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

6512

2009-2010 Regular Sessions

I N A S S E M B L Y

March 6, 2009

Introduced by M. of A. SCOZZAFAVA, SPANO, TEDISCO, McDONOUGH, TOWNSEND -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES, BALL, BARCLAY, BOYLE, BURLING, BUTLER, CALHOUN, CONTE, CROUCH, DUPREY, ERRIGO, FINCH, FITZPATRICK, GIGLIO, HAWLEY, HAYES, KOLB, P. LOPEZ, McKEVITT, MILLER, MOLINARO, OAKS, O'MARA, QUINN, RABBITT, RAIA, REILICH, SALADINO, SAYWARD, THIELE, WALKER -- read once and referred to the Committee on Codes

AN ACT to amend the correction law, in relation to the penalty for failure to register by a sex offender (Part A); to amend the correction law, in relation to notifying the public of sex offenders who reside or move into a person's zip code (Part B); to amend the correction law and the penal law, in relation to establishing additional restrictions on parole and relocation for certain sex offenders; and to amend the social services law, in relation to child abuse notification liability (Part C); to amend the executive law, in relation to requiring a criminal history check for child care employees and volunteers and making an appropriation therefor (Part D); to amend the penal law, in relation to establishing the crimes of attempting to lure or entice a child (Part E); to amend the criminal procedure law, in relation to limiting plea bargaining for sexual offenders; and to amend the penal law, the correction law and the criminal procedure law, in relation to repeat sexual offenders (Part F); to amend the criminal procedure law, in relation to the period of limitation for the prosecution of sex offenses committed against children; and to repeal paragraphs (e) and (f) of subdivision 3 of section 30.10 of such law relating to timeliness of the prosecution of course of sexual conduct offenses (Part G); to amend the penal law, in relation to sentence of imprisonment for the offense of predatory sexual assault against a child (Part H); to amend the penal law, in relation to the sanctions for repeat offenses of the crime of public lewdness (Part I); to amend the penal law, in relation to persistent sexual abuse (Part J); to amend the penal law, in relation to the crime of eavesdropping (Part K); to amend the penal law and the correction law, in relation to establishing the crime of endangering the welfare of a child in a sexual manner, a class E felo-

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

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ny (Part L); and to amend the penal law, in relation to sentencing of persistent violent felony offenders; and to repeal subdivision 3 of section 70.08 of such law relating to minimum periods of imprisonment for persistent violent felony offenders (Part M)

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

Section 1. This act enacts into law major components of legislation which are necessary to enact the SAVE-NY Child Protection Act. Each component is wholly contained within a Part identified as Parts A through M. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section five of this act sets forth the general effective date of this act.

S 2. This act shall be known and may be cited as the "SAVE-NY Child Protection Act".

S 3. Legislative intent. The Sexual Assault and Violence Education Task Force (SAVE-NY) worked diligently with law enforcement officials, district attorneys and community activists throughout New York state to create legislation to further protect New York's children from sexual predators. The Task Force thoroughly reviewed Megan's Law and, while acknowledging that this law is an invaluable tool for keeping children safe, determined that the current provisions can be strengthened to provide more protection for children and stiffer penalties for sexual predators who violate the law's provisions. SAVE-NY also explored other avenues for protecting children from sexual predators, such as civil confinement, internet protection and criminal background checks for individuals seeking to work with children. This legislation is the culmination of the SAVE-NY Task Force's research and investigation and provides a thorough and comprehensive plan for protecting New York's residents, especially its children, from sexual predators.

PART A

Section 1. Paragraph (c) of subdivision 2 of section 168-f of the correction law, as amended by chapter 453 of the laws of 1999, is amended to read as follows:

(c) If the sex offender fails to mail the signed verification form to the division within ten calendar days after receipt of the form, he or she shall be in violation of this section [unless he proves that he or she has not changed his or her residence address] AND SUBJECT TO THE PENALTIES SET FORTH IN SECTION ONE HUNDRED SIXTY-EIGHT-T OF THIS ARTICLE.

