

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 17, 2009

Introduced by M. of A. ORTIZ, SCHROEDER, COLTON, KOON, MAISEL, FIELDS, GUNTHER, JAFFEE, GABRYSZAK, MAYERSOHN, GALEF, ROBINSON, TITUS, ESPAILLAT -- Multi-Sponsored by -- M. of A. ALFANO, BOYLAND, BROOK-KRASNY, COOK, DeMONTE, HYER-SPENCER, KOLB, MARKEY, PHEFFER, REILLY, SCARBOROUGH, SWEENEY, WEISENBERG -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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-

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

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1 ment with the tools needed to combat this problem, impose penalties on
2 those determined to abuse children and provide a safe environment for
3 child victims.

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

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

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

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

13 9. BUSINESS RECORDS MAY BE RECEIVED AT GRAND JURY PROCEEDINGS AS
14 EVIDENCE OF THE FACTS STATED IN SUCH RECORDS, PROVIDED SUCH RECORDS ARE
15 ACCOMPANIED BY A WRITTEN STATEMENT, UNDER OATH, OF THE RECORD'S CUSTO-
16 DIAN OR OTHER QUALIFIED WITNESS OF THE BUSINESS. SUCH STATEMENT SHALL
17 CONTAIN A LIST OR DESCRIPTION OF THE RECORDS ATTACHED AND STATE IN
18 SUBSTANCE THAT THE PERSON IS A DULY AUTHORIZED CUSTODIAN OF THE RECORDS
19 OR OTHER QUALIFIED WITNESS WITH KNOWLEDGE THAT SUCH RECORDS WERE MADE IN
20 THE REGULAR COURSE OF BUSINESS AND THAT IT WAS THE REGULAR COURSE OF
21 SUCH BUSINESS TO MAKE SUCH RECORDS AT THE TIME OF THE ACT, TRANSACTION,
22 OCCURRENCE OR EVENT, OR WITHIN A REASONABLE TIME THEREAFTER. SUCH WRIT-
23 TEN STATEMENT MAY ALSO INCLUDE A STATEMENT THAT THE BUSINESS DOES NOT
24 POSSESS A PARTICULAR RECORD OR RECORDS, AND SUCH STATEMENT MAY BE
25 RECEIVED AT GRAND JURY PROCEEDINGS AS EVIDENCE OF THE FACT THAT THE
26 BUSINESS DOES NOT POSSESS SUCH RECORD OR RECORDS. WHEN IT IS NECESSARY
27 FOR THE BUSINESS WHOSE RECORDS ARE BEING OFFERED INTO EVIDENCE TO SUBMIT
28 A WRITTEN STATEMENT UNDER OATH FROM MORE THAN ONE OF ITS EMPLOYEES IN
29 ORDER TO COMPLY WITH THIS SUBDIVISION, MORE THAN ONE WRITTEN STATEMENT
30 UNDER OATH MAY BE ATTACHED TO THE RECORDS. FOR THE PURPOSE OF THIS
31 SUBDIVISION, THE TERM "BUSINESS" INCLUDES A BUSINESS, PROFESSION, OCCU-
32 PATION AND CALLING OF EVERY KIND.

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

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

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

1 (a) asserts facts supporting every element of the offense charged and
2 the defendant's or defendants' commission thereof with sufficient preci-
3 sion to clearly apprise the defendant or defendants of the conduct which
4 is the subject of the accusation; and

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

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

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

25 (e) in the case of a sexually motivated felony, as defined in section
26 130.91 of the penal law, asserts facts supporting the allegation that
27 the offense was sexually motivated; and

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

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

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

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

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

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

53 (h) Promoting prostitution in the first degree, as defined in section
54 230.32 of the penal law, promoting prostitution in the second degree, as
55 defined by subdivision one of section 230.30 of the penal law, COMPEL-
56 LING PROSTITUTION, AS DEFINED IN SECTION 230.33 OF THE PENAL LAW;

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

3 (U) USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE AS
4 DEFINED IN SECTION 263.06 OF THE PENAL LAW, USE OF A CHILD IN A SEXUAL
5 PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.07 OF THE
6 PENAL LAW, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
7 SECOND DEGREE AS DEFINED IN SECTION 263.08 OF THE PENAL LAW, PROMOTING
8 AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED
9 IN SECTION 263.09 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL
10 PERFORMANCE BY A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 263.10
11 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN
12 THE SECOND DEGREE AS DEFINED IN SECTION 263.11 OF THE PENAL LAW,
13 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE
14 AS DEFINED IN SECTION 263.12 OF THE PENAL LAW, PROMOTING A SEXUAL
15 PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.13
16 OF THE PENAL LAW, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
17 DEGREE AS DEFINED IN SECTION 263.14 OF THE PENAL LAW, POSSESSING A SEXU-
18 AL PERFORMANCE BY A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION
19 263.15 OF THE PENAL LAW, POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN
20 THE SECOND DEGREE AS DEFINED IN SECTION 263.16 OF THE PENAL LAW,
21 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS
22 DEFINED IN SECTION 263.17 OF THE PENAL LAW, COMPUTER SEX CRIMES AS
23 DEFINED IN SECTION 263.18 OF THE PENAL LAW, CRIMINAL USE OF ENCRYPTION
24 IN THE SECOND DEGREE AS DEFINED IN SECTION 156.40 OF THE PENAL LAW,
25 CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE AS DEFINED IN SECTION
26 156.41 OF THE PENAL LAW, LURING A CHILD AS DEFINED IN SECTION 263.01 OF
27 THE PENAL LAW AND DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST
28 DEGREE AS DEFINED IN SECTION 263.03 OF THE PENAL LAW.

