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

6941

2009-2010 Regular Sessions

I N  A S S E M B L Y

March 17, 2009

Introduced by M. of A. ORTIZ, SCHROEDER, COLTON, KOON, MAISEL, FIELDS, GUNTHER, JAFFEE, GABRYSZAK, MAYERSOHN, GALEF, ROBINSON, TITUS, EDDINGTON, ESPAILLAT, GREENE -- Multi-Sponsored by -- M. of A. ALFANO, BOYLAND, BROOK-KRASNY, COOK, DelMONTE, HYER-SPENCER, KOLB, MARKEY, PHEFFER, REILLY, SCARBOROUGH, SWEENEY, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, the correction law, the penal law, the arts and cultural affairs law, the general business law, the labor law and the civil practice law and rules, in relation to enacting the "child sexual abuse and exploitation prevention act"; to amend the penal law, in relation to creating the crime of criminal use of encryption in the first and second degrees; to amend the penal law, the criminal procedure law, the civil rights law, the executive law, the family court act, the mental hygiene law, the multiple dwelling law, the public health law, the alcoholic beverage control law, the real property actions and proceedings law, the real property law and the vehicle and traffic law, in relation to prostitution offenses and creating the crime of sexual exploitation of a child; to amend the penal law, in relation to computer sex crimes against children; and repealing certain provisions of the penal law relating thereto

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "child sexual abuse and exploitation prevention act".
3 S 2. Legislative intent. The legislature hereby finds and declares
4 that the sexual abuse and exploitation of children is a continuing seri-
5 ous problem and such exploitation is being aided by technological
6 advances that utilize the internet. The proliferation of child pornogra-
7 phy must be addressed through legislative means that supply law enforce-
8 ment with the tools needed to combat this problem, impose penalties on

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

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those determined to abuse children and provide a safe environment for child victims.

S 3. Paragraph (e) of subdivision 1 of section 160.10 of the criminal procedure law, as added by chapter 344 of the laws of 1976, is amended and a new paragraph (f) is added to read as follows:

(e) Loitering for the purpose of engaging in a prostitution offense as defined in subdivision two of section 240.37 of the penal law[.]; OR

(F) UNLAWFUL PROSTITUTION AS DEFINED IN SECTION 230.01 OF THE PENAL LAW.

S 4. Section 190.30 of the criminal procedure law is amended by adding a new subdivision 9 to read as follows:

9. BUSINESS RECORDS MAY BE RECEIVED AT GRAND JURY PROCEEDINGS AS EVIDENCE OF THE FACTS STATED IN SUCH RECORDS, PROVIDED SUCH RECORDS ARE ACCOMPANIED BY A WRITTEN STATEMENT, UNDER OATH, OF THE RECORD'S CUSTODIAN OR OTHER QUALIFIED WITNESS OF THE BUSINESS. SUCH STATEMENT SHALL CONTAIN A LIST OR DESCRIPTION OF THE RECORDS ATTACHED AND STATE IN SUBSTANCE THAT THE PERSON IS A DULY AUTHORIZED CUSTODIAN OF THE RECORDS OR OTHER QUALIFIED WITNESS WITH KNOWLEDGE THAT SUCH RECORDS WERE MADE IN THE REGULAR COURSE OF BUSINESS AND THAT IT WAS THE REGULAR COURSE OF SUCH BUSINESS TO MAKE SUCH RECORDS AT THE TIME OF THE ACT, TRANSACTION, OCCURRENCE OR EVENT, OR WITHIN A REASONABLE TIME THEREAFTER. SUCH WRITTEN STATEMENT MAY ALSO INCLUDE A STATEMENT THAT THE BUSINESS DOES NOT POSSESS A PARTICULAR RECORD OR RECORDS, AND SUCH STATEMENT MAY BE RECEIVED AT GRAND JURY PROCEEDINGS AS EVIDENCE OF THE FACT THAT THE BUSINESS DOES NOT POSSESS SUCH RECORD OR RECORDS. WHEN IT IS NECESSARY FOR THE BUSINESS WHOSE RECORDS ARE BEING OFFERED INTO EVIDENCE TO SUBMIT A WRITTEN STATEMENT UNDER OATH FROM MORE THAN ONE OF ITS EMPLOYEES IN ORDER TO COMPLY WITH THIS SUBDIVISION, MORE THAN ONE WRITTEN STATEMENT UNDER OATH MAY BE ATTACHED TO THE RECORDS. FOR THE PURPOSE OF THIS SUBDIVISION, THE TERM "BUSINESS" INCLUDES A BUSINESS, PROFESSION, OCCUPATION AND CALLING OF EVERY KIND.

S 5. Subdivisions 4 and 7 of section 200.50 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, are amended to read as follows:

4. A statement in each count that the grand jury, or, where the accusatory instrument is a superior court information, the district attorney, accuses the defendant or defendants of a designated offense, provided that in any prosecution under article four hundred eighty-five of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 485.05 of the penal law, followed by the phrase "as a hate crime", and provided further that in any prosecution under section 490.25 of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 490.05 of the penal law, followed by the phrase "as a crime of terrorism"; and provided further that in any prosecution under section 130.91 of the penal law, the designated offense shall be the specified offense, as defined in subdivision two of section 130.91 of the penal law, followed by the phrase "as a sexually motivated felony"; and PROVIDED FURTHER THAT IN ANY PROSECUTION UNDER SECTION 263.18 OF THE PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE UNDERLYING SEX CRIME AGAINST A CHILD, AS DEFINED IN SUBDIVISION TWO OF SECTION 263.18 OF THE PENAL LAW, FOLLOWED BY THE PHRASE "AS A COMPUTER SEX CRIME"; AND

7. A plain and concise factual statement in each count which, without allegations of an evidentiary nature,

(a) asserts facts supporting every element of the offense charged and the defendant's or defendants' commission thereof with sufficient preci-

sion to clearly apprise the defendant or defendants of the conduct which is the subject of the accusation; and

(b) in the case of any armed felony, as defined in subdivision forty-one of section 1.20 OF THIS CHAPTER, states that such offense is an armed felony and specifies the particular implement the defendant or defendants possessed, were armed with, used or displayed or, in the case of an implement displayed, specifies what the implement appeared to be; and

(c) in the case of any hate crime, as defined in section 485.05 of the penal law, specifies, as applicable, that the defendant or defendants intentionally selected the person against whom the offense was committed or intended to be committed; or intentionally committed the act or acts constituting the offense, in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person; and

(d) in the case of a crime of terrorism, as defined in section 490.25 of the penal law, specifies, as applicable, that the defendant or defendants acted with intent to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination or kidnapping; and

(e) in the case of a sexually motivated felony, as defined in section 130.91 of the penal law, asserts facts supporting the allegation that the offense was sexually motivated; and

(F) IN THE CASE OF A COMPUTER SEX CRIME, AS DEFINED IN SUBDIVISION ONE OF SECTION 263.18 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE, THAT THE DEFENDANT OR DEFENDANTS FACILITATED THE COMMISSION OF A SEX CRIME AGAINST A CHILD, AS DEFINED IN SUBDIVISION TWO OF SECTION 263.18 OF THE PENAL LAW, BY USING OR CAUSING TO BE USED A COMPUTER OR COMPUTER SERVICE TO COMMUNICATE WITH THE CHILD AGAINST WHOM SUCH OFFENSE IS COMMITTED.

S 6. Section 610.10 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. A "NON-JUDICIAL SUBPOENA" IS A PROCESS ISSUED BY A DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, WHERE APPROPRIATE, OR THE CHIEF EXECUTIVE OFFICER OF A POLICE DEPARTMENT, AS DEFINED IN SUBDIVISION A OF SECTION EIGHT HUNDRED THIRTY-SEVEN-C OF THE EXECUTIVE LAW, OR THE DESIGNEE OF SUCH CHIEF EXECUTIVE OFFICER, IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION FOUR OF SECTION 610.20 OF THIS ARTICLE.