S 2. Section 168-t of the correction law, as amended by chapter 373 of the laws of 2007, is amended to read as follows:

S 168-t. Penalty. 1. Any LEVEL ONE OR LEVEL TWO sex offender required to register or to verify pursuant to the provisions of this article SHALL HAVE THE AMOUNT OF TIME THE OFFENDER EVADED REGISTRATION OR VERIFICATION ADDED TO THE DURATION SUCH SEX OFFENDER IS MANDATED TO REGISTER PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-H OF THIS ARTICLE

OR, who fails to register or verify in the manner and within the time periods provided for in this article shall be guilty of a class E felony upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony. Any sex offender who violates the provisions of section one hundred sixty-eight-v of this article shall be guilty of a class A misdemeanor upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony. Any such failure to register or verify may also be the basis for revocation of parole pursuant to section two hundred fifty-nine-i of the executive law or the basis for revocation of probation pursuant to article four hundred ten of the criminal procedure law.

2. ANY LEVEL THREE SEX OFFENDER REQUIRED TO REGISTER OR TO VERIFY PURSUANT TO THE PROVISIONS OF THIS ARTICLE WHO FAILS TO REGISTER OR VERIFY IN THE MANNER AND WITHIN THE TIME PERIODS PROVIDED FOR IN THIS ARTICLE SHALL HAVE THE AMOUNT OF TIME THE OFFENDER EVADED REGISTRATION OR VERIFICATION ADDED TO THE DURATION SUCH SEX OFFENDER IS MANDATED TO REGISTER PURSUANT TO THIS ARTICLE, SHALL BE GUILTY OF A CLASS D FELONY UPON CONVICTION FOR THE FIRST OFFENSE, AND UPON CONVICTION FOR A SECOND OR SUBSEQUENT OFFENSE SHALL BE GUILTY OF A CLASS C FELONY. ANY SUCH FAILURE TO REGISTER OR VERIFY MAY ALSO BE THE BASIS FOR REVOCATION OF PAROLE PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW OR THE BASIS FOR REVOCATION OF PROBATION PURSUANT TO ARTICLE FOUR HUNDRED TEN OF THE CRIMINAL PROCEDURE LAW.

S 3. Section 168-w of the correction law, as relettered by chapter 604 of the laws of 2005, is relettered section 168-y and two new sections 168-w and 168-x are added to read as follows:

S 168-W. SUBMISSION OF FRAUDULENT INFORMATION RESPECTING IDENTITY OR RESIDENCE FOR THE PURPOSE OF REGISTRATION OR VERIFICATION; PENALTY. ANY SEX OFFENDER REQUIRED TO REGISTER OR TO VERIFY PURSUANT TO THE PROVISIONS OF THIS ARTICLE WHO, WITH FRAUDULENT INTENT, SUBMITS FALSE INFORMATION RESPECTING HIS OR HER IDENTITY OR RESIDENCE OR BOTH, FOR THE PURPOSE OF, OR IN THE COURSE OF, SATISFYING HIS OR HER DUTY TO REGISTER OR TO VERIFY PURSUANT TO THE PROVISIONS OF THIS ARTICLE, SHALL BE GUILTY OF A CLASS E FELONY.

S 168-X. SEX OFFENDERS SHALL NOT BE EMPLOYED IN A POSITION INVOLVING DIRECT CONTACT WITH CHILDREN. 1. NO SEX OFFENDER SHALL APPLY FOR OR ACCEPT A POSITION WHICH INVOLVES DIRECT CONTACT WITH CHILDREN. SUCH POSITION SHALL INCLUDE ANY JOB, TASK OR OCCUPATION, WHICH BY ITS NATURE, REQUIRES A PERSON TO BE IN DIRECT CONTACT WITH CHILDREN IN THE REGULAR PERFORMANCE OF HIS OR HER DUTIES OR DEALINGS IN SUCH POSITION. THIS SECTION SHALL ALSO APPLY TO ANY PERSON SEEKING A PERMIT OR PERMISSION TO EXECUTE ANY ACTIVITY OR PERFORMANCE THAT WOULD PRESENT A DIRECT CONTACT WITH CHILDREN.