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

32 (a) (i) a conviction of or a conviction for an attempt to commit any
33 of the provisions of sections [120.70,] 130.20, 130.25, 130.30, 130.40,
34 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two
35 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20
36 or 135.25 of such law relating to kidnapping offenses, provided the
37 victim of such kidnapping or related offense is less than seventeen
38 years old and the offender is not the parent of the victim, or section
39 230.04, where the person patronized is in fact less than seventeen years
40 of age, 230.05 [or], 230.06 OR 230.06-A, or subdivision two of section
41 230.30, or section 230.32 [or], 230.33 OR 230.45 of the penal law, or
42 (ii) [a conviction of or a conviction for an attempt to commit any of
43 the provisions of section 235.22 of the penal law, or (iii)] a
44 conviction of or a conviction for an attempt to commit any provisions of
45 the foregoing sections committed or attempted as a hate crime defined in
46 section 485.05 of the penal law or as a crime of terrorism defined in
47 section 490.25 of such law or as a sexually motivated felony defined in
48 section 130.91 of such law; or

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

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

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

4 D. THE REGISTRY IS AUTHORIZED TO MAKE AVAILABLE THE INFORMATION
5 PROVIDED FOR IN SECTION ONE HUNDRED SIXTY-EIGHT-Q OF THIS ARTICLE AND,
6 IN ADDITION, PROVIDE INFORMATION ON ANY INTERNET ACCOUNTS REGISTERED TO
7 SUCH SEX OFFENDER AND ANY INTERNET SCREEN NAMES USED BY SUCH OFFENDER TO
8 AN INTERACTIVE COMPUTER SERVICE, WHICH SHALL BE DEFINED AS ANY INFORMA-
9 TION SERVICE, SYSTEM OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR
10 ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUD-
11 ING SPECIFICALLY A SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTER-
12 NET.

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

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

21 (a) Class B violent felony offenses: an attempt to commit the class
22 A-I felonies of murder in the second degree as defined in section
23 125.25, kidnapping in the first degree as defined in section 135.25, and
24 arson in the first degree as defined in section 150.20; manslaughter in
25 the first degree as defined in section 125.20, aggravated manslaughter
26 in the first degree as defined in section 125.22, rape in the first
27 degree as defined in section 130.35, criminal sexual act in the first
28 degree as defined in section 130.50, aggravated sexual abuse in the
29 first degree as defined in section 130.70, course of sexual conduct
30 against a child in the first degree as defined in section 130.75[;],
31 assault in the first degree as defined in section 120.10, kidnapping in
32 the second degree as defined in section 135.20, burglary in the first
33 degree as defined in section 140.30, arson in the second degree as
34 defined in section 150.15, robbery in the first degree as defined in
35 section 160.15, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION
36 230.06-A, PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN
37 SECTION 230.32, COMPELLING PROSTITUTION AS DEFINED IN SECTION 230.33,
38 incest in the first degree as defined in section 255.27, USE OF A CHILD
39 IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION
40 263.07, criminal possession of a weapon in the first degree as defined
41 in section 265.04, criminal use of a firearm in the first degree as
42 defined in section 265.09, criminal sale of a firearm in the first
43 degree as defined in section 265.13, aggravated assault upon a police
44 officer or a peace officer as defined in section 120.11, gang assault in
45 the first degree as defined in section 120.07, intimidating a victim or
46 witness in the first degree as defined in section 215.17, hindering
47 prosecution of terrorism in the first degree as defined in section
48 490.35, criminal possession of a chemical weapon or biological weapon in
49 the second degree as defined in section 490.40, and criminal use of a
50 chemical weapon or biological weapon in the third degree as defined in
51 section 490.47.

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

1 peace officer, police officer, fireman or emergency medical services
2 professional as defined in section 120.08, gang assault in the second
3 degree as defined in section 120.06, burglary in the second degree as
4 defined in section 140.25, robbery in the second degree as defined in
5 section 160.10, PROMOTING PROSTITUTION IN THE SECOND DEGREE AS DEFINED
6 IN SECTION 230.30, DISSEMINATING INDECENT MATERIALS TO MINORS IN THE
7 FIRST DEGREE AS DEFINED IN SECTION 263.03, USE OF A CHILD IN A SEXUAL
8 PERFORMANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 263.06, PROMOTING
9 AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED
10 IN SECTION 263.09, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD
11 IN THE FIRST DEGREE AS DEFINED IN SECTION 263.12, PROMOTING A SEXUAL
12 PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14,
13 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS
14 DEFINED IN SECTION 263.17, criminal possession of a weapon in the second
15 degree as defined in section 265.03, criminal use of a firearm in the
16 second degree as defined in section 265.08, criminal sale of a firearm
17 in the second degree as defined in section 265.12, criminal sale of a
18 firearm with the aid of a minor as defined in section 265.14, soliciting
19 or providing support for an act of terrorism in the first degree as
20 defined in section 490.15, hindering prosecution of terrorism in the
21 second degree as defined in section 490.30, and criminal possession of a
22 chemical weapon or biological weapon in the third degree as defined in
23 section 490.37.