S 7. Section 610.20 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. IN THE INVESTIGATION OF AN OFFENSE AGAINST A MINOR OR AN ATTEMPT TO COMMIT AN OFFENSE AGAINST A MINOR, OR IN ANY INSTANCE WHERE THE LIFE OR SAFETY OF A PERSON IS IN IMMINENT DANGER, A NON-JUDICIAL SUBPOENA MAY BE ISSUED AND DIRECTED TO AN INTERNET SERVICE PROVIDER OR A PROVIDER OF E-MAIL SERVICES REQUIRING THE PROVIDER TO DISCLOSE THE IDENTITY AND ADDRESS OF A SUBSCRIBER RELATIVE TO A SCREEN NAME.

S 8. Paragraph (h) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 154 of the laws of 1990, is amended to read as follows:

(h) Promoting prostitution in the first degree, as defined in section 230.32 of the penal law, promoting prostitution in the second degree, as defined by subdivision one of section 230.30 of the penal law, COMPELLING PROSTITUTION, AS DEFINED IN SECTION 230.33 OF THE PENAL LAW;

S 9. Subdivision 8 of section 700.05 of the criminal procedure law is amended by adding a new paragraph (u) to read as follows:

(U) USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 263.06 OF THE PENAL LAW, USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.07 OF THE PENAL LAW, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.08 OF THE PENAL LAW, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 263.10 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.11 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.12 OF THE PENAL LAW, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.13 OF THE PENAL LAW, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14 OF THE PENAL LAW, POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 263.15 OF THE PENAL LAW, POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.16 OF THE PENAL LAW, POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.17 OF THE PENAL LAW, COMPUTER SEX CRIMES AS DEFINED IN SECTION 263.18 OF THE PENAL LAW, CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE AS DEFINED IN SECTION 156.40 OF THE PENAL LAW, CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE AS DEFINED IN SECTION 156.41 OF THE PENAL LAW, LURING A CHILD AS DEFINED IN SECTION 263.01 OF THE PENAL LAW AND DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE AS DEFINED IN SECTION 263.03 OF THE PENAL LAW.

S 10. Paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 405 of the laws of 2008, is amended to read as follows:

(a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of sections [120.70,] 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 [or], 230.06 OR 230.06-A, or subdivision two of section 230.30, or section 230.32 [or], 230.33 OR 230.45 of the penal law, or (ii) [a conviction of or a conviction for an attempt to commit any of the provisions of section 235.22 of the penal law, or (iii)] a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law or as a sexually motivated felony defined in section 130.91 of such law; or

S 11. Paragraph (b) of subdivision 2 of section 168-f of the correction law, as added by chapter 192 of the laws of 1995, is amended to read as follows:

(b) The verification form shall be signed by the sex offender, and state that he still resides at the address last reported to the division AND SHALL PROVIDE INFORMATION ON ANY INTERNET ACCOUNTS BELONGING TO SUCH SEX OFFENDER AND ANY INTERNET SCREEN NAME OR NAMES USED BY SUCH OFFENDER.

S 12. Paragraphs d and e of subdivision 2 of section 168-b of the correction law are relettered paragraphs e and f and a new paragraph d is added to read as follows:

D. THE REGISTRY IS AUTHORIZED TO MAKE AVAILABLE THE INFORMATION PROVIDED FOR IN SECTION ONE HUNDRED SIXTY-EIGHT-Q OF THIS ARTICLE AND, IN ADDITION, PROVIDE INFORMATION ON ANY INTERNET ACCOUNTS REGISTERED TO SUCH SEX OFFENDER AND ANY INTERNET SCREEN NAMES USED BY SUCH OFFENDER TO AN INTERACTIVE COMPUTER SERVICE, WHICH SHALL BE DEFINED AS ANY INFORMATION SERVICE, SYSTEM OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUDING SPECIFICALLY A SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTERNET.

S 13. Subdivision 1 of section 70.02 of the penal law, as separately amended by chapters 764 and 765 of the laws of 2005, paragraph (a) as amended by chapter 320 of the laws of 2006 and paragraphs (c) and (d) as amended by chapter 7 of the laws of 2007, is amended to read as follows:

1. Definition of a violent felony offense. A violent felony offense is a class B violent felony offense, a class C violent felony offense, a class D violent felony offense, or a class E violent felony offense, defined as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75[;], assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A, PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.32, COMPELLING PROSTITUTION AS DEFINED IN SECTION 230.33, incest in the first degree as defined in section 255.27, USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.07, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a

peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, PROMOTING PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SECTION 230.30, DISSEMINATING INDECENT MATERIALS TO MINORS IN THE FIRST DEGREE AS DEFINED IN SECTION 263.03, USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 263.06, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.12, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14, POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.17, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, PATRONIZING A PROSTITUTE IN THE FIRST DEGREE AS DEFINED IN SECTION 230.06, PROMOTING PROSTITUTION IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 230.25, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.08, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.13, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight of section 265.02 as a

lesser included offense of that section as defined in section 220.20 of the criminal procedure law, persistent sexual abuse as defined in section 130.53, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, PATRONIZING A PROSTITUTE IN THE SECOND DEGREE AS DEFINED IN SECTION 230.05, falsely reporting an incident in the second degree as defined in section 240.55 and placing a false bomb or hazardous substance in the second degree as defined in section 240.61.

S 14. The penal law is amended by adding two new sections 156.40 and 156.41 to read as follows:

S 156.40 CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE.

A PERSON IS GUILTY OF CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE WHEN HE OR SHE INTENTIONALLY USES OR ATTEMPTS TO USE ENCRYPTION TO:

1. COMMIT, FURTHER, FACILITATE OR PROMOTE CONDUCT CONSTITUTING A CRIME;

2. CONCEAL THE COMMISSION OF ANY CRIME;

3. CONCEAL OR PROTECT THE IDENTITY OF A PERSON WHO HAS COMMITTED ANY CRIME; OR

4. PREVENT, IMPEDE, DELAY OR DISRUPT THE NORMAL OPERATION OR USE OF A COMPUTER, COMPUTER PROGRAM OR COMPUTER SYSTEM.

CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 156.41 CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE.

A PERSON IS GUILTY OF CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE AND HE OR SHE:

1. DOES SO WITH AN INTENT TO COMMIT OR ATTEMPT TO COMMIT OR FURTHER THE COMMISSION OF A FELONY;

2. DOES SO WITH AN INTENT TO CONCEAL THE COMMISSION OF ANY FELONY;

3. DOES SO WITH THE INTENT TO PROTECT THE IDENTITY OF A PERSON WHO HAS COMMITTED ANY FELONY; OR

4. HAS BEEN PREVIOUSLY CONVICTED OF ANY CRIME UNDER THIS ARTICLE.

CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE IS A CLASS E FELONY.

S 15. Section 156.00 of the penal law is amended by adding a new subdivision 10 to read as follows:

10. "ENCRYPTION" MEANS ANY PROTECTIVE OR DISRUPTIVE MEASURE, INCLUDING, WITHOUT LIMITATION, CRYPTOGRAPHY, ENCIPHERING OR ENCODING, WHICH:

(A) CAUSES OR MAKES ANY DATA, INFORMATION, IMAGE, PROGRAM, SIGNAL OR SOUND UNINTELLIGIBLE OR UNUSABLE; OR

(B) PREVENTS, IMPEDES, DELAYS OR DISRUPTS ACCESS TO ANY DATA, INFORMATION, IMAGE, PROGRAM, SIGNAL OR SOUND.

S 16. Section 215.40 of the penal law is amended to read as follows:

S 215.40 Tampering with physical evidence.

A person is guilty of tampering with physical evidence when:

1. With intent that it be used or introduced in, OR BELIEVING THAT IT HAS BEEN REQUESTED OR MAY BE GATHERED DURING OR PURSUANT TO an official proceeding or a prospective official proceeding, [he] SUCH PERSON: (a) knowingly makes, devises or prepares false physical evidence, or (b) produces or offers such evidence at such a proceeding knowing it to be false; or

2. Believing that certain physical evidence [is about to] HAS BEEN OR MAY be REQUESTED, GATHERED, produced or used in OR PURSUANT TO an official proceeding or a prospective official proceeding, and intending to prevent such production or use, [he] SUCH PERSON suppresses it by any act of concealment, alteration, ENCRYPTION or destruction, or by employing force, intimidation or deception against any person.