2. THE DEFINITION OF "POSITION" AS USED IN THIS SECTION SHALL APPLY TO ANY PERSON SEEKING EMPLOYMENT EITHER PAID OR NOT PAID, ANY PERSON SEEKING TO VOLUNTEER, OR ANY PERSON SEEKING A PERMIT OR PERMISSION THAT WOULD PRESENT A DIRECT CONTACT WITH CHILDREN.

3. EXAMPLES OF SUCH EMPLOYMENT INCLUDE, BUT ARE NOT LIMITED TO:

A. ANY INSTRUCTIONAL OR NON-INSTRUCTIONAL SCHOOL DISTRICT EMPLOYEE OR CONTRACTUAL PERSONNEL WHO ARE PERMITTED ACCESS ON SCHOOL GROUNDS WHEN STUDENTS ARE PRESENT INCLUDING TEACHERS, TEACHER-AIDES, ADMINISTRATORS, ASSISTANTS, CAFETERIA WORKERS, JANITORS, NURSES, CONTRACTUAL PERSONNEL INCLUDING A VENDOR, INDIVIDUAL OR ENTITY UNDER CONTRACT WITH SUCH SCHOOL, SCHOOL BOARD OR SCHOOL DISTRICT OR ANY OTHER PERSON WORKING IN A SCHOOL THAT WOULD HAVE CONTACT WITH THE CHILDREN ATTENDING THE SCHOOL;

B. ANY POSITION IN A CHILD-CARE FACILITY;

C. ANY RECREATIONAL POSITION SUCH AS A COACH, BOY SCOUT OR GIRL SCOUT LEADER, CAMP COUNSELOR, LIFEGUARD, INSTRUCTORS OR ANY OTHER RECREATIONAL AREA THAT WOULD PRESENT A DIRECT CONTACT WITH CHILDREN;

D. ANY POSITION IN A PARK, PLAYGROUND, AMUSEMENT PARK, POOL OR ANY OTHER FACILITY OR AREA WHERE CHILDREN HAVE A PROPENSITY TO INHABIT;

E. ANY STORE OR RESTAURANT THAT IS SPECIFICALLY TARGETED TOWARDS CHILDREN SUCH AS A TOY STORE OR CHILDREN'S THEME RESTAURANT;

F. ANY POSITION WHEREAS A PERSON WOULD BE EMPLOYED IN AN AREA THAT SPECIFICALLY IS TARGETED TOWARDS CHILDREN SUCH AS AN ICE-CREAM TRUCK OPERATOR;

G. ANY PERSON APPLYING FOR A PERMIT OR PERMISSION THAT WOULD GRANT SAID PERSON THE ABILITY TO CARRY OUT ANY ACTIVITY OR ACTION THAT IS DIRECTED TOWARDS OR WOULD INVOLVE DIRECT CONTACT WITH CHILDREN.

4. EMPLOYERS, ORGANIZATIONS OR GOVERNMENT ENTITIES SHALL HAVE ACCESS TO THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT FOR THE PURPOSE OF PERFORMING A BACKGROUND CHECK FOR ANY CONVICTIONS OF SEXUAL ABUSE OF A CHILD. ANY EMPLOYER, ORGANIZATION OR GOVERNMENT ENTITY SHALL CHECK ANY POTENTIAL EMPLOYEES SEEKING TO ASSUME A POSITION THAT WILL BE IN DIRECT CONTACT WITH CHILDREN AGAINST BOTH THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT AND THE REGISTERED SEX OFFENDERS DATABASE TO ASCERTAIN IF SAID PERSON MAINTAINS A CONVICTION FOR SEXUAL ABUSE OF A CHILD.