24 (c) Class D violent felony offenses: an attempt to commit any of the
25 class C felonies set forth in paragraph (b); reckless assault of a child
26 as defined in section 120.02, assault in the second degree as defined in
27 section 120.05, menacing a police officer or peace officer as defined in
28 section 120.18, stalking in the first degree, as defined in subdivision
29 one of section 120.60, rape in the second degree as defined in section
30 130.30, criminal sexual act in the second degree as defined in section
31 130.45, sexual abuse in the first degree as defined in section 130.65,
32 course of sexual conduct against a child in the second degree as defined
33 in section 130.80, aggravated sexual abuse in the third degree as
34 defined in section 130.66, facilitating a sex offense with a controlled
35 substance as defined in section 130.90, PATRONIZING A PROSTITUTE IN THE
36 FIRST DEGREE AS DEFINED IN SECTION 230.06, PROMOTING PROSTITUTION IN THE
37 THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 230.25, PROMOTING
38 AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED
39 IN SECTION 263.08, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE
40 SECOND DEGREE AS DEFINED IN SECTION 263.13, criminal possession of a
41 weapon in the third degree as defined in subdivision five, six, seven or
42 eight of section 265.02, criminal sale of a firearm in the third degree
43 as defined in section 265.11, intimidating a victim or witness in the
44 second degree as defined in section 215.16, soliciting or providing
45 support for an act of terrorism in the second degree as defined in
46 section 490.10, and making a terroristic threat as defined in section
47 490.20, falsely reporting an incident in the first degree as defined in
48 section 240.60, placing a false bomb or hazardous substance in the first
49 degree as defined in section 240.62, placing a false bomb or hazardous
50 substance in a sports stadium or arena, mass transportation facility or
51 enclosed shopping mall as defined in section 240.63, and aggravated
52 unpermitted use of indoor pyrotechnics in the first degree as defined in
53 section 405.18.

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

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

8 S 14. The penal law is amended by adding two new sections 156.40 and
9 156.41 to read as follows:

10 S 156.40 CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE.

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

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

15 2. CONCEAL THE COMMISSION OF ANY CRIME;

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

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

20 CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE IS A CLASS A MISDEMEA-
21 NOR.

22 S 156.41 CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE.

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

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

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

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

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

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

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

35 10. "ENCRYPTION" MEANS ANY PROTECTIVE OR DISRUPTIVE MEASURE, INCLUD-
36 ING, WITHOUT LIMITATION, CRYPTOGRAPHY, ENCIPHERING OR ENCODING, WHICH:

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

39 (B) PREVENTS, IMPEDES, DELAYS OR DISRUPTS ACCESS TO ANY DATA, INFORMA-
40 TION, IMAGE, PROGRAM, SIGNAL OR SOUND.

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

42 S 215.40 Tampering with physical evidence.

43 A person is guilty of tampering with physical evidence when:

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

50 2. Believing that certain physical evidence [is about to] HAS BEEN OR
51 MAY be REQUESTED, GATHERED, produced or used in OR PURSUANT TO an offi-
52 cial proceeding or a prospective official proceeding, and intending to
53 prevent such production or use, [he] SUCH PERSON suppresses it by any
54 act of concealment, alteration, ENCRYPTION or destruction, or by employ-
55 ing 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] MISDEMEANOR.

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:

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

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

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

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

11 S 230.11 PROSTITUTION; DEFENSE.

12 IN ANY PROSECUTION FOR UNLAWFUL PROSTITUTION OR CRIMINAL PROSTITUTION,
13 IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS A VICTIM OF SEX TRAF-
14 FICKING.

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

17 S 230.33 Compelling prostitution.

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

22 Compelling prostitution is a class B felony.

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

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

36 S 26. Section 230.40 of the penal law is amended and a new section
37 230.45 is added to read as follows:

38 S 230.40 Permitting prostitution IN THE SECOND DEGREE.

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

43 Permitting prostitution IN THE SECOND DEGREE is a class [B] A misde-
44 meanor.

45 S 230.45 PERMITTING PROSTITUTION IN THE FIRST DEGREE.

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

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

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

54 S 60.13 Authorized dispositions; felony sex offenses.

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

1 ally motivated felony, or patronizing a prostitute in the first degree
2 as defined in section 230.06 of this chapter, SEXUAL EXPLOITATION OF A
3 CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, incest in the
4 second degree as defined in section 255.26 of this chapter, or incest in
5 the first degree as defined in section 255.27 of this chapter, or a
6 felony attempt or conspiracy to commit any of these crimes, the court
7 must sentence the defendant in accordance with the provisions of section
8 70.80 of this title.

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

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

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

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

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

30 6. Regardless of whether the victim requests to make a statement with
31 regard to the defendant's sentence, where the defendant is sentenced for
32 a violent felony offense as defined in section 70.02 of the penal law or
33 a felony defined in article one hundred twenty-five of such law or any
34 of the following provisions of such law sections 130.25, 130.30, 130.40,
35 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10,
36 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or
37 230.32, the prosecutor shall, within sixty days of the imposition of
38 sentence, provide the victim with a form on which the victim may indi-
39 cate a demand to be informed of any petition to change the name of such
40 defendant. Such forms shall be maintained by such prosecutor. Upon
41 receipt of a notice of a petition to change the name of any such defend-
42 ant, pursuant to subdivision two of section sixty-two of the civil
43 rights law, the prosecutor shall promptly notify the victim at the most
44 current address or telephone number provided by such victim in the most
45 reasonable and expedient possible manner of the time and place such
46 petition will be presented to the court.