3. NO ELECTRONIC COMMUNICATIONS SERVICE OR REMOTE COMPUTING SERVICE, AS DEFINED UNDER THE FEDERAL ELECTRONIC COMMUNICATIONS PRIVACY ACT, WHICH IS ACTING WITHIN THE ORDINARY COURSE OF BUSINESS, SHALL BE OBLIGATED TO RETAIN CUSTOMER INFORMATION AND/OR CONTENT UNLESS IN RECEIPT OF AN OFFICIAL REQUEST TO RETAIN PHYSICAL EVIDENCE.

Tampering with physical evidence is a class [E] D felony.

S 17. Section 230.00 of the penal law, as amended by chapter 169 of the laws of 1969, is amended to read as follows:

S 230.00 [Prostitution] CRIMINAL PROSTITUTION.

A person is guilty of CRIMINAL prostitution when, BEING SEVENTEEN YEARS OLD OR MORE, such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

[Prostitution] CRIMINAL PROSTITUTION is a class B [Misdemeanor] MISDEAMEANOR.

S 18. The penal law is amended by adding a new section 230.01 to read as follows:

S 230.01 UNLAWFUL PROSTITUTION.

A PERSON IS GUILTY OF UNLAWFUL PROSTITUTION WHEN, BEING LESS THAN SEVENTEEN YEARS OLD, SUCH PERSON ENGAGES OR AGREES OR OFFERS TO ENGAGE IN SEXUAL CONDUCT WITH ANOTHER PERSON IN RETURN FOR A FEE.

UNLAWFUL PROSTITUTION IS A VIOLATION, PROVIDED, HOWEVER, THAT ANY PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A CRIME DEFINED IN THIS ARTICLE OR SECTION 240.37 OF THIS PART SHALL BE GUILTY OF A CLASS B MISDEMEANOR.

S 19. Sections 230.05 and 230.06 of the penal law, as added by chapter 627 of the laws of 1978, are amended to read as follows:

S 230.05 Patronizing a prostitute in the second degree.

A person is guilty of patronizing a prostitute in the second degree when, being [over eighteen] TWENTY-ONE years of age OR MORE, he OR SHE patronizes a prostitute and the person patronized is less than [fourteen] SEVENTEEN years of age.

Patronizing a prostitute in the second degree is a class E felony.

S 230.06 Patronizing a prostitute in the first degree.

A person is guilty of patronizing a prostitute in the first degree when, BEING EIGHTEEN YEARS OF AGE OR MORE, he OR SHE patronizes a prostitute and the person patronized is less than [eleven] FIFTEEN years of age.

Patronizing a prostitute in the first degree is a class D felony.

S 20. The penal law is amended by adding a new section 230.06-a to read as follows:

S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

A PERSON IS GUILTY OF SEXUAL EXPLOITATION OF A CHILD WHEN:

1. BEING EIGHTEEN YEARS OF AGE OR MORE HE OR SHE PATRONIZES A PROSTITUTE AND THE PERSON PATRONIZED IS LESS THAN THIRTEEN YEARS OF AGE; OR

2. HE OR SHE PATRONIZES A PROSTITUTE AND THE PERSON PATRONIZED IS LESS THAN ELEVEN YEARS OF AGE.

SEXUAL EXPLOITATION OF A CHILD IS A CLASS B FELONY.

S 21. Section 230.07 of the penal law, as amended by chapter 74 of the laws of 2007, is amended to read as follows:

S 230.07 Patronizing a prostitute; defense.

In any prosecution for patronizing a prostitute in the first or second degrees OR SEXUAL EXPLOITATION OF A CHILD, it is [a] AN AFFIRMATIVE defense that the defendant did not have reasonable grounds to believe that the person was less than the age specified.

S 22. The opening paragraph of section 230.10 of the penal law is amended to read as follows:

In any prosecution for SEXUAL EXPLOITATION OF A CHILD, prostitution or patronizing a prostitute, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated or solicited is immaterial, and it is no defense that:

S 23. Subdivision 2 of section 230.30 of the penal law, as amended by chapter 627 of the laws of 1978, is amended to read as follows:

2. Advances or profits from prostitution of a person less than [sixteen] SEVENTEEN years old.

S 23-a. The penal law is amended by adding a new section 230.11 to read as follows:

S 230.11 PROSTITUTION; DEFENSE.

IN ANY PROSECUTION FOR UNLAWFUL PROSTITUTION OR CRIMINAL PROSTITUTION, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS A VICTIM OF SEX TRAFFICKING.

S 24. Section 230.33 of the penal law, as added by chapter 450 of the laws of 2005, is amended to read as follows:

S 230.33 Compelling prostitution.

A person is guilty of compelling prostitution when, being twenty-one years of age or older, he or she knowingly advances prostitution by compelling a person less than [sixteen] SEVENTEEN years old, by force or intimidation, to engage in prostitution.

Compelling prostitution is a class B felony.

S 25. Subdivision 2 of section 240.37 of the penal law, as added by chapter 344 of the laws of 1976, is amended to read as follows:

2. Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons, for the purpose of prostitution, or of patronizing a prostitute as those terms are defined in article two hundred thirty of [the penal law] THIS CHAPTER, shall be guilty of a violation and is guilty of a class B misdemeanor if such person has previously been convicted of a violation of this section or of [sections] SECTION 230.00, 230.01 or 230.05 of [the penal law] THIS CHAPTER.

S 26. Section 230.40 of the penal law is amended and a new section 230.45 is added to read as follows:

S 230.40 Permitting prostitution IN THE SECOND DEGREE.

A person is guilty of permitting prostitution IN THE SECOND DEGREE when, having possession or control of premises which he OR SHE knows are being used for prostitution purposes, he OR SHE fails to make reasonable effort to halt or abate such use.

Permitting prostitution IN THE SECOND DEGREE is a class [B] A misdemeanor.

S 230.45 PERMITTING PROSTITUTION IN THE FIRST DEGREE.

A PERSON IS GUILTY OF PERMITTING PROSTITUTION IN THE FIRST DEGREE WHEN HAVING POSSESSION OR CONTROL OF PREMISES WHICH HE OR SHE KNOWS ARE BEING USED FOR PROSTITUTION PURPOSES INCLUDING THE PROSTITUTION OF A CHILD LESS THAN SEVENTEEN YEARS OF AGE, HE OR SHE FAILS TO MAKE REASONABLE EFFORT TO HALT OR ABATE SUCH USE.

PERMITTING PROSTITUTION IN THE FIRST DEGREE IS A CLASS E FELONY.

S 27. Section 60.13 of the penal law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

S 60.13 Authorized dispositions; felony sex offenses.

When a person is to be sentenced upon a conviction for any felony defined in article one hundred thirty of this chapter, including a sexu-

ally motivated felony, or patronizing a prostitute in the first degree as defined in section 230.06 of this chapter, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, incest in the second degree as defined in section 255.26 of this chapter, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of these crimes, the court must sentence the defendant in accordance with the provisions of section 70.80 of this title.

S 28. Paragraph (a) of subdivision 1 of section 70.80 of the penal law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

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

S 29. Subdivision 2 of section 60.42 of the criminal procedure law, as added by chapter 230 of the laws of 1975, is amended to read as follows:

2. proves or tends to prove that the victim has been convicted of an offense under section 230.00 OR 230.01 of the penal law within three years prior to the sex offense which is the subject of the prosecution; or

S 30. Subdivision 6 of section 380.50 of the criminal procedure law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

6. Regardless of whether the victim requests to make a statement with regard to the defendant's sentence, where the defendant is sentenced for a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or 230.32, the prosecutor shall, within sixty days of the imposition of sentence, provide the victim with a form on which the victim may indicate a demand to be informed of any petition to change the name of such defendant. Such forms shall be maintained by such prosecutor. Upon receipt of a notice of a petition to change the name of any such defendant, pursuant to subdivision two of section sixty-two of the civil rights law, the prosecutor shall promptly notify the victim at the most current address or telephone number provided by such victim in the most reasonable and expedient possible manner of the time and place such petition will be presented to the court.

