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

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:

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

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

7. "PERSONAL IDENTIFYING INFORMATION" SHALL MEAN A PERSON'S NAME, ADDRESS, TELEPHONE NUMBER, DATE OF BIRTH, DRIVER'S LICENSE NUMBER, MOTOR VEHICLE LICENSE PLATE NUMBER, SOCIAL SECURITY NUMBER, PLACE OF EMPLOYMENT, SCHOOL, MOTHER'S MAIDEN NAME, IMAGE, OR SCHEDULE OF DAILY ACTIVITIES.

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

4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable 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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ING THE VICTIM OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE; or

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

S 120.61 ELECTRONIC STALKING IN THE THIRD DEGREE.

A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE THIRD DEGREE WHEN HE OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNICATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH, SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRISONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMINAL TRESPASS OR BURGLARY.

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

S 120.62 ELECTRONIC STALKING IN THE SECOND DEGREE.

A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE SECOND DEGREE WHEN HE OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNICATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH, SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRISONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMINAL TRESPASS OR BURGLARY, AND:

1. SUCH COMMUNICATION FACILITATES THE COMMISSION OR ATTEMPTED COMMISSION OF A CRIME OTHER THAN A CLASS A, B OR C FELONY AND SUCH CRIME OR ATTEMPTED CRIME ACTUALLY OCCURS; OR

2. SUCH COMMUNICATION INVOLVES THE DISSEMINATION OF PERSONAL IDENTIFYING INFORMATION CONCERNING A PERSON UNDER THE AGE OF EIGHTEEN AND THE ACTOR IS EIGHTEEN YEARS OLD OR MORE; OR

3. SUCH COMMUNICATION INVOLVES THE DISSEMINATION OF PERSONAL IDENTIFYING INFORMATION CONCERNING A PERSON WHO IS A PUBLIC SERVANT AS DEFINED IN SUBDIVISION FIFTEEN OF SECTION 10.00 OF THIS CHAPTER AND THE INFORMATION IS COMMUNICATED BECAUSE OF THE PERSON'S POSITION AS A PUBLIC SERVANT; OR

4. HE OR SHE DOES SO BY KNOWINGLY ASSUMING THE IDENTITY OF SUCH SPECIFIC PERSON BY PRESENTING HIMSELF OR HERSELF AS THAT SPECIFIC PERSON, OR BY ACTING AS THAT SPECIFIC PERSON, OR BY USING PERSONAL IDENTIFYING INFORMATION OF THAT SPECIFIC PERSON.

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

S 120.63 ELECTRONIC STALKING IN THE FIRST DEGREE.

A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE FIRST DEGREE WHEN HE OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNICATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH, SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRISONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMINAL TRESPASS OR BURGLARY; AND SUCH COMMUNICATION FACILITATES THE COMMISSION OR ATTEMPTED COMMISSION OF A CLASS A, B OR C FELONY AND SUCH CRIME OR ATTEMPTED CRIME ACTUALLY OCCURS.

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

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

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

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

(U) DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE AS DEFINED IN SECTION 235.22 OF THE PENAL LAW, USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.10 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.11 OF THE PENAL LAW, PROMOTING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.15 OF THE PENAL LAW, AND POSSESSING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.16 OF THE PENAL LAW.

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

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

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

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

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

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

aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; ELECTRONIC STALKING IN THE THIRD DEGREE, AS DEFINED IN SECTION 120.61 OF THE PENAL LAW; ELECTRONIC STALKING IN THE SECOND DEGREE, AS DEFINED IN SECTION 120.62 OF THE PENAL LAW; ELECTRONIC STALKING IN THE FIRST DEGREE, AS DEFINED IN SECTION 120.63 OF THE PENAL LAW; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as

defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent [materials] MATERIAL to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent [materials] MATERIAL to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, as defined in section 263.16 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or

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

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

S 9. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.