

5364

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

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

AN ACT to amend the penal law and the criminal procedure law, in relation to creating the crimes of electronic stalking, and adding electronic stalking to designated offenses for eavesdropping warrants and to amend the executive law and the correction law, in relation to including a conviction of electronic stalking under the requirements of the state DNA identification index and the sex offender registration act

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

1 Section 1. Section 120.40 of the penal law is amended by adding two
2 new subdivisions 6 and 7 to read as follows:

3 6. "ELECTRONIC COMMUNICATION" SHALL MEAN ANY TRANSFER OF SIGNS,
4 SIGNALS, WRITINGS, IMAGES, SOUNDS, DATA, OR INTELLIGENCE OF ANY NATURE
5 TRANSMITTED IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC,
6 PHOTO-ELECTRONIC, OR PHOTO-OPTICAL SYSTEM. ELECTRONIC COMMUNICATION
7 INCLUDES, BUT IS NOT LIMITED TO, THE TRANSFER OF THAT COMMUNICATION
8 THROUGH THE INTERNET.

9 7. "PERSONAL IDENTIFYING INFORMATION" SHALL MEAN A PERSON'S NAME,
10 ADDRESS, TELEPHONE NUMBER, DATE OF BIRTH, DRIVER'S LICENSE NUMBER, MOTOR
11 VEHICLE LICENSE PLATE NUMBER, SOCIAL SECURITY NUMBER, PLACE OF EMPLOY-
12 MENT, SCHOOL, MOTHER'S MAIDEN NAME, IMAGE, OR SCHEDULE OF DAILY ACTIV-
13 ITIES.

14 S 2. Subdivision 4 of section 120.55 of the penal law, as amended by
15 chapter 598 of the laws of 2003, is amended to read as follows:

16 4. Being twenty-one years of age or older, repeatedly follows a person
17 under the age of fourteen or engages in a course of conduct or repeated-
18 ly commits acts over a period of time intentionally placing or attempt-
19 ing to place such person who is under the age of fourteen in reasonable
20 fear of physical injury, serious physical injury [or], death, OR BECOM-

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

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1 ING THE VICTIM OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY
2 OF THIS TITLE; or

3 S 3. The penal law is amended by adding three new sections 120.61,
4 120.62 and 120.63 to read as follows:

5 S 120.61 ELECTRONIC STALKING IN THE THIRD DEGREE.

6 A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE THIRD DEGREE WHEN HE
7 OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC
8 COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING
9 A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNI-
10 CATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH,
11 SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRI-
12 SONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX
13 OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST
14 SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMI-
15 NAL TRESPASS OR BURGLARY.

16 ELECTRONIC STALKING IN THE THIRD DEGREE IS A CLASS E FELONY.

17 S 120.62 ELECTRONIC STALKING IN THE SECOND DEGREE.

18 A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE SECOND DEGREE WHEN HE
19 OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC
20 COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING
21 A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNI-
22 CATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH,
23 SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRI-
24 SONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX
25 OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST
26 SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMI-
27 NAL TRESPASS OR BURGLARY, AND:

28 1. SUCH COMMUNICATION FACILITATES THE COMMISSION OR ATTEMPTED COMMIS-
29 SION OF A CRIME OTHER THAN A CLASS A, B OR C FELONY AND SUCH CRIME OR
30 ATTEMPTED CRIME ACTUALLY OCCURS; OR

31 2. SUCH COMMUNICATION INVOLVES THE DISSEMINATION OF PERSONAL IDENTIFY-
32 ING INFORMATION CONCERNING A PERSON UNDER THE AGE OF EIGHTEEN AND THE
33 ACTOR IS EIGHTEEN YEARS OLD OR MORE; OR