S 31. Subdivision 2 of section 61 of the civil rights law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

2. If the petitioner stands convicted of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or 230.32, and is currently confined as an inmate in any correctional facility or currently under the supervision of the state division of parole or a county probation

department as a result of such conviction, the petition shall for each such conviction specify such felony conviction, the date of such conviction or convictions, and the court in which such conviction or convictions were entered.

S 32. Subdivision 2 of section 62 of the civil rights law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

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

S 33. The closing paragraph of section 64 of the civil rights law, as separately amended by chapters 258, 320 and 481 of the laws of 2006, is amended to read as follows:

Upon compliance with the order and the filing of the affidavit of the publication, as provided in this section, the clerk of the court in which the order has been entered shall certify that the order has been complied with; and, if the petition states that the petitioner stands convicted of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or 230.32, such clerk (1) shall deliver, by first class mail, a copy of such certified order to the division of criminal justice services at its office in the county of Albany and (2) upon the clerk of the court reviewing the petitioner's application for name change and subsequent in-court inquiry, may, in the clerk's discretion, deliver, by first class mail, the petitioner's new name with such certified order to the court of competent jurisdiction which imposed the orders of support. Such certification shall appear on the original order and on any certified copy thereof and shall be entered in the clerk's minutes of the proceeding.

S 34. Paragraph (d) of subdivision 7 of section 995 of the executive law, as amended by chapter 2 of the laws of 2006, is amended to read as follows:

(d) any of the following felonies, or an attempt thereof where such attempt is a felony offense:

aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; criminally negligent homicide, as defined in section 125.10

of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; SEXUAL EXPLOITATION OF A CHILD, AS DEFINED IN SECTION 230.06-A; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent [materials] MATERIAL to minors in the second degree, as defined in section [235.21] 263.02 of the penal law; disseminating indecent [materials] MATERIAL to minors in the first degree, as defined in section [235.22] 263.03 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance IN THE SECOND DEGREE, as defined in section [263.05] 263.06 of the penal law; USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.07 OF THE PENAL LAW; promoting an obscene sexual performance by a child IN THE SECOND DEGREE, as defined in section [263.10] 263.08 of the penal law; PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.09 OF THE PENAL LAW; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD

DEGREE, AS DEFINED IN SECTION 263.10 OF THE PENAL LAW; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE, AS DEFINED IN SECTION 263.11 OF THE PENAL LAW; possessing an obscene sexual performance by a child IN THE FIRST DEGREE, as defined in section [263.11] 263.12 of the penal law; promoting a sexual performance by a child[, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, as defined in section 263.16] IN THE SECOND DEGREE, AS DEFINED IN SECTION 263.13 OF THE PENAL LAW; PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.14 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE, AS DEFINED IN SECTION 263.15 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE, AS DEFINED IN SECTION 263.16 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.17 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or

S 35. Subdivision 2 of section 344.4 of the family court act, as added by chapter 761 of the laws of 1987, is amended to read as follows:

2. proves or tends to prove that the victim has been convicted of an offense under section 230.00 OR 230.01 of the penal law within three years prior to the sex offense which is the subject of the juvenile delinquency proceeding; or

S 36. Subdivisions (f) and (p) of section 10.03 of the mental hygiene law, as added by chapter 7 of the laws of 2007, are amended to read as follows:

(f) "Designated felony" means any felony offense defined by any of the following provisions of the penal law: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section [235.22] 263.03, use of a child in a sexual performance IN THE SECOND DEGREE as defined in section [263.05] 263.06, USE OF A CHILD IN A SEXUAL

PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.07, promoting an obscene sexual performance by a child IN THE SECOND DEGREE as defined in section [263.10] 263.08, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09, promoting a sexual performance by a child IN THE SECOND DEGREE as defined in section [263.15] 263.13, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14, or any felony attempt or conspiracy to commit any of the foregoing offenses.

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

S 37. Subdivision 2 of section 353 of the multiple dwelling law, as amended by chapter 680 of the laws of 1967, is amended to read as follows:

2. If there be two or more convictions in such dwelling within a period of six months, under sections 230.00, 230.01, 230.25, [or] 230.40 OR 230.45 of the penal law.

S 38. Subdivision 1 of section 2302 of the public health law, as amended by chapter 680 of the laws of 1967, is amended to read as follows:

1. Every person arrested charged with a violation of section 230.00 [or], 230.01, 230.40 OR 230.45 of the penal law, or arrested for failure to comply with the order of a judge or justice issued pursuant to the provisions of section two thousand three hundred one of this chapter, or any person arrested for frequenting disorderly houses or houses of prostitution, shall be reported within twenty-four hours by the court or magistrate before whom such person is arraigned to the health officer of the health district in which the alleged offense occurred, and shall be examined in accordance with the provisions of section two thousand three hundred of this chapter.

S 39. Section 2324-a of the public health law, as amended by chapter 260 of the laws of 1978, is amended to read as follows:

S 2324-a. Presumptive evidence. For the purposes of this title, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25 or 230.30 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

S 40. Paragraph (b) of subdivision 3 of section 2324 of the public health law, as amended by chapter 680 of the laws of 1967, is amended to read as follows:

(b) An admission or finding of guilt of any person of a violation of section 230.40 OR 230.45 of the penal law at such place shall be presumptive evidence of the nuisance, and a plea of guilty or a conviction in a criminal action of maintaining a nuisance at the place described in the complaint shall be prima facie evidence of the

nuisance, and the records of any court in the jurisdiction shall be admissible as evidence to prove the conviction or plea of guilty.

S 41. Subdivisions 1 and 4 of section 126 of the alcoholic beverage control law, as amended by chapter 366 of the laws of 1992, are amended to read as follows:

1. Except as provided in subdivision one-a of this section, a person who has been convicted of a felony or any of the misdemeanors mentioned in section eleven hundred forty-six of the former penal law as in force and effect immediately prior to September first, nineteen hundred sixty-seven, or of an offense defined in section 230.20 [or], 230.40 OR 230.45 of the penal law, unless subsequent to such conviction such person shall have received an executive pardon therefor removing this disability, a certificate of good conduct granted by the board of parole, or a certificate of relief from disabilities granted by the board of parole or a court of this state pursuant to the provisions of article twenty-three of the correction law to remove the disability under this section because of such conviction.

4. A copartnership or a corporation, unless each member of the partnership, or each of the principal officers and directors of the corporation, is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, not less than twenty-one years of age, and has not been convicted of any felony or any of the misdemeanors, specified in section eleven hundred forty-six of the former penal law as in force and effect immediately prior to September first, nineteen hundred sixty-seven, or of an offense defined in section 230.20 [or], 230.40 OR 230.45 of the penal law, or if so convicted has received, subsequent to such conviction, an executive pardon therefor removing this disability a certificate of good conduct granted by the board of parole, or a certificate of relief from disabilities granted by the board of parole or a court of this state pursuant to the provisions of article twenty-three of the correction law to remove the disability under this section because of such conviction; provided however that a corporation which otherwise conforms to the requirements of this section and chapter may be licensed if each of its principal officers and more than one-half of its directors are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; and provided further that a corporation organized under the not-for-profit corporation law or the education law which otherwise conforms to the requirements of this section and chapter may be licensed if each of its principal officers and more than one-half of its directors are not less than twenty-one years of age and none of its directors are less than eighteen years of age; and provided further that a corporation organized under the not-for-profit corporation law or the education law and located on the premises of a college as defined by section two of the education law which otherwise conforms to the requirements of this section and chapter may be licensed if each of its principal officers and each of its directors are not less than eighteen years of age.

S 42. Subdivision 2 of section 715 of the real property actions and proceedings law, as added by chapter 494 of the laws of 1976, is amended to read as follows:

2. For purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30 [or], 230.40 OR 230.45 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law

shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

S 43. Subdivision 3 of section 231 of the real property law, as amended by chapter 203 of the laws of 1980, is amended to read as follows:

3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30, [or] 230.40 OR 230.45 of the penal law arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owners knowledge of the same.

S 44. Paragraphs (b) and (c) of subdivision 4 of section 509-cc of the vehicle and traffic law, paragraph (b) as amended by chapter 360 of the laws of 1986 and paragraph (c) as amended by chapter 345 of the laws of 2007, are amended to read as follows:

(b) The offenses referred to in subparagraph (ii) of paragraph (a) of subdivision one and paragraph (b) of subdivision two of this section that result in permanent disqualification shall include a conviction under sections 100.13, 105.15, 105.17, 115.08, 125.10, 125.15, 130.40, 130.60, 130.65, 135.20, 160.15, 220.18, 220.21, 220.39, 220.41, 220.43, 260.00, [263.05, 263.10, 263.15] 263.06, 263.07, 263.08, 263.09, 263.13, 263.14, 265.04 OR ARTICLE TWO HUNDRED SIXTY-THREE of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

(c) The offenses referred to in subparagraph (i) of paragraph (b) of subdivision one and subparagraph (i) of paragraph (c) of subdivision two of this section that result in disqualification for a period of five years shall include a conviction under sections 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 125.13, 125.14, 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16, 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00, 230.01, 230.05, 230.06, 230.06-A, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06, 235.07, [235.21,] 240.06, 245.00, 260.10, subdivision two of section 260.20 and sections 260.25, 263.02, 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any similar offenses committed under a former section of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

S 45. The section heading and subdivision 1 of section 235.15 of the penal law, as amended by chapter 600 of the laws of 1996, are amended to read as follows:

Obscenity [or disseminating indecent material to minors in the second degree]; defense.

1. In any prosecution for obscenity[, or disseminating indecent material to minors in the second degree in violation of subdivision three of section 235.21 of this article,] it is an affirmative defense that the persons to whom allegedly obscene or indecent material was dissem-

inated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing, disseminating or viewing the same.

S 46. Sections 120.70, 235.20, 235.21, 235.22, 235.23 and 235.24 of the penal law are REPEALED.

S 47. Article 263 of the penal law is REPEALED and a new article 263 is added to read as follows:

ARTICLE 263
CHILD SEXUAL ABUSE, EXPLOITATION
AND PORNOGRAPHY OFFENSES

SECTION 263.00 DEFINITIONS.
263.01 LURING A CHILD.
263.02 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE.
263.03 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE.
263.04 DISSEMINATING INDECENT MATERIAL TO MINORS; PRESUMPTION AND DEFENSES.
263.05 DISSEMINATING INDECENT MATERIAL TO MINORS; LIMITATIONS.
263.06 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE.
263.07 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE.
263.08 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
263.09 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
263.10 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE.
263.11 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
263.12 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
263.13 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
263.14 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
263.15 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE.
263.16 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
263.17 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
263.18 COMPUTER SEX CRIMES AGAINST CHILDREN.
263.19 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.
263.20 SEXUAL PERFORMANCE BY A CHILD; AFFIRMATIVE DEFENSES.
263.25 PROOF OF AGE OF CHILD.

S 263.00 DEFINITIONS.

AS USED IN THIS ARTICLE THE FOLLOWING DEFINITIONS SHALL APPLY:

1. "MINOR" MEANS ANY PERSON LESS THAN SEVENTEEN YEARS OLD.

2. "NUDITY" MEANS THE SHOWING OF THE HUMAN MALE OR FEMALE GENITALS, PUBIC AREA OR BUTTOCKS WITH LESS THAN A FULL OPAQUE COVERING, OR THE SHOWING OF THE FEMALE BREAST WITH LESS THAN A FULLY OPAQUE COVERING OF ANY PORTION THEREOF BELOW THE TOP OF THE NIPPLE, OR THE DEPICTION OF COVERED MALE GENITALS IN A DISCERNIBLY TURGID STATE.

3. "SEXUAL CONDUCT" MEANS ACTUAL OR SIMULATED SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT, SEXUAL BESTIALITY, MASTURBATION, SADOMASOCHISTIC ABUSE, OR LEWD EXHIBITION OF THE GENITALS.

4. "SEXUAL EXCITEMENT" MEANS THE CONDITION OF HUMAN MALE OR FEMALE GENITALS WHEN IN A STATE OF SEXUAL STIMULATION OR AROUSAL.

5. "SEXUAL PERFORMANCE" MEANS ANY PERFORMANCE OR PART THEREOF WHICH INCLUDES SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A CHILD LESS THAN SEVENTEEN YEARS OF AGE.

6. "OBSCENE SEXUAL PERFORMANCE" MEANS ANY PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A CHILD LESS THAN SEVENTEEN YEARS OF AGE, IN ANY MATERIAL WHICH IS OBSCENE, AS SUCH TERM IS DEFINED IN SECTION 235.00 OF THIS CHAPTER.

7. "SEXUAL INTERCOURSE", "SEXUAL CONTACT", "ORAL SEXUAL CONDUCT" AND "ANAL SEXUAL CONDUCT" MEAN THE CONDUCT DEFINED BY SECTION 130.00 OF THIS CHAPTER.

8. "SADOMASOCHISTIC ABUSE" MEANS FLAGELLATION OR TORTURE BY OR UPON A PERSON CLAD IN UNDERGARMENTS, A MASK OR BIZARRE COSTUME, OR THE CONDITION OF BEING FETTERED, BOUND OR OTHERWISE PHYSICALLY RESTRAINED ON THE PART OF ONE SO CLOTHED.

9. "PERFORMANCE" MEANS ANY PLAY, MOTION PICTURE, PHOTOGRAPH OR DANCE, FILM, VIDEO, DIGITAL IMAGE OR DATA STORED ON A COMPUTER DISK OR BY ELECTRONIC MEANS WHERE SUCH DATA IS CAPABLE OF CONVERSION INTO A VISUAL IMAGE. PERFORMANCE ALSO MEANS ANY OTHER VISUAL REPRESENTATION EXHIBITED BEFORE AN AUDIENCE.

10. "PROMOTE" MEANS TO PROCURE, MANUFACTURE, ISSUE, SELL, GIVE, PROVIDE, LEND, MAIL, DELIVER, TRANSFER, TRANSMUTE, PUBLISH, DISTRIBUTE, CIRCULATE, DISSEMINATE, PRESENT, EXHIBIT OR ADVERTISE, OR TO OFFER OR AGREE TO DO THE SAME.

11. "SIMULATED" MEANS THE EXPLICIT DEPICTION OF ANY OF THE CONDUCT SET FORTH IN SUBDIVISION THREE OF THIS SECTION WHICH CREATES THE APPEARANCE OF SUCH CONDUCT.

12. "HARMFUL TO MINORS" MEANS THAT QUALITY OF ANY DESCRIPTION OR REPRESENTATION, IN WHATEVER FORM, OF NUDITY, SEXUAL CONDUCT, SEXUAL EXCITEMENT, OR SADOMASOCHISTIC ABUSE, WHEN IT: (A) CONSIDERED AS A WHOLE, APPEALS TO THE PRURIENT INTEREST IN SEX OF MINORS; AND (B) IS PATENTLY OFFENSIVE TO PREVAILING STANDARDS IN THE ADULT COMMUNITY AS A WHOLE WITH RESPECT TO WHAT IS SUITABLE MATERIAL FOR MINORS; AND (C) CONSIDERED AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL AND SCIENTIFIC VALUE FOR MINORS.

13. "ACCESS SOFTWARE" MEANS SOFTWARE (INCLUDING CLIENT OR SERVER SOFTWARE) OR ENABLING TOOLS THAT DO NOT CREATE OR PROVIDE THE CONTENT OF THE COMMUNICATION BUT THAT ALLOW A USER TO DO ANY ONE OR MORE OF THE FOLLOWING: (A) FILTER, SCREEN, ALLOW OR DISALLOW CONTENT; (B) PICK, CHOOSE, ANALYZE OR DIGEST CONTENT; OR (C) TRANSMIT, RECEIVE, DISPLAY, FORWARD, CACHE, SEARCH, SUBSET, ORGANIZE, REORGANIZE OR TRANSLATE CONTENT.

