

5680--A

Cal. No. 979

2009-2010 Regular Sessions

I N S E N A T E

May 27, 2009

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the executive law and the penal law, in relation to educating children on the electronic sending and posting of certain images

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

1 Section 1. Subdivision 16 of section 501 of the executive law, as
2 renumbered by chapter 170 of the laws of 1994, is renumbered subdivision
3 17 and a new subdivision 16 is added to read as follows:
4 16. TO ESTABLISH AN EDUCATIONAL OUTREACH PROGRAM FOR TEXT MESSAGE,
5 EMAIL AND INTERNET POSTING AWARENESS BY PROVIDING FOR AN ONGOING PUBLIC
6 INFORMATION AND EDUCATIONAL CAMPAIGN ABOUT THE HARM THAT MAY ARISE FROM
7 ADOLESCENTS SENDING, RECEIVING OR POSTING ON THE INTERNET MESSAGES THAT
8 MAY INCLUDE, BUT ARE NOT LIMITED TO, PROVOCATIVE OR NUDE IMAGES AND
9 PHOTOGRAPHS OF THEMSELVES.
10 (A) SUCH PROGRAM SHALL BE DESIGNED TO PROMOTE (I) INCREASED AWARENESS
11 OF THE POTENTIAL LONG-TERM HARM TO PRIVACY INTERESTS ASSOCIATED WITH THE
12 SENDING, RECEIVING OR POSTING OF SUCH IMAGES AND PHOTOGRAPHS; AND (II)
13 COORDINATION OF PUBLIC AND PRIVATE EFFORTS, INCLUDING BUT NOT LIMITED TO
14 EFFORTS OF EDUCATORS, COMMUNITY ORGANIZATIONS AND OTHER GROUPS, TO
15 PROVIDE EDUCATIONAL OUTREACH PROGRAMS TO ADOLESCENTS AND THEIR PARENTS
16 AND CAREGIVERS, EMPHASIZING SUCH POTENTIAL LONG-TERM HARM.

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

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1 (B) THE FOLLOWING STRATEGIES, AMONG OTHERS, MAY BE USED TO PROMOTE
2 AWARENESS OF THE POTENTIAL LONG-TERM HARM TO ADOLESCENTS' PRIVACY INTER-
3 ESTS BY THE SENDING, RECEIVING OR POSTING OF SUCH IMAGES AND PHOTO-
4 GRAPHS: (I) OUTREACH CAMPAIGNS BY MEANS OF PRINT, RADIO AND TELEVISION
5 PUBLIC SERVICE ANNOUNCEMENTS, ADVERTISEMENTS, POSTERS, INTERNET POSTINGS
6 AND OTHER MATERIALS; (II) COMMUNITY INFORMATIONAL FORUMS; AND (III)
7 DISTRIBUTION OF INFORMATION THROUGH EDUCATORS, MENTORS, AND COMMUNITY
8 MEMBERS.

9 S 2. The penal law is amended by adding a new section 40.20 to read as
10 follows:

11 S 40.20 CERTAIN ACTS BY A YOUNG PERSON.

12 IN ANY PROSECUTION PURSUANT TO SECTION 235.21 OR 235.22 OR SECTION
13 263.10, 263.11, 263.15 OR 263.16 OF THIS CHAPTER, IT IS AN AFFIRMATIVE
14 DEFENSE THAT THE DEFENDANT WAS LESS THAN EIGHTEEN YEARS OLD, AND THAT
15 THERE IS A LESS THAN FOUR YEARS AGE DIFFERENCE BETWEEN THE DEFENDANT AND
16 THE RECIPIENT AT THE TIME OF THE ACT, AND THE DEPICTION OR DESCRIPTION
17 WAS NOT OBTAINED IN VIOLATION OF SECTION 250.45 OR 250.50 OF THIS CHAP-
18 TER, AND BOTH THE DEFENDANT AND THE RECIPIENT EXPRESSLY OR IMPLIEDLY
19 ACQUIESCED IN THE CONDUCT, AND THE DEFENDANT DID NOT INTEND TO OR PROFIT
20 FROM SUCH CONDUCT. THE AFFIRMATIVE DEFENSE SHALL NOT BE AVAILABLE FOR
21 ANY SUBSEQUENT TRANSFER OF THE DEPICTION OR DESCRIPTION, AND SHALL ONLY
22 APPLY TO THE ORIGINAL SINGLE TRANSFER TO A SINGLE RECIPIENT.

23 S 3. This act shall take effect immediately; provided, however, that
24 section one of this act shall take effect on the ninetieth day after it
25 shall have become a law.