5. "DIRECT CONTACT WITH CHILDREN" AS USED IN THIS SECTION MEANS WORKING WITH CHILDREN, HAVING ACCESS TO CHILDREN, HAVING OPPORTUNITY TO BE ALONE WITH CHILDREN, SPENDING TIME WITH CHILDREN, PERFORMING FOR CHILDREN OR ANY OTHER ACTIVITY THAT INVOLVES CHILDREN.

6. A. ANY SEX OFFENDER WHO APPLIES FOR OR ACCEPTS EMPLOYMENT IN VIOLATION OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR UPON CONVICTION FOR THE FIRST OFFENSE, AND UPON CONVICTION FOR A SECOND OR SUBSEQUENT OFFENSE SHALL BE GUILTY OF A CLASS D FELONY.

B. ANY EMPLOYER WHO KNOWINGLY EMPLOYS A SEX OFFENDER IN VIOLATION OF THIS SECTION SHALL, UPON CONVICTION, BE GUILTY OF A CLASS A MISDEMEANOR.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided that section 168-x of the correction law as added by section three of this act shall take effect on the first of January next succeeding the date on which it shall have become a law.

PART B

Section 1. Subdivision 2 of section 168-q of the correction law is renumbered subdivision 3 and a new subdivision 2 is added to read as follows:

2. THE DIVISION SHALL, ON ITS INTERNET HOMEPAGE, PROVIDE A MEANS FOR ANY PERSON TO REGISTER AND RECEIVE NOTICE AT SUCH PERSON'S ELECTRONIC MAIL ADDRESS OF ALL SEX OFFENDERS WHO RESIDE OR MOVE INTO THE AREA ENCOMPASSED BY SUCH PERSON'S ZIP CODE. THE DIVISION SHALL PROVIDE TIMELY NOTICE BY ELECTRONIC MAIL TO EACH PERSON WHO REGISTERS PURSUANT TO THIS SUBDIVISION OF A LEVEL TWO OR LEVEL THREE SEX OFFENDER RESIDING IN AND OF EVERY LEVEL TWO OR LEVEL THREE SEX OFFENDER WHO MOVES INTO THE PERSON'S ZIP CODE. SUCH NOTICE SHALL INCLUDE ALL INFORMATION AUTHORIZED TO BE DISCLOSED ON EACH SUCH SEX OFFENDER PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.

PART C

Section 1. The section heading of section 168-j of the correction law, as amended by chapter 11 of the laws of 2002, is amended and two new subdivisions 6 and 7 are added to read as follows:

Notification of local law enforcement agencies of change of address; PROHIBITED RELOCATIONS.

6. ANY PERSON WHO HAS BEEN CONVICTED OF OR CONVICTED FOR AN ATTEMPT TO COMMIT AN OFFENSE UNDER SECTION 130.20, 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.55, 130.60, 130.65, 130.66, 130.67, 130.70, 130.75, 130.80, 255.25 OR ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW OR OTHER OFFENSES DEFINED UNDER THE PROVISIONS OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THIS ARTICLE, WHERE THE VICTIM OF SUCH OFFENSE WAS A PERSON UNDER THE AGE OF EIGHTEEN, WHO IS PAROLED, ON PROBATION, OR CONDITIONALLY RELEASED PURSUANT TO SECTION 70.40 OF THE PENAL LAW, AND WHO MAY BE REQUIRED TO REGISTER UNDER THE PROVISIONS OF THIS ARTICLE, OR ANY LEVEL THREE SEX OFFENDER REQUIRED TO REGISTER OR VERIFY PURSUANT TO THIS ARTICLE, SHALL NOT, DURING THE PERIOD OF PAROLE, PROBATION OR CONDITIONAL RELEASE, ESTABLISH A RESIDENTIAL RESIDENCE, EITHER FREEHOLD OR LEASEHOLD, WITHIN ONE THOUSAND FEET OF THE BOUNDARIES OF ANY SCHOOL THAT WORKS WITH, INSTRUCTS, OR TREATS CHILDREN UNDER THE AGE OF EIGHTEEN OR WITHIN FIVE HUNDRED FEET OF THE BOUNDARIES OF ANY SCHOOL THAT WORKS WITH, INSTRUCTS, OR TREATS CHILDREN UNDER THE AGE OF EIGHTEEN THAT IS LOCATED IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE.