14. "COMPUTER" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 156.00 OF THIS CHAPTER.

15. "TELEPHONIC COMMUNICATION" AND "ELECTRONIC COMMUNICATION" SHALL HAVE THE MEANING GIVEN TO THOSE TERMS BY SUBDIVISIONS THREE AND FIVE RESPECTIVELY, OF SECTION 250.00 OF THIS CHAPTER.

S 263.01 LURING A CHILD.

1. A PERSON IS GUILTY OF LURING A CHILD WHEN HE OR SHE LURES A CHILD INTO A MOTOR VEHICLE, AIRCRAFT, WATERCRAFT, ISOLATED AREA, BUILDING, OR PART THEREOF, FOR THE PURPOSE OF COMMITTING AGAINST SUCH CHILD ANY OF THE FOLLOWING OFFENSES: AN OFFENSE AS DEFINED IN SECTION 70.02 OF THIS CHAPTER; AN OFFENSE AS DEFINED IN SECTION 125.25 OR 125.27 OF THIS CHAP-

TER; A FELONY OFFENSE THAT IS A VIOLATION OF ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER; AN OFFENSE AS DEFINED IN SECTION 135.25 OF THIS CHAPTER; AN OFFENSE AS DEFINED IN SECTIONS 230.30, 230.33 OR 230.34 OF THIS CHAPTER; AN OFFENSE AS DEFINED IN SECTIONS 255.25, 255.26, OR 255.27 OF THIS CHAPTER; OR AN OFFENSE AS DEFINED IN THIS ARTICLE. FOR PURPOSES OF THIS SUBDIVISION "CHILD" MEANS A PERSON LESS THAN SEVENTEEN YEARS OF AGE. NOTHING IN THIS SECTION SHALL BE DEEMED TO PRECLUDE, IF THE EVIDENCE WARRANTS, A CONVICTION FOR THE COMMISSION OR ATTEMPTED COMMISSION OF ANY CRIME, INCLUDING BUT NOT LIMITED TO A CRIME DEFINED IN ARTICLE ONE HUNDRED THIRTY-FIVE OF THIS CHAPTER.

2. LURING A CHILD IS A CLASS E FELONY, PROVIDED, HOWEVER, THAT IF THE UNDERLYING OFFENSE THE ACTOR INTENDED TO COMMIT AGAINST SUCH CHILD CONSTITUTED A CLASS A OR A CLASS B FELONY, THEN THE OFFENSE OF LURING A CHILD IN VIOLATION OF THIS SECTION SHALL BE DEEMED RESPECTIVELY, A CLASS C FELONY OR CLASS D FELONY.

S 263.02 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE.

A PERSON IS GUILTY OF DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE WHEN:

1. WITH KNOWLEDGE OF ITS CHARACTER AND CONTENT, HE OR SHE SELLS OR LOANS TO A MINOR FOR MONETARY CONSIDERATION:

(A) ANY PICTURE, PHOTOGRAPH, DRAWING, SCULPTURE, MOTION PICTURE FILM, OR SIMILAR VISUAL REPRESENTATION OR IMAGE OF A PERSON OR PORTION OF THE HUMAN BODY WHICH DEPICTS NUDITY, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE AND WHICH IS HARMFUL TO MINORS; OR

(B) ANY BOOK, PAMPHLET, MAGAZINE, PRINTED MATTER HOWEVER REPRODUCED, OR SOUND RECORDING WHICH CONTAINS ANY MATTER ENUMERATED IN PARAGRAPH (A) OF THIS SUBDIVISION, OR EXPLICIT AND DETAILED VERBAL DESCRIPTIONS OR NARRATIVE ACCOUNTS OF SEXUAL EXCITEMENT, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE AND WHICH, TAKEN AS A WHOLE, IS HARMFUL TO MINORS; OR

2. KNOWING THE CHARACTER AND CONTENT OF A MOTION PICTURE, SHOW OR OTHER PRESENTATION WHICH, IN WHOLE OR IN PART, DEPICTS NUDITY, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE, AND WHICH IS HARMFUL TO MINORS, HE OR SHE:

(A) EXHIBITS SUCH MOTION PICTURE, SHOW OR OTHER PRESENTATION TO A MINOR FOR MONETARY CONSIDERATION; OR

(B) SELLS TO A MINOR AN ADMISSION TICKET OR PASS TO PREMISES WHEREON THERE IS EXHIBITED OR TO BE EXHIBITED SUCH MOTION PICTURE, SHOW OR OTHER PRESENTATION; OR

(C) ADMITS A MINOR FOR A MONETARY CONSIDERATION TO PREMISES WHEREON THERE IS EXHIBITED OR TO BE EXHIBITED SUCH MOTION PICTURE SHOW OR OTHER PRESENTATION; OR

3. 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 SADOMASOCHISTIC 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.

DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE IS A CLASS E FELONY.

S 263.03 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE.

A PERSON IS GUILTY OF DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE WHEN:

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 SADOMASOCHISTIC ABUSE, AND WHICH

IS HARMFUL TO MINORS, HE OR SHE INTENTIONALLY USES ANY TELEPHONIC COMMUNICATION, ELECTRONIC COMMUNICATION OR 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 OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH OFFICER TO BE A MINOR; AND

2. BY MEANS OF SUCH COMMUNICATION HE OR SHE IMPORTUNES, INVITES OR INDUCES A MINOR OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH OFFICER TO BE A MINOR 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.

DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE IS A CLASS C FELONY.

S 263.04 DISSEMINATING INDECENT MATERIAL TO MINORS; PRESUMPTION AND DEFENSES.

1. A PERSON WHO ENGAGES IN THE CONDUCT PROSCRIBED BY SECTION 263.02 OF THIS ARTICLE IS PRESUMED TO DO SO WITH KNOWLEDGE OF THE CHARACTER AND CONTENT OF THE MATERIAL SOLD OR LOANED, OR THE MOTION PICTURE, SHOW OR PRESENTATION EXHIBITED OR TO BE EXHIBITED.

2. IN ANY PROSECUTION FOR DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE PURSUANT TO SUBDIVISION ONE OR TWO OF SECTION 263.02 OF THIS ARTICLE, IT IS AN AFFIRMATIVE DEFENSE THAT:

(A) THE DEFENDANT HAD REASONABLE CAUSE TO BELIEVE THAT THE MINOR INVOLVED WAS SEVENTEEN YEARS OLD OR MORE; AND

(B) SUCH MINOR EXHIBITED TO THE DEFENDANT A DRAFT CARD, DRIVER'S LICENSE, BIRTH CERTIFICATE OR OTHER OFFICIAL OR APPARENTLY OFFICIAL DOCUMENT PURPORTING TO ESTABLISH THAT SUCH MINOR WAS SEVENTEEN YEARS OLD OR MORE.

3. IN ANY PROSECUTION FOR DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE IN VIOLATION OF SUBDIVISION THREE OF SECTION 263.02 OF THIS ARTICLE, IT IS AN AFFIRMATIVE DEFENSE THAT THE PERSONS TO WHOM ALLEGEDLY OBSCENE OR INDECENT MATERIAL WAS DISSEMINATED, OR THE AUDIENCE TO AN ALLEGEDLY OBSCENE PERFORMANCE, CONSISTED OF PERSONS OR INSTITUTIONS HAVING SCIENTIFIC, EDUCATIONAL, GOVERNMENTAL OR OTHER SIMILAR JUSTIFICATION FOR POSSESSING, DISSEMINATING OR VIEWING THE SAME.