34 3. SUCH COMMUNICATION INVOLVES THE DISSEMINATION OF PERSONAL IDENTIFY-
35 ING INFORMATION CONCERNING A PERSON WHO IS A PUBLIC SERVANT AS DEFINED
36 IN SUBDIVISION FIFTEEN OF SECTION 10.00 OF THIS CHAPTER AND THE INFORMA-
37 TION IS COMMUNICATED BECAUSE OF THE PERSON'S POSITION AS A PUBLIC SERV-
38 ANT; OR

39 4. HE OR SHE DOES SO BY KNOWINGLY ASSUMING THE IDENTITY OF SUCH
40 SPECIFIC PERSON BY PRESENTING HIMSELF OR HERSELF AS THAT SPECIFIC
41 PERSON, OR BY ACTING AS THAT SPECIFIC PERSON, OR BY USING PERSONAL IDEN-
42 TIFYING INFORMATION OF THAT SPECIFIC PERSON.

43 ELECTRONIC STALKING IN THE SECOND DEGREE IS A CLASS D FELONY.

44 S 120.63 ELECTRONIC STALKING IN THE FIRST DEGREE.

45 A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE FIRST DEGREE WHEN HE
46 OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC
47 COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING
48 A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNI-
49 CATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH,
50 SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRI-
51 SONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX
52 OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST
53 SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMI-
54 NAL TRESPASS OR BURGLARY; AND SUCH COMMUNICATION FACILITATES THE COMMIS-
55 SION OR ATTEMPTED COMMISSION OF A CLASS A, B OR C FELONY AND SUCH CRIME
56 OR ATTEMPTED CRIME ACTUALLY OCCURS.

1 ELECTRONIC STALKING IN THE FIRST DEGREE IS A CLASS C FELONY.

2 S 4. Paragraph (p) of subdivision 8 of section 700.05 of the criminal
3 procedure law, as added by chapter 635 of the laws of 1999, is amended
4 to read as follows:

5 (p) Stalking in the second degree as defined in section 120.55 of the
6 penal law, [and] stalking in the first degree as defined in section
7 120.60 of the penal law, ELECTRONIC STALKING IN THE THIRD DEGREE AS
8 DEFINED IN SECTION 120.61 OF THE PENAL LAW, ELECTRONIC STALKING IN THE
9 SECOND DEGREE AS DEFINED IN SECTION 120.62 OF THE PENAL LAW, AND ELEC-
10 TRONIC STALKING IN THE FIRST DEGREE AS DEFINED IN SECTION 120.63 OF THE
11 PENAL LAW.

12 S 5. Subdivision 8 of section 700.05 of the criminal procedure law is
13 amended by adding a new paragraph (u) to read as follows:

14 (U) DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE AS
15 DEFINED IN SECTION 235.22 OF THE PENAL LAW, USE OF A CHILD IN A SEXUAL
16 PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, PROMOTING AN
17 OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.10 OF
18 THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS
19 DEFINED IN SECTION 263.11 OF THE PENAL LAW, PROMOTING A SEXUAL PERFORM-
20 ANCE BY A CHILD AS DEFINED IN SECTION 263.15 OF THE PENAL LAW, AND
21 POSSESSING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.16
22 OF THE PENAL LAW.

23 S 6. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the
24 penal law, paragraph (b) as separately amended by chapters 764 and 765
25 of the laws of 2005 and paragraph (c) as amended by chapter 7 of the
26 laws of 2007, are amended to read as follows:

27 (b) Class C violent felony offenses: an attempt to commit any of the
28 class B felonies set forth in paragraph (a); aggravated criminally
29 negligent homicide as defined in section 125.11, aggravated manslaughter
30 in the second degree as defined in section 125.21, aggravated sexual
31 abuse in the second degree as defined in section 130.67, assault on a
32 peace officer, police officer, fireman or emergency medical services
33 professional as defined in section 120.08, gang assault in the second
34 degree as defined in section 120.06, ELECTRONIC STALKING IN THE FIRST
35 DEGREE AS DEFINED IN SECTION 120.63, burglary in the second degree as
36 defined in section 140.25, robbery in the second degree as defined in
37 section 160.10, criminal possession of a weapon in the second degree as
38 defined in section 265.03, criminal use of a firearm in the second
39 degree as defined in section 265.08, criminal sale of a firearm in the
40 second degree as defined in section 265.12, criminal sale of a firearm
41 with the aid of a minor as defined in section 265.14, soliciting or
42 providing support for an act of terrorism in the first degree as defined
43 in section 490.15, hindering prosecution of terrorism in the second
44 degree as defined in section 490.30, and criminal possession of a chemi-
45 cal weapon or biological weapon in the third degree as defined in
46 section 490.37.

