ANNOY, THREATEN OR ALARM ANOTHER PERSON, HE OR SHE, BY MEANS OF A COMPUTER COMMUNICATIONS SYSTEM, COMMUNICATES OR CAUSES A COMMUNICATION TO BE INITIATED PURPORTING TO SOLICIT:

(1) SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT OR SEXUAL CONTACT WITH A PERSON WHOM HE OR SHE KNOWS OR REASONABLY SHOULD KNOW IS LESS THAN SEVENTEEN YEARS OLD; OR

(2) A SEXUAL PERFORMANCE BY A PERSON WHOM HE OR SHE KNOWS OR REASONABLY SHOULD KNOW IS LESS THAN SEVENTEEN YEARS OLD; OR

(3) ANY IN-PERSON CONTACT THAT RESULTS IN THE COMMISSION OR ATTEMPTED COMMISSION OF A CRIMINAL OFFENSE WITH OR AGAINST A MINOR.

2. FOR PURPOSES OF THIS SECTION: (A) "MINOR" MEANS A PERSON LESS THAN SEVENTEEN YEARS OF AGE, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE,

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

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IS A LAW ENFORCEMENT OFFICIAL POSING AS A MINOR DURING THE COURSE OF HIS OR HER OFFICIAL DUTIES.

(B) "BUILDING" IN ADDITION TO ITS ORDINARY MEANING, INCLUDES ANY STRUCTURE, VEHICLE, AIRCRAFT OR WATERCRAFT USED FOR OVERNIGHT LODGING OF PERSONS, OR USED BY PERSONS FOR CARRYING ON BUSINESS THEREIN, OR AN ENCLOSED MOTOR TRUCK, OR AN ENCLOSED MOTOR TRUCK TRAILER.

(C) "COMPUTER" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 156.00 OF THIS PART.

(D) "ORAL SEXUAL CONDUCT" AND "ANAL SEXUAL CONDUCT" SHALL HAVE THE SAME MEANINGS AS ASCRIBED TO SUCH TERMS BY SECTION 130.00 OF THIS TITLE.

(E) "SEXUAL CONTACT" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 130.00 OF THIS TITLE.

(F) "SEXUAL INTERCOURSE" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 130.00 OF THIS TITLE.

(G) "SEXUAL PERFORMANCE" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 263.00 OF THIS PART.

3. NOTHING IN THIS SECTION SHALL BE DEEMED TO PRECLUDE, IF THE EVIDENCE SO WARRANTS, AN INDICTMENT AND CONVICTION FOR ATTEMPTED KIDNAPPING UNDER THE PROVISIONS OF SECTIONS 110.00 AND 135.00 OF THIS PART.

ATTEMPTING TO LURE OR ENTICE A MINOR IS A CLASS D FELONY.

S 2. Subdivisions 1 and 2 of section 235.22 of the penal law, subdivision 1 as amended by chapter 8 of the laws of 2007 and subdivision 2 as amended by chapter 264 of the laws of 2003, are amended to read as follows:

1. knowing the character and content of the communication which, in whole or in part, depicts or describes, either in words or images actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he OR SHE intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor, LESS THAN SEVENTEEN YEARS OF AGE, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A LAW ENFORCEMENT OFFICIAL POSING AS A MINOR DURING THE COURSE OF HIS OR HER OFFICIAL DUTIES; and

2. by means of such communication he OR SHE importunes, invites or induces a minor, LESS THAN SEVENTEEN YEARS OF AGE, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A LAW ENFORCEMENT OFFICIAL POSING AS A MINOR DURING THE COURSE OF HIS OR HER OFFICIAL DUTIES to engage in sexual intercourse, oral sexual conduct or anal sexual conduct, or sexual contact with him OR HER, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his OR HER benefit.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.