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

49 2. If the petitioner stands convicted of a violent felony offense as
50 defined in section 70.02 of the penal law or a felony defined in article
51 one hundred twenty-five of such law or any of the following provisions
52 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
53 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06,
54 230.06-A, subdivision two of section 230.30 or 230.32, and is currently
55 confined as an inmate in any correctional facility or currently under
56 the supervision of the state division of parole or a county probation

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

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

7 2. If the petition be to change the name of a person currently
8 confined as an inmate in any correctional facility or currently under
9 the supervision of the state division of parole or a county probation
10 department as a result of a conviction for a violent felony offense as
11 defined in section 70.02 of the penal law or a felony defined in article
12 one hundred twenty-five of such law or any of the following provisions
13 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
14 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06,
15 230.06-A, subdivision two of section 230.30 or 230.32, notice of the
16 time and place when and where the petition will be presented shall be
17 served, in like manner as a notice of a motion upon an attorney in an
18 action, upon the district attorney of every county in which such person
19 has been convicted of such felony and upon the court or courts in which
20 the sentence for such felony was entered. Unless a shorter period of
21 time is ordered by the court, said notice shall be served upon each such
22 district attorney and court or courts not less than sixty days prior to
23 the date on which such petition is noticed to be heard.

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

27 Upon compliance with the order and the filing of the affidavit of the
28 publication, as provided in this section, the clerk of the court in
29 which the order has been entered shall certify that the order has been
30 complied with; and, if the petition states that the petitioner stands
31 convicted of a violent felony offense as defined in section 70.02 of the
32 penal law or a felony defined in article one hundred twenty-five of such
33 law or any of the following provisions of such law sections 130.25,
34 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred
35 sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two
36 of section 230.30 or 230.32, such clerk (1) shall deliver, by first
37 class mail, a copy of such certified order to the division of criminal
38 justice services at its office in the county of Albany and (2) upon the
39 clerk of the court reviewing the petitioner's application for name
40 change and subsequent in-court inquiry, may, in the clerk's discretion,
41 deliver, by first class mail, the petitioner's new name with such certi-
42 fied order to the court of competent jurisdiction which imposed the
43 orders of support. Such certification shall appear on the original
44 order and on any certified copy thereof and shall be entered in the
45 clerk's minutes of the proceeding.

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

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

51 aggravated assault upon a person less than eleven years old, as
52 defined in section 120.12 of the penal law; menacing in the first
53 degree, as defined in section 120.13 of the penal law; reckless endan-
54 germent in the first degree, as defined in section 120.25 of the penal
55 law; stalking in the second degree, as defined in section 120.55 of the
56 penal law; criminally negligent homicide, as defined in section 125.10

1 of the penal law; vehicular manslaughter in the second degree, as
2 defined in section 125.12 of the penal law; vehicular manslaughter in
3 the first degree, as defined in section 125.13 of the penal law;
4 persistent sexual abuse, as defined in section 130.53 of the penal law;
5 aggravated sexual abuse in the fourth degree, as defined in section
6 130.65-a of the penal law; female genital mutilation, as defined in
7 section 130.85 of the penal law; facilitating a sex offense with a
8 controlled substance, as defined in section 130.90 of the penal law;
9 unlawful imprisonment in the first degree, as defined in section 135.10
10 of the penal law; custodial interference in the first degree, as defined
11 in section 135.50 of the penal law; criminal trespass in the first
12 degree, as defined in section 140.17 of the penal law; criminal tamper-
13 ing in the first degree, as defined in section 145.20 of the penal law;
14 tampering with a consumer product in the first degree, as defined in
15 section 145.45 of the penal law; robbery in the third degree as defined
16 in section 160.05 of the penal law; identity theft in the second degree,
17 as defined in section 190.79 of the penal law; identity theft in the
18 first degree, as defined in section 190.80 of the penal law; promoting
19 prison contraband in the first degree, as defined in section 205.25 of
20 the penal law; tampering with a witness in the third degree, as defined
21 in section 215.11 of the penal law; tampering with a witness in the
22 second degree, as defined in section 215.12 of the penal law; tampering
23 with a witness in the first degree, as defined in section 215.13 of the
24 penal law; criminal contempt in the first degree, as defined in subdivi-
25 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
26 criminal contempt, as defined in section 215.52 of the penal law; bail
27 jumping in the second degree, as defined in section 215.56 of the penal
28 law; bail jumping in the first degree, as defined in section 215.57 of
29 the penal law; patronizing a prostitute in the second degree, as defined
30 in section 230.05 of the penal law; patronizing a prostitute in the
31 first degree, as defined in section 230.06 of the penal law; SEXUAL
32 EXPLOITATION OF A CHILD, AS DEFINED IN SECTION 230.06-A; promoting pros-
33 titution in the second degree, as defined in section 230.30 of the penal
34 law; promoting prostitution in the first degree, as defined in section
35 230.32 of the penal law; compelling prostitution, as defined in section
36 230.33 of the penal law; disseminating indecent [materials] MATERIAL to
37 minors in the second degree, as defined in section [235.21] 263.02 of
38 the penal law; disseminating indecent [materials] MATERIAL to minors in
39 the first degree, as defined in section [235.22] 263.03 of the penal
40 law; riot in the first degree, as defined in section 240.06 of the penal
41 law; criminal anarchy, as defined in section 240.15 of the penal law;
42 aggravated harassment of an employee by an inmate, as defined in section
43 240.32 of the penal law; unlawful surveillance in the second degree, as
44 defined in section 250.45 of the penal law; unlawful surveillance in the
45 first degree, as defined in section 250.50 of the penal law; endangering
46 the welfare of a vulnerable elderly person in the second degree, as
47 defined in section 260.32 of the penal law; endangering the welfare of a
48 vulnerable elderly person in the first degree, as defined in section
49 260.34 of the penal law; use of a child in a sexual performance IN THE
50 SECOND DEGREE, as defined in section [263.05] 263.06 of the penal law;
51 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE, AS DEFINED
52 IN SECTION 263.07 OF THE PENAL LAW; promoting an obscene sexual perform-
53 ance by a child IN THE SECOND DEGREE, as defined in section [263.10]
54 263.08 of the penal law; PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
55 CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.09 OF THE PENAL
56 LAW; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD

1 DEGREE, AS DEFINED IN SECTION 263.10 OF THE PENAL LAW; POSSESSING AN
2 OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE, AS DEFINED
3 IN SECTION 263.11 OF THE PENAL LAW; possessing an obscene sexual
4 performance by a child IN THE FIRST DEGREE, as defined in section
5 [263.11] 263.12 of the penal law; promoting a sexual performance by a
6 child[, as defined in section 263.15 of the penal law; possessing a
7 sexual performance by a child, as defined in section 263.16] IN THE
8 SECOND DEGREE, AS DEFINED IN SECTION 263.13 OF THE PENAL LAW; PROMOTING
9 A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN
10 SECTION 263.14 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORMANCE BY A
11 CHILD IN THE THIRD DEGREE, AS DEFINED IN SECTION 263.15 OF THE PENAL
12 LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE, AS
13 DEFINED IN SECTION 263.16 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORM-
14 ANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.17 of the
15 penal law; criminal possession of a weapon in the third degree, as
16 defined in section 265.02 of the penal law; criminal sale of a firearm
17 in the third degree, as defined in section 265.11 of the penal law;
18 criminal sale of a firearm to a minor, as defined in section 265.16 of
19 the penal law; unlawful wearing of a body vest, as defined in section
20 270.20 of the penal law; hate crimes as defined in section 485.05 of the
21 penal law; and crime of terrorism, as defined in section 490.25 of the
22 penal law; or

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

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

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

32 (f) "Designated felony" means any felony offense defined by any of the
33 following provisions of the penal law: assault in the second degree as
34 defined in section 120.05, assault in the first degree as defined in
35 section 120.10, gang assault in the second degree as defined in section
36 120.06, gang assault in the first degree as defined in section 120.07,
37 stalking in the first degree as defined in section 120.60, manslaughter
38 in the second degree as defined in subdivision one of section 125.15,
39 manslaughter in the first degree as defined in section 125.20, murder in
40 the second degree as defined in section 125.25, aggravated murder as
41 defined in section 125.26, murder in the first degree as defined in
42 section 125.27, kidnapping in the second degree as defined in section
43 135.20, kidnapping in the first degree as defined in section 135.25,
44 burglary in the third degree as defined in section 140.20, burglary in
45 the second degree as defined in section 140.25, burglary in the first
46 degree as defined in section 140.30, arson in the second degree as
47 defined in section 150.15, arson in the first degree as defined in
48 section 150.20, robbery in the third degree as defined in section
49 160.05, robbery in the second degree as defined in section 160.10,
50 robbery in the first degree as defined in section 160.15, promoting
51 prostitution in the second degree as defined in section 230.30, promot-
52 ing prostitution in the first degree as defined in section 230.32,
53 compelling prostitution as defined in section 230.33, disseminating
54 indecent material to minors in the first degree as defined in section
55 [235.22] 263.03, use of a child in a sexual performance IN THE SECOND
56 DEGREE as defined in section [263.05] 263.06, USE OF A CHILD IN A SEXUAL

1 PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.07, promoting
2 an obscene sexual performance by a child IN THE SECOND DEGREE as defined
3 in section [263.10] 263.08, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
4 CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09, promoting a
5 sexual performance by a child IN THE SECOND DEGREE as defined in section
6 [263.15] 263.13, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
7 DEGREE AS DEFINED IN SECTION 263.14, or any felony attempt or conspiracy
8 to commit any of the foregoing offenses.

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

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

23 2. If there be two or more convictions in such dwelling within a peri-
24 od of six months, under sections 230.00, 230.01, 230.25, [or] 230.40 OR
25 230.45 of the penal law.

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

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

39 S 39. Section 2324-a of the public health law, as amended by chapter
40 260 of the laws of 1978, is amended to read as follows:

41 S 2324-a. Presumptive evidence. For the purposes of this title, two or
42 more convictions of any person or persons had, within a period of one
43 year, for any of the offenses described in section 230.00, 230.01,
44 230.05, 230.20, 230.25 or 230.30 of the penal law arising out of conduct
45 engaged in at the same real property consisting of a dwelling as that
46 term is defined in subdivision four of section four of the multiple
47 dwelling law shall be presumptive evidence of conduct constituting use
48 of the premises for purposes of prostitution.

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

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

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

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

6 1. Except as provided in subdivision one-a of this section, a person
7 who has been convicted of a felony or any of the misdemeanors mentioned
8 in section eleven hundred forty-six of the former penal law as in force
9 and effect immediately prior to September first, nineteen hundred
10 sixty-seven, or of an offense defined in section 230.20 [or], 230.40 OR
11 230.45 of the penal law, unless subsequent to such conviction such
12 person shall have received an executive pardon therefor removing this
13 disability, a certificate of good conduct granted by the board of
14 parole, or a certificate of relief from disabilities granted by the
15 board of parole or a court of this state pursuant to the provisions of
16 article twenty-three of the correction law to remove the disability
17 under this section because of such conviction.