47 (c) Class D violent felony offenses: an attempt to commit any of the
48 class C felonies set forth in paragraph (b); reckless assault of a child
49 as defined in section 120.02, assault in the second degree as defined in
50 section 120.05, menacing a police officer or peace officer as defined in
51 section 120.18, stalking in the first degree, as defined in subdivision
52 one of section 120.60, ELECTRONIC STALKING IN THE FIRST DEGREE AS
53 DEFINED IN SECTION 120.63, rape in the second degree as defined in
54 section 130.30, criminal sexual act in the second degree as defined in
55 section 130.45, sexual abuse in the first degree as defined in section
56 130.65, course of sexual conduct against a child in the second degree as

1 defined in section 130.80, aggravated sexual abuse in the third degree
2 as defined in section 130.66, facilitating a sex offense with a
3 controlled substance as defined in section 130.90, criminal possession
4 of a weapon in the third degree as defined in subdivision five, six,
5 seven or eight of section 265.02, criminal sale of a firearm in the
6 third degree as defined in section 265.11, intimidating a victim or
7 witness in the second degree as defined in section 215.16, soliciting or
8 providing support for an act of terrorism in the second degree as
9 defined in section 490.10, and making a terroristic threat as defined in
10 section 490.20, falsely reporting an incident in the first degree as
11 defined in section 240.60, placing a false bomb or hazardous substance
12 in the first degree as defined in section 240.62, placing a false bomb
13 or hazardous substance in a sports stadium or arena, mass transportation
14 facility or enclosed shopping mall as defined in section 240.63, and
15 aggravated unpermitted use of indoor pyrotechnics in the first degree as
16 defined in section 405.18.

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

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

22 aggravated assault upon a person less than eleven years old, as
23 defined in section 120.12 of the penal law; menacing in the first
24 degree, as defined in section 120.13 of the penal law; reckless endan-
25 germent in the first degree, as defined in section 120.25 of the penal
26 law; stalking in the second degree, as defined in section 120.55 of the
27 penal law; ELECTRONIC STALKING IN THE THIRD DEGREE, AS DEFINED IN
28 SECTION 120.61 OF THE PENAL LAW; ELECTRONIC STALKING IN THE SECOND
29 DEGREE, AS DEFINED IN SECTION 120.62 OF THE PENAL LAW; ELECTRONIC STALK-
30 ING IN THE FIRST DEGREE, AS DEFINED IN SECTION 120.63 OF THE PENAL LAW;
31 criminally negligent homicide, as defined in section 125.10 of the penal
32 law; vehicular manslaughter in the second degree, as defined in section
33 125.12 of the penal law; vehicular manslaughter in the first degree, as
34 defined in section 125.13 of the penal law; persistent sexual abuse, as
35 defined in section 130.53 of the penal law; aggravated sexual abuse in
36 the fourth degree, as defined in section 130.65-a of the penal law;
37 female genital mutilation, as defined in section 130.85 of the penal
38 law; facilitating a sex offense with a controlled substance, as defined
39 in section 130.90 of the penal law; unlawful imprisonment in the first
40 degree, as defined in section 135.10 of the penal law; custodial inter-
41 ference in the first degree, as defined in section 135.50 of the penal
42 law; criminal trespass in the first degree, as defined in section 140.17
43 of the penal law; criminal tampering in the first degree, as defined in
44 section 145.20 of the penal law; tampering with a consumer product in
45 the first degree, as defined in section 145.45 of the penal law; robbery
46 in the third degree as defined in section 160.05 of the penal law; iden-
47 tity theft in the second degree, as defined in section 190.79 of the
48 penal law; identity theft in the first degree, as defined in section
49 190.80 of the penal law; promoting prison contraband in the first
50 degree, as defined in section 205.25 of the penal law; tampering with a
51 witness in the third degree, as defined in section 215.11 of the penal
52 law; tampering with a witness in the second degree, as defined in
53 section 215.12 of the penal law; tampering with a witness in the first
54 degree, as defined in section 215.13 of the penal law; criminal contempt
55 in the first degree, as defined in subdivisions (b), (c) and (d) of
56 section 215.51 of the penal law; aggravated criminal contempt, as