4. IN ANY PROSECUTION FOR DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE PURSUANT TO SUBDIVISION THREE OF SECTION 263.02 OF THIS ARTICLE OR DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE PURSUANT TO SECTION 263.03 OF THIS ARTICLE, IT SHALL BE A DEFENSE THAT:

(A) THE DEFENDANT MADE A REASONABLE EFFORT TO ASCERTAIN THE TRUE AGE OF THE MINOR AND WAS UNABLE TO DO SO AS A RESULT OF ACTIONS TAKEN BY THE MINOR; OR

(B) THE DEFENDANT HAS TAKEN, IN GOOD FAITH, REASONABLE, EFFECTIVE AND APPROPRIATE ACTIONS UNDER THE CIRCUMSTANCES TO RESTRICT OR PREVENT ACCESS BY MINORS TO MATERIALS SPECIFIED IN SUCH SUBDIVISION, WHICH MAY INVOLVE ANY APPROPRIATE MEASURES TO RESTRICT MINORS FROM ACCESS TO SUCH COMMUNICATIONS, INCLUDING ANY METHOD WHICH IS FEASIBLE UNDER AVAILABLE TECHNOLOGY; OR

(C) THE DEFENDANT HAS RESTRICTED ACCESS TO SUCH MATERIALS BY REQUIRING USE OF A VERIFIED CREDIT CARD, DEBIT ACCOUNT, ADULT ACCESS CODE OR ADULT PERSONAL IDENTIFICATION NUMBER; OR

(D) THE DEFENDANT HAS IN GOOD FAITH ESTABLISHED A MECHANISM SUCH THAT THE LABELLING, SEGREGATION OR OTHER MECHANISM ENABLES SUCH MATERIAL TO BE AUTOMATICALLY BLOCKED OR SCREENED BY SOFTWARE OR OTHER CAPABILITIES REASONABLY AVAILABLE TO RESPONSIBLE ADULTS WISHING TO EFFECT SUCH BLOCKING OR SCREENING AND THE DEFENDANT HAS NOT OTHERWISE SOLICITED MINORS NOT SUBJECT TO SUCH SCREENING OR BLOCKING CAPABILITIES TO ACCESS THAT MATERIAL OR TO CIRCUMVENT ANY SUCH SCREENING OR BLOCKING.

S 263.05 DISSEMINATING INDECENT MATERIAL TO MINORS; LIMITATIONS.

IN ANY PROSECUTION FOR DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE PURSUANT TO SUBDIVISION THREE OF SECTION 263.02 OF THIS ARTICLE OR DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE PURSUANT TO SECTION 263.03 OF THIS ARTICLE:

1. NO PERSON SHALL BE HELD TO HAVE VIOLATED SUCH PROVISIONS SOLELY FOR PROVIDING ACCESS OR CONNECTION TO OR FROM A FACILITY, SYSTEM, OR NETWORK NOT UNDER THAT PERSON'S CONTROL, INCLUDING TRANSMISSION, DOWNLOADING, INTERMEDIATE STORAGE, ACCESS SOFTWARE, OR OTHER RELATED CAPABILITIES THAT ARE INCIDENTAL TO PROVIDING SUCH ACCESS OR CONNECTION THAT DO NOT INCLUDE THE CREATION OF THE CONTENT OF THE COMMUNICATION.

(A) THE LIMITATIONS PROVIDED BY THIS SUBDIVISION SHALL NOT BE APPLICABLE TO A PERSON WHO IS A CONSPIRATOR WITH AN ENTITY ACTIVELY INVOLVED IN THE CREATION OR KNOWING DISTRIBUTION OF COMMUNICATIONS THAT VIOLATE SUCH PROVISIONS, OR WHO KNOWINGLY ADVERTISES THE AVAILABILITY OF SUCH COMMUNICATIONS.

(B) THE LIMITATIONS PROVIDED BY THIS SUBDIVISION SHALL NOT BE APPLICABLE TO A PERSON WHO PROVIDES ACCESS OR CONNECTION TO A FACILITY, SYSTEM, OR NETWORK ENGAGED IN THE VIOLATION OF SUCH PROVISIONS THAT IS OWNED OR CONTROLLED BY SUCH PERSON.

2. NO EMPLOYER SHALL BE HELD LIABLE UNDER SUCH PROVISIONS FOR THE ACTIONS OF AN EMPLOYEE OR AGENT UNLESS THE EMPLOYEE'S OR AGENT'S CONDUCT IS WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT OR AGENCY AND THE EMPLOYER HAVING KNOWLEDGE OF SUCH CONDUCT, AUTHORIZES OR RATIFIES SUCH CONDUCT, OR RECKLESSLY DISREGARDS SUCH CONDUCT.

S 263.06 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE.

A PERSON IS GUILTY OF THE USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE IF KNOWING THE CHARACTER AND CONTENT THEREOF HE OR SHE EMPLOYS, AUTHORIZES OR INDUCES A MINOR TO ENGAGE IN A SEXUAL PERFORMANCE OR OBSCENE SEXUAL PERFORMANCE OR BEING A PARENT, LEGAL GUARDIAN OR CUSTODIAN OF SUCH MINOR, HE OR SHE CONSENTS TO THE PARTICIPATION BY SUCH MINOR IN A SEXUAL PERFORMANCE OR OBSCENE SEXUAL PERFORMANCE.

USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE IS A CLASS C FELONY.

S 263.07 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE.

A PERSON IS GUILTY OF THE USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE IF KNOWING THE CHARACTER AND CONTENT THEREOF HE OR SHE EMPLOYS, AUTHORIZES OR INDUCES A CHILD LESS THAN ELEVEN YEARS OF AGE TO ENGAGE IN A SEXUAL PERFORMANCE OR OBSCENE SEXUAL PERFORMANCE OR BEING A PARENT, LEGAL GUARDIAN OR CUSTODIAN OF SUCH CHILD, HE OR SHE CONSENTS TO THE PARTICIPATION BY SUCH CHILD IN A SEXUAL PERFORMANCE OR OBSCENE SEXUAL PERFORMANCE.

USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE IS A CLASS B FELONY.

S 263.08 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES ANY OBSCENE PERFORMANCE

WHICH INCLUDES SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR.

PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 263.09 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES:

1. TEN OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR; OR

2. ANY OBSCENE PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR AND HE OR SHE PROMOTES SUCH PERFORMANCE TO A MINOR, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH OFFICER TO BE A MINOR.

PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A CLASS C FELONY.

S 263.10 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE.

A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ANY OBSCENE PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE IS A CLASS E FELONY.

S 263.11 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL TEN OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 263.12 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ONE HUNDRED OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A CLASS C FELONY.

S 263.13 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES ANY PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT BY A MINOR.

PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 263.14 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES:

1. TEN OR MORE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR; OR

2. ANY PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR AND HE OR SHE PROMOTES SUCH PERFORMANCE TO A MINOR, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH OFFICER TO BE A MINOR.

PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A CLASS C FELONY.

S 263.15 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE.

A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ANY PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR.

POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE IS A CLASS E FELONY.

S 263.16 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL TEN OR MORE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 263.17 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ONE HUNDRED OR MORE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A CLASS C FELONY.

S 263.18 COMPUTER SEX CRIMES AGAINST CHILDREN.

1. A PERSON COMMITS A COMPUTER SEX CRIME WHEN HE OR SHE COMMITS A SEX CRIME AGAINST A CHILD AND FACILITATED THE COMMISSION OF SUCH OFFENSE BY USING OR CAUSING TO BE USED A COMPUTER OR COMPUTER SERVICE TO COMMUNICATE WITH THE CHILD AGAINST WHOM SUCH OFFENSE IS COMMITTED.

2. A "SEX CRIME AGAINST A CHILD" MEANS A FELONY OFFENSE (A) THE ESSENTIAL ELEMENTS OF WHICH INCLUDE THE COMMISSION OR ATTEMPTED COMMISSION OF SEXUAL CONDUCT, AS DEFINED IN SUBDIVISION TEN OF SECTION 130.00 OF THIS CHAPTER, OR THE USE OR PROMOTION OF A SEXUAL OR OBSCENE SEXUAL PERFORMANCE, AS DEFINED IN SECTION 263.00 OF THIS ARTICLE, (B) COMMITTED OR ATTEMPTED TO BE COMMITTED AGAINST A CHILD LESS THAN SEVENTEEN YEARS OLD.