18 4. A copartnership or a corporation, unless each member of the part-
19 nership, or each of the principal officers and directors of the corpo-
20 ration, is a citizen of the United States or an alien lawfully admitted
21 for permanent residence in the United States, not less than twenty-one
22 years of age, and has not been convicted of any felony or any of the
23 misdemeanors, specified in section eleven hundred forty-six of the
24 former penal law as in force and effect immediately prior to September
25 first, nineteen hundred sixty-seven, or of an offense defined in section
26 230.20 [or], 230.40 OR 230.45 of the penal law, or if so convicted has
27 received, subsequent to such conviction, an executive pardon therefor
28 removing this disability a certificate of good conduct granted by the
29 board of parole, or a certificate of relief from disabilities granted by
30 the board of parole or a court of this state pursuant to the provisions
31 of article twenty-three of the correction law to remove the disability
32 under this section because of such conviction; provided however that a
33 corporation which otherwise conforms to the requirements of this section
34 and chapter may be licensed if each of its principal officers and more
35 than one-half of its directors are citizens of the United States or
36 aliens lawfully admitted for permanent residence in the United States;
37 and provided further that a corporation organized under the not-for-pro-
38 fit corporation law or the education law which otherwise conforms to the
39 requirements of this section and chapter may be licensed if each of its
40 principal officers and more than one-half of its directors are not less
41 than twenty-one years of age and none of its directors are less than
42 eighteen years of age; and provided further that a corporation organized
43 under the not-for-profit corporation law or the education law and
44 located on the premises of a college as defined by section two of the
45 education law which otherwise conforms to the requirements of this
46 section and chapter may be licensed if each of its principal officers
47 and each of its directors are not less than eighteen years of age.

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

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

1 shall be presumptive evidence of conduct constituting use of the prem-
2 ises for purposes of prostitution.

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

6 3. For the purposes of this section, two or more convictions of any
7 person or persons had, within a period of one year, for any of the
8 offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25,
9 230.30, [or] 230.40 OR 230.45 of the penal law arising out of conduct
10 engaged in at the same premises consisting of a dwelling as that term is
11 defined in subdivision four of section four of the multiple dwelling law
12 shall be presumptive evidence of unlawful use of such premises and of
13 the owners knowledge of the same.

14 S 44. Paragraphs (b) and (c) of subdivision 4 of section 509-cc of the
15 vehicle and traffic law, paragraph (b) as amended by chapter 360 of the
16 laws of 1986 and paragraph (c) as amended by chapter 345 of the laws of
17 2007, are amended to read as follows:

18 (b) The offenses referred to in subparagraph (ii) of paragraph (a) of
19 subdivision one and paragraph (b) of subdivision two of this section
20 that result in permanent disqualification shall include a conviction
21 under sections 100.13, 105.15, 105.17, 115.08, 125.10, 125.15, 130.40,
22 130.60, 130.65, 135.20, 160.15, 220.18, 220.21, 220.39, 220.41, 220.43,
23 260.00, [263.05, 263.10, 263.15] 263.06, 263.07, 263.08, 263.09, 263.13,
24 263.14, 265.04 OR ARTICLE TWO HUNDRED SIXTY-THREE of the penal law or an
25 attempt to commit any of the aforesaid offenses under section 110.00 of
26 the penal law, or any offenses committed under a former section of the
27 penal law which would constitute violations of the aforesaid sections of
28 the penal law, or any offenses committed outside this state which would
29 constitute violations of the aforesaid sections of the penal law.

30 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
31 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
32 of this section that result in disqualification for a period of five
33 years shall include a conviction under sections 100.10, 105.13, 115.05,
34 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 125.13, 125.14,
35 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55, 140.17, 140.25,
36 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16,
37 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00, 230.01, 230.05,
38 230.06, 230.06-A, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06,
39 235.07, [235.21,] 240.06, 245.00, 260.10, subdivision two of section
40 260.20 and sections 260.25, 263.02, 265.02, 265.03, 265.08, 265.09,
41 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of
42 the aforesaid offenses under section 110.00 of the penal law, or any
43 similar offenses committed under a former section of the penal law, or
44 any offenses committed under a former section of the penal law which
45 would constitute violations of the aforesaid sections of the penal law,
46 or any offenses committed outside this state which would constitute
47 violations of the aforesaid sections of the penal law.

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

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

53 1. In any prosecution for obscenity[, or disseminating indecent mate-
54 rial to minors in the second degree in violation of subdivision three of
55 section 235.21 of this article,] it is an affirmative defense that the
56 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.

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

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

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

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

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

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

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

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

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

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

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

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

48 15. "TELEPHONIC COMMUNICATION" AND "ELECTRONIC COMMUNICATION" SHALL
49 HAVE THE MEANING GIVEN TO THOSE TERMS BY SUBDIVISIONS THREE AND FIVE
50 RESPECTIVELY, OF SECTION 250.00 OF THIS CHAPTER.
51 S 263.01 LURING A CHILD.

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

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

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

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

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

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

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

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

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

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

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

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

42 3. KNOWING THE CHARACTER AND CONTENT OF THE COMMUNICATION WHICH, IN
43 WHOLE OR IN PART, DEPICTS OR DESCRIBES, EITHER IN WORDS OR IMAGES ACTUAL
44 OR SIMULATED NUDITY, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE, AND WHICH
45 IS HARMFUL TO MINORS, HE OR SHE INTENTIONALLY USES ANY COMPUTER COMMUNI-
46 CATION SYSTEM ALLOWING THE INPUT, OUTPUT, EXAMINATION OR TRANSFER, OF
47 COMPUTER DATA OR COMPUTER PROGRAMS FROM ONE COMPUTER TO ANOTHER, TO
48 INITIATE OR ENGAGE IN SUCH COMMUNICATION WITH A PERSON WHO IS A MINOR.