1 defined in section 215.52 of the penal law; bail jumping in the second
2 degree, as defined in section 215.56 of the penal law; bail jumping in
3 the first degree, as defined in section 215.57 of the penal law; patron-
4 izing a prostitute in the second degree, as defined in section 230.05 of
5 the penal law; patronizing a prostitute in the first degree, as defined
6 in section 230.06 of the penal law; promoting prostitution in the second
7 degree, as defined in section 230.30 of the penal law; promoting prosti-
8 tution in the first degree, as defined in section 230.32 of the penal
9 law; compelling prostitution, as defined in section 230.33 of the penal
10 law; disseminating indecent [materials] MATERIAL to minors in the second
11 degree, as defined in section 235.21 of the penal law; disseminating
12 indecent [materials] MATERIAL to minors in the first degree, as defined
13 in section 235.22 of the penal law; riot in the first degree, as defined
14 in section 240.06 of the penal law; criminal anarchy, as defined in
15 section 240.15 of the penal law; aggravated harassment of an employee by
16 an inmate, as defined in section 240.32 of the penal law; unlawful
17 surveillance in the second degree, as defined in section 250.45 of the
18 penal law; unlawful surveillance in the first degree, as defined in
19 section 250.50 of the penal law; endangering the welfare of a vulnerable
20 elderly person in the second degree, as defined in section 260.32 of the
21 penal law; endangering the welfare of a vulnerable elderly person in the
22 first degree, as defined in section 260.34 of the penal law; use of a
23 child in a sexual performance, as defined in section 263.05 of the penal
24 law; promoting an obscene sexual performance by a child, as defined in
25 section 263.10 of the penal law; possessing an obscene sexual perform-
26 ance by a child, as defined in section 263.11 of the penal law; promot-
27 ing a sexual performance by a child, as defined in section 263.15 of the
28 penal law; possessing a sexual performance by a child, as defined in
29 section 263.16 of the penal law; criminal possession of a weapon in the
30 third degree, as defined in section 265.02 of the penal law; criminal
31 sale of a firearm in the third degree, as defined in section 265.11 of
32 the penal law; criminal sale of a firearm to a minor, as defined in
33 section 265.16 of the penal law; unlawful wearing of a body vest, as
34 defined in section 270.20 of the penal law; hate crimes as defined in
35 section 485.05 of the penal law; and crime of terrorism, as defined in
36 section 490.25 of the penal law; or

37 S 8. Subdivision 2 of section 168-a of the correction law is amended
38 by adding a new paragraph (f) to read as follows:

39 (F) A CONVICTION FOR ANY OF THE PROVISIONS DEFINED IN SECTIONS 120.61,
40 120.62, OR 120.63 OF THE PENAL LAW, UNLESS UPON MOTION BY THE DEFENDANT,
41 THE TRIAL COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE
42 CRIME AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPIN-
43 ION THAT REGISTRATION WOULD BE UNDULY HARSH AND INAPPROPRIATE.

44 S 9. This act shall take effect on the first of November next succeed-
45 ing the date on which it shall have become a law.