S 263.19 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.

1. WHEN A PERSON IS CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 263.18 OF THIS ARTICLE, AND THE UNDERLYING CRIME AGAINST A CHILD IS A VIOLENT FELONY OFFENSE, AS DEFINED IN SECTION 70.02 OF THIS CHAPTER, THE COMPUTER SEX CRIME SHALL BE DEEMED A VIOLENT FELONY OFFENSE.

2. WHEN A PERSON IS CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 263.18 OF THIS ARTICLE, AND THE UNDERLYING SEX CRIME AGAINST A CHILD IS A CLASS C, D OR E FELONY, THE COMPUTER SEX CRIME SHALL BE DEEMED TO BE ONE CATEGORY HIGHER THAN THE SEX CRIME AGAINST A CHILD THE DEFENDANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL

APPLICABLE TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A SEX CRIME AGAINST A CHILD, WHICHEVER IS APPLICABLE.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 263.18 OF THIS ARTICLE AND THE UNDERLYING SEX CRIME AGAINST A CHILD IS A CLASS B FELONY:

(A) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

(B) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER; AND

(C) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF THIS CHAPTER.

S 263.20 SEXUAL PERFORMANCE BY A CHILD; AFFIRMATIVE DEFENSES.

1. UNDER THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IN GOOD FAITH REASONABLY BELIEVED THE PERSON APPEARING IN THE PERFORMANCE WAS NOT A MINOR.

2. IN ANY PROSECUTION FOR ANY OFFENSE PURSUANT TO THIS ARTICLE, IT IS AN AFFIRMATIVE DEFENSE THAT THE PERSON SO CHARGED WAS A LIBRARIAN ENGAGED IN THE NORMAL COURSE OF HIS OR HER EMPLOYMENT, A MOTION PICTURE PROJECTIONIST, STAGE EMPLOYEE OR SPOTLIGHT OPERATOR, CASHIER, DOORMAN, USHER, CANDY STAND ATTENDANT, PORTER OR IN ANY OTHER NON-MANAGERIAL OR NON-SUPERVISORY CAPACITY IN A MOTION PICTURE THEATRE; PROVIDED HE OR SHE HAS NO FINANCIAL INTEREST, OTHER THAN HIS OR HER EMPLOYMENT, WHICH EMPLOYMENT DOES NOT ENCOMPASS COMPENSATION BASED UPON ANY PROPORTION OF THE GROSS RECEIPTS, IN THE PROMOTION OF A SEXUAL PERFORMANCE FOR SALE, RENTAL OR EXHIBITION OR IN THE PROMOTION, PRESENTATION OR DIRECTION OF ANY SEXUAL PERFORMANCE, OR IS IN ANY WAY RESPONSIBLE FOR ACQUIRING SUCH MATERIAL FOR SALE, RENTAL OR EXHIBITION.

S 263.25 PROOF OF AGE OF CHILD.

WHENEVER IT BECOMES NECESSARY FOR THE PURPOSES OF THIS ARTICLE TO DETERMINE WHETHER A CHILD WHO PARTICIPATED IN A SEXUAL PERFORMANCE WAS A MINOR, THE COURT OR JURY MAY MAKE SUCH DETERMINATION BY ANY OF THE FOLLOWING: PERSONAL INSPECTION OF THE CHILD; INSPECTION OF THE SEXUAL PERFORMANCE; ORAL TESTIMONY BY A WITNESS TO THE SEXUAL PERFORMANCE AS TO THE AGE OF THE CHILD BASED UPON THE CHILD'S APPEARANCE; EXPERT MEDICAL TESTIMONY BASED UPON THE APPEARANCE OF THE CHILD IN THE SEXUAL PERFORMANCE; AND ANY OTHER METHOD AUTHORIZED BY ANY APPLICABLE PROVISION OF LAW OR BY THE RULES OF EVIDENCE AT COMMON LAW.

S 48. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as separately amended by chapters 312 and 472 of the laws of 2008, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,

170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 and 220.60 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06[,] AND 235.07[, 235.21 and 235.22] relating to obscenity; sections [263.10] 263.01, 263.02, 263.03, 263.06, 263.07, 263.08, 263.09, 263.13 and [263.15] 263.14 relating to [promoting a sexual performance by a] child SEXUAL ABUSE, EXPLOITATION AND PORNOGRAPHY; SECTION 263.18 RELATING TO SEX CRIMES AGAINST CHILDREN; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

S 49. Subdivision 1 of section 50-b of the civil rights law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

1. The identity of any victim of a sex offense, as defined in article one hundred thirty, ARTICLE TWO HUNDRED SIXTY-THREE or section 255.25, 255.26 or 255.27 of the penal law, or of an offense involving the alleged transmission of the human immunodeficiency virus, shall be confidential. No report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection. No such public officer or employee shall disclose any portion of any police report, court file, or other document, which tends to identify such a victim except as provided in subdivision two of this section.

S 50. Subdivision 2 of section 130.91 of the penal law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

2. A "specified offense" is a felony offense defined by any of the following provisions of this chapter: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25,

burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section [235.22] 263.03, use of a child in a sexual performance IN THE SECOND DEGREE as defined in section [263.05] 263.06, USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.07, promoting an obscene sexual performance by a child IN THE SECOND DEGREE as defined in section [263.10] 263.08, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09, promoting a sexual performance by a child IN THE SECOND DEGREE as defined in section [263.15] 263.13, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14, or any felony attempt or conspiracy to commit any of the foregoing offenses.

S 51. Subdivision 3 of section 130.95 of the penal law, as added by chapter 107 of the laws of 2006, is amended to read as follows:

3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this chapter or use of a child in a sexual performance as defined in [section 263.05] SECTIONS 263.06 AND 263.07 of this chapter.

S 52. Subdivision 2 of section 250.65 of the penal law, as added by chapter 69 of the laws of 2003, is amended to read as follows:

2. With respect to sections 250.55 and 250.60 of this article, the provisions of subdivision two of section 235.15 and subdivisions one and two of section [235.24] 263.05 of this chapter shall apply.

S 53. Subdivision 2 of section 35.07 of the arts and cultural affairs law, as added by chapter 160 of the laws of 2007, is amended to read as follows:

2. It shall be unlawful for any person to employ, use or exhibit any person under eighteen years of age as a dancer or performer in any portion of a facility open to the public wherein performers appear and dance or otherwise perform unclothed, under circumstances in which such employment would be harmful to such person in the manner defined in subdivision [six] TWELVE of section [235.20] 263.00 of the penal law.

S 54. Subdivision 1 of section 390-c of the general business law, as added by chapter 160 of the laws of 2007, is amended to read as follows:

1. No person under the age of eighteen years shall be admitted to any portion of a facility open to the public wherein performers appear and dance or otherwise perform unclothed, under circumstances where viewing such dancing or performance would be harmful to such person, in the manner described in subdivision [six] TWELVE of section [235.20] 263.00 of the penal law.

S 55. Paragraph s of subdivision 2 of section 133 of the labor law, as added by chapter 160 of the laws of 2007, is amended to read as follows:

s. as a dancer or performer in any portion of a facility open to the public wherein performers appear and dance or otherwise perform unclothed, under circumstances in which such employment would be harmful to such person in the manner defined in subdivision [six] TWELVE of section [235.20] 263.00 of the penal law.

S 56. Subdivision 6 of section 6330 of the civil practice law and rules, as amended by chapter 826 of the laws of 1972, is amended to read as follows:

6. The court, in its adjudication, may (1) grant the relief sought (2) deny the relief sought or (3) enjoin the sale, further sale, display, distribution, further distribution, acquisition, publication, or possession of the material, to persons under the age of seventeen, upon a finding that the material is of the kind described in paragraph [a] (A) or [b] (B) of subdivision one of section [235.21] 263.02 of the penal law.

S 57. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.