

5402

2009-2010 Regular Sessions

I N   S E N A T E

April 29, 2009

---

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

AN ACT to amend the penal law, in relation to establishing crimes for  
the use of electronic communications

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

1     Section 1. The penal law is amended by adding three new sections  
2     156.40, 156.41, and 156.42 to read as follows:  
3     S 156.40. CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE THIRD DEGREE.  
4     A PERSON IS GUILTY OF CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE  
5     THIRD DEGREE WHEN HE OR SHE INTENTIONALLY USES OR ATTEMPTS TO USE ELEC-  
6     TRONIC COMMUNICATION TO:  
7     1. COMMIT, FURTHER FACILITATE OR PROMOTE CONDUCT CONSTITUTING A CRIME;  
8     2. CONCEAL THE COMMISSION OF ANY CRIME; OR  
9     3. CONCEAL OR PROTECT THE IDENTITY OF A PERSON WHO HAS COMMITTED ANY  
10    CRIME.  
11    CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE THIRD DEGREE IS A  
12    CLASS A MISDEMEANOR.  
13    S 150.41 CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE SECOND DEGREE.  
14    A PERSON IS GUILTY OF CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE  
15    SECOND DEGREE WHEN HE OR SHE COMMITS THE CRIME OF CRIMINAL USE OF ELEC-  
16    TRONIC COMMUNICATION IN THE THIRD DEGREE AND HE OR SHE:  
17    1. DOES SO WITH AN INTENT TO COMMIT OR ATTEMPT TO COMMIT OR FURTHER  
18    THE COMMISSION OF A FELONY;  
19    2. DOES SO WITH THE INTENT TO CONCEAL THE COMMISSION OF ANY FELONY;  
20    3. DOES SO WITH THE INTENT TO PROTECT THE IDENTITY OF A PERSON WHO HAS  
21    COMMITTED ANY FELONY;  
22    4. HAS BEEN PREVIOUSLY CONVICTED OF ANY CRIME UNDER THIS ARTICLE.  
23    CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE SECOND DEGREE IS A  
24    CLASS E FELONY.  
25    S 156.42 CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE FIRST DEGREE.

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

LBD11604-01-9

1 A PERSON IS GUILTY OF CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE  
2 FIRST DEGREE WHEN HE OR SHE, WITH INTENT TO LURE, ENTICE, PERSUADE,  
3 CONVINCE, HARASS, ANNOY, THREATEN OR ALARM ANOTHER PERSON, BY MEANS OF  
4 THE USE OF ELECTRONIC COMMUNICATION CAUSE A COMMUNICATION TO BE INITI-  
5 ATED PURPORTING TO SOLICIT THE COMMISSION OR ATTEMPTED COMMISSION OF A  
6 VIOLENT FELONY, AS DEFINED IN SECTION 70.02 OF THIS CHAPTER.

7 CRIMINAL USE OF ELECTRONIC COMMUNICATION IN THE FIRST DEGREE IS A  
8 CLASS D FELONY.

9 S 2. Section 156.00 of the penal law is amended by adding a new subdi-  
10 vision 10 to read as follows:

11 10. "ELECTRONIC COMMUNICATION" SHALL MEAN ANY TRANSFER OF SIGNS,  
12 SIGNALS, WRITING, IMAGES, SOUNDS, DATA, OR INTELLIGENCE OF ANY NATURE  
13 TRANSMITTED IN WHOLE OR IN PART BY THE INTERNET AND PERSONAL DIGITAL  
14 ASSISTANCE, SUCH AS A BLACKBERRY OR OTHER DEVICE.

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