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

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

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

54 1. KNOWING THE CHARACTER AND CONTENT OF THE COMMUNICATION WHICH, IN
55 WHOLE OR IN PART, DEPICTS OR DESCRIBES, EITHER IN WORDS OR IMAGES ACTUAL
56 OR SIMULATED NUDITY, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE, AND WHICH

1 IS HARMFUL TO MINORS, HE OR SHE INTENTIONALLY USES ANY TELEPHONIC COMMU-
2 NICATION, ELECTRONIC COMMUNICATION OR COMPUTER COMMUNICATION SYSTEM
3 ALLOWING THE INPUT, OUTPUT, EXAMINATION OR TRANSFER, OF COMPUTER DATA OR
4 COMPUTER PROGRAMS FROM ONE COMPUTER TO ANOTHER, TO INITIATE OR ENGAGE IN
5 SUCH COMMUNICATION WITH A PERSON WHO IS A MINOR OR A PERSON WHO, REGARD-
6 LESS OF HIS OR HER AGE, IS A POLICE OFFICER AND THE ACTOR REASONABLY
7 BELIEVES SUCH OFFICER TO BE A MINOR; AND

8 2. BY MEANS OF SUCH COMMUNICATION HE OR SHE IMPORTUNES, INVITES OR
9 INDUCES A MINOR OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A
10 POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH OFFICER TO BE A
11 MINOR TO ENGAGE IN SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT OR ANAL SEXU-
12 AL CONDUCT, OR SEXUAL CONTACT WITH HIM OR HER, OR TO ENGAGE IN A SEXUAL
13 PERFORMANCE, OBSCENE SEXUAL PERFORMANCE, OR SEXUAL CONDUCT FOR HIS OR
14 HER BENEFIT.

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

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

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

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

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

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

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

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

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

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

53 (C) THE DEFENDANT HAS RESTRICTED ACCESS TO SUCH MATERIALS BY REQUIRING
54 USE OF A VERIFIED CREDIT CARD, DEBIT ACCOUNT, ADULT ACCESS CODE OR ADULT
55 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

1 WHICH INCLUDES SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL
2 CONDUCT, BY A MINOR.
3 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND
4 DEGREE IS A CLASS D FELONY.
5 S 263.09 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
6 DEGREE.
7 A PERSON IS GUILTY OF PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
8 CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-
9 OF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES:
10 1. TEN OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT, OR
11 WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR; OR
12 2. ANY OBSCENE PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT, OR WHAT
13 REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR AND HE OR SHE
14 PROMOTES SUCH PERFORMANCE TO A MINOR, OR A PERSON WHO, REGARDLESS OF HIS
15 OR HER AGE, IS A POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH
16 OFFICER TO BE A MINOR.
17 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE
18 IS A CLASS C FELONY.
19 S 263.10 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
20 THIRD DEGREE.
21 A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A
22 CHILD IN THE THIRD DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-
23 OF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ANY
24 OBSCENE PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT OR WHAT REASONABLY
25 APPEARS TO BE SEXUAL CONDUCT BY A MINOR.
26 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD
27 DEGREE IS A CLASS E FELONY.
28 S 263.11 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
29 SECOND DEGREE.
30 A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A
31 CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-
32 OF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL TEN OR
33 MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR WHAT REASON-
34 ABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.
35 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND
36 DEGREE IS A CLASS D FELONY.
37 S 263.12 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
38 FIRST DEGREE.
39 A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A
40 CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-
41 OF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ONE
42 HUNDRED OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR
43 WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.
44 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
45 DEGREE IS A CLASS C FELONY.
46 S 263.13 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
47 A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE
48 SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE
49 PRODUCES, DIRECTS OR PROMOTES ANY PERFORMANCE WHICH INCLUDES SEXUAL
50 CONDUCT BY A MINOR.
51 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A
52 CLASS D FELONY.
53 S 263.14 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
54 A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE
55 FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE
56 PRODUCES, DIRECTS OR PROMOTES:

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

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

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

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

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

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

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

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

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

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

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

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

35 S 263.18 COMPUTER SEX CRIMES AGAINST CHILDREN.

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

40 2. A "SEX CRIME AGAINST A CHILD" MEANS A FELONY OFFENSE (A) THE ESSEN-
41 TIAL ELEMENTS OF WHICH INCLUDE THE COMMISSION OR ATTEMPTED COMMISSION OF
42 SEXUAL CONDUCT, AS DEFINED IN SUBDIVISION TEN OF SECTION 130.00 OF THIS
43 CHAPTER, OR THE USE OR PROMOTION OF A SEXUAL OR OBSCENE SEXUAL PERFORM-
44 ANCE, AS DEFINED IN SECTION 263.00 OF THIS ARTICLE, (B) COMMITTED OR
45 ATTEMPTED TO BE COMMITTED AGAINST A CHILD LESS THAN SEVENTEEN YEARS OLD.