7. "BOUNDARIES OF ANY SCHOOL" MEANS IN OR ON OR WITHIN ANY BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A CERTIFIED DAY CARE CENTER, PUBLIC OR PRIVATE ELEMENTARY, PAROCHIAL, INTERMEDIATE, JUNIOR HIGH, VOCATIONAL, OR HIGH SCHOOL, OR SIMILAR EDUCATIONAL INSTITUTION WHERE CHILDREN ARE IN DAILY ATTENDANCE, OR WITHIN ONE THOUSAND FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH SCHOOL, CENTER, OR INSTITUTION.

S 2. The penal law is amended by adding a new section 70.09 to read as follows:

S 70.09 SENTENCE OF IMPRISONMENT FOR DELINEATED SEX OFFENSE.

NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW TO THE CONTRARY, ANY PERSON WHO COMMITS ANY OFFENSE SET FORTH UNDER SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-EIGHT-J OF THE CORRECTION LAW WITHIN ONE THOUSAND FEET OF THE BOUNDARIES OF ANY SCHOOL AS DEFINED IN SUBDIVISION SEVEN OF SECTION ONE HUNDRED SIXTY-EIGHT-J OF THE CORRECTION LAW OR WITHIN FIVE HUNDRED FEET OF THE BOUNDARIES OF ANY SCHOOL IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE SHALL BE SUBJECT TO A PERMISSIBLE SENTENCE OF IMPRISONMENT WHICH IS TWO TIMES THE SENTENCE OF IMPRISONMENT FOR SUCH OFFENSE OTHERWISE PROVIDED FOR IN THIS CHAPTER.

S 3. The social services law is amended by adding a new section 419-a to read as follows:

S 419-A. IMMUNITY FROM LIABILITY. ANY TEACHER, OFFICIAL OR EDUCATIONAL INSTITUTION WHO, IN GOOD FAITH, FAILS TO NOTIFY A PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR A CHILD, THAT SUCH CHILD IS BEING QUESTIONED ON SCHOOL PROPERTY BY LAW ENFORCEMENT REGARDING ALLEGA-

TIONS OF CHILD ABUSE ALLEGEDLY PERPETRATED BY THAT CHILD'S PARENT, GUARDIAN, ETC., IS IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR FAILING TO NOTIFY THE PARENT, GUARDIAN, ETC. OF THE QUESTIONING. IN ORDER TO QUALIFY FOR THIS IMMUNITY, THE EMPLOYEE, OFFICIAL OR EDUCATIONAL INSTITUTION MUST HAVE A REASONABLE BELIEF THAT THE PARENT, GUARDIAN, ETC. PERPETRATED THE ABUSE.

S 4. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.

PART D

Section 1. The executive law is amended by adding a new section 837-s to read as follows:

S 837-S. REQUESTS FOR CRIMINAL HISTORY INFORMATION CONCERNING NEW AND PROSPECTIVE CHILD CARE EMPLOYEES. 1. AN EMPLOYER AND VOLUNTEER ORGANIZATION SHALL REQUEST AND ARE AUTHORIZED TO RECEIVE FROM THE DIVISION CRIMINAL HISTORY INFORMATION CONCERNING EACH NEW AND PROSPECTIVE EMPLOYEE AND VOLUNTEER WHO IN CONNECTION WITH SUCH EMPLOYMENT FOR SERVICE WILL BE IN CONTACT WITH PERSONS UNDER THE AGE OF EIGHTEEN, SUBJECT TO THE FOLