

5113

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. ESPAILLAT, JOHN, WRIGHT, COOK -- Multi-Sponsored
by -- M. of A. ALFANO, BARRA, BENJAMIN, BOYLAND, BRADLEY, BRENNAN,
CHRISTENSEN, COLTON, CROUCH, DIAZ, FARRELL, GALEF, GUNTHER, LAVINE,
MAYERSOHN, N. RIVERA, ROBINSON -- read once and referred 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 registra-
tion act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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-

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

LBD07773-01-9

ly 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 BECOMING 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 CRIMI-

NAL 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

1 section 130.30, criminal sexual act in the second degree as defined in
2 section 130.45, sexual abuse in the first degree as defined in section
3 130.65, course of sexual conduct against a child in the second degree as
4 defined in section 130.80, aggravated sexual abuse in the third degree
5 as defined in section 130.66, facilitating a sex offense with a
6 controlled substance as defined in section 130.90, criminal possession
7 of a weapon in the third degree as defined in subdivision five, six,
8 seven or eight of section 265.02, criminal sale of a firearm in the
9 third degree as defined in section 265.11, intimidating a victim or
10 witness in the second degree as defined in section 215.16, soliciting or
11 providing support for an act of terrorism in the second degree as
12 defined in section 490.10, and making a terroristic threat as defined in
13 section 490.20, falsely reporting an incident in the first degree as
14 defined in section 240.60, placing a false bomb or hazardous substance
15 in the first degree as defined in section 240.62, placing a false bomb
16 or hazardous substance in a sports stadium or arena, mass transportation
17 facility or enclosed shopping mall as defined in section 240.63, and
18 aggravated unpermitted use of indoor pyrotechnics in the first degree as
19 defined in section 405.18.

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

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

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

1 degree, as defined in section 215.13 of the penal law; criminal contempt
2 in the first degree, as defined in subdivisions (b), (c) and (d) of
3 section 215.51 of the penal law; aggravated criminal contempt, as
4 defined in section 215.52 of the penal law; bail jumping in the second
5 degree, as defined in section 215.56 of the penal law; bail jumping in
6 the first degree, as defined in section 215.57 of the penal law; patron-
7 izing a prostitute in the second degree, as defined in section 230.05 of
8 the penal law; patronizing a prostitute in the first degree, as defined
9 in section 230.06 of the penal law; promoting prostitution in the second
10 degree, as defined in section 230.30 of the penal law; promoting prosti-
11 tution in the first degree, as defined in section 230.32 of the penal
12 law; compelling prostitution, as defined in section 230.33 of the penal
13 law; disseminating indecent [materials] MATERIAL to minors in the second
14 degree, as defined in section 235.21 of the penal law; disseminating
15 indecent [materials] MATERIAL to minors in the first degree, as defined
16 in section 235.22 of the penal law; riot in the first degree, as defined
17 in section 240.06 of the penal law; criminal anarchy, as defined in
18 section 240.15 of the penal law; aggravated harassment of an employee by
19 an inmate, as defined in section 240.32 of the penal law; unlawful
20 surveillance in the second degree, as defined in section 250.45 of the
21 penal law; unlawful surveillance in the first degree, as defined in
22 section 250.50 of the penal law; endangering the welfare of a vulnerable
23 elderly person in the second degree, as defined in section 260.32 of the
24 penal law; endangering the welfare of a vulnerable elderly person in the
25 first degree, as defined in section 260.34 of the penal law; use of a
26 child in a sexual performance, as defined in section 263.05 of the penal
27 law; promoting an obscene sexual performance by a child, as defined in
28 section 263.10 of the penal law; possessing an obscene sexual perform-
29 ance by a child, as defined in section 263.11 of the penal law; promot-
30 ing a sexual performance by a child, as defined in section 263.15 of the
31 penal law; possessing a sexual performance by a child, as defined in
32 section 263.16 of the penal law; criminal possession of a weapon in the
33 third degree, as defined in section 265.02 of the penal law; criminal
34 sale of a firearm in the third degree, as defined in section 265.11 of
35 the penal law; criminal sale of a firearm to a minor, as defined in
36 section 265.16 of the penal law; unlawful wearing of a body vest, as
37 defined in section 270.20 of the penal law; hate crimes as defined in
38 section 485.05 of the penal law; and crime of terrorism, as defined in
39 section 490.25 of the penal law; or

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

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

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