46 S 263.19 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.

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

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

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

3 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
4 CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 263.18 OF THIS
5 ARTICLE AND THE UNDERLYING SEX CRIME AGAINST A CHILD IS A CLASS B FELONY:
6

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

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

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

15 S 263.20 SEXUAL PERFORMANCE BY A CHILD; AFFIRMATIVE DEFENSES.

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

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

31 S 263.25 PROOF OF AGE OF CHILD.

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

41 S 48. Paragraph (a) of subdivision 1 of section 460.10 of the penal
42 law, as amended by section 30 of part AAA of chapter 56 of the laws of
43 2009, is amended to read as follows:

44 (a) Any of the felonies set forth in this chapter: sections 120.05,
45 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
46 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
47 sections 135.20 and 135.25 relating to kidnapping; section 135.35 relat-
48 ing to labor trafficking; section 135.65 relating to coercion; sections
49 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10
50 and 145.12 relating to criminal mischief; article one hundred fifty
51 relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating
52 to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to
53 health care fraud; article one hundred sixty relating to robbery;
54 sections 165.45, 165.50, 165.52 and 165.54 relating to criminal
55 possession of stolen property; sections 165.72 and 165.73 relating to
56 trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,

1 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,
2 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,
3 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20
4 and 178.25 relating to criminal diversion of prescription medications
5 and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40,
6 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22,
7 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections
8 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage
9 fraud, sections 190.40 and 190.42 relating to criminal usury; section
10 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relat-
11 ing to hindering prosecution; sections 210.10, 210.15, and 215.51 relat-
12 ing to perjury and contempt; section 215.40 relating to tampering with
13 physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21,
14 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60 and
15 220.77 relating to controlled substances; sections 225.10 and 225.20
16 relating to gambling; sections 230.25, 230.30, and 230.32 relating to
17 promoting prostitution; section 230.34 relating to sex trafficking;
18 sections 235.06, AND 235.07[, 235.21 and 235.22] relating to obscenity;
19 sections [263.10] 263.01, 263.02, 263.03, 263.06, 263.07, 263.08,
20 263.09, 263.13 and [263.15] 263.14 relating to [promoting a sexual
21 performance by a] child SEXUAL ABUSE, EXPLOITATION AND PORNOGRAPHY;
22 SECTION 263.18 RELATING TO SEX CRIMES AGAINST CHILDREN; sections 265.02,
23 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section
24 265.10 which constitute a felony relating to firearms and other danger-
25 ous weapons; and sections 265.14 and 265.16 relating to criminal sale of
26 a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to
27 unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20
28 relating to money laundering; or

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

32 1. The identity of any victim of a sex offense, as defined in article
33 one hundred thirty, ARTICLE TWO HUNDRED SIXTY-THREE or section 255.25,
34 255.26 or 255.27 of the penal law, or of an offense involving the
35 alleged transmission of the human immunodeficiency virus, shall be
36 confidential. No report, paper, picture, photograph, court file or other
37 documents, in the custody or possession of any public officer or employ-
38 ee, which identifies such a victim shall be made available for public
39 inspection. No such public officer or employee shall disclose any
40 portion of any police report, court file, or other document, which tends
41 to identify such a victim except as provided in subdivision two of this
42 section.

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

45 2. A "specified offense" is a felony offense defined by any of the
46 following provisions of this chapter: assault in the second degree as
47 defined in section 120.05, assault in the first degree as defined in
48 section 120.10, gang assault in the second degree as defined in section
49 120.06, gang assault in the first degree as defined in section 120.07,
50 stalking in the first degree as defined in section 120.60, manslaughter
51 in the second degree as defined in subdivision one of section 125.15,
52 manslaughter in the first degree as defined in section 125.20, murder in
53 the second degree as defined in section 125.25, aggravated murder as
54 defined in section 125.26, murder in the first degree as defined in
55 section 125.27, kidnapping in the second degree as defined in section
56 135.20, kidnapping in the first degree as defined in section 135.25,

1 burglary in the third degree as defined in section 140.20, burglary in
2 the second degree as defined in section 140.25, burglary in the first
3 degree as defined in section 140.30, arson in the second degree as
4 defined in section 150.15, arson in the first degree as defined in
5 section 150.20, robbery in the third degree as defined in section
6 160.05, robbery in the second degree as defined in section 160.10,
7 robbery in the first degree as defined in section 160.15, promoting
8 prostitution in the second degree as defined in section 230.30, promot-
9 ing prostitution in the first degree as defined in section 230.32,
10 compelling prostitution as defined in section 230.33, disseminating
11 indecent material to minors in the first degree as defined in section
12 [235.22] 263.03, use of a child in a sexual performance IN THE SECOND
13 DEGREE as defined in section [263.05] 263.06, USE OF A CHILD IN A SEXUAL
14 PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.07, promoting
15 an obscene sexual performance by a child IN THE SECOND DEGREE as defined
16 in section [263.10] 263.08, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
17 CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09, promoting a
18 sexual performance by a child IN THE SECOND DEGREE as defined in section
19 [263.15] 263.13, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
20 DEGREE AS DEFINED IN SECTION 263.14, or any felony attempt or conspiracy
21 to commit any of the foregoing offenses.

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

24 3. He or she has previously been subjected to a conviction for a felo-
25 ny defined in this article, incest as defined in section 255.25 of this
26 chapter or use of a child in a sexual performance as defined in [section
27 263.05] SECTIONS 263.06 AND 263.07 of this chapter.

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

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

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

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

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

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

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

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

1 S 56. Subdivision 6 of section 6330 of the civil practice law and
2 rules, as amended by chapter 826 of the laws of 1972, is amended to read
3 as follows:
4 6. The court, in its adjudication, may (1) grant the relief sought (2)
5 deny the relief sought or (3) enjoin the sale, further sale, display,
6 distribution, further distribution, acquisition, publication, or
7 possession of the material, to persons under the age of seventeen, upon
8 a finding that the material is of the kind described in paragraph [a]
9 (A) or [b] (B) of subdivision one of section [235.21] 263.02 of the
10 penal law.
11 S 57. This act shall take effect on the first of November next
12 succeeding the date on which it shall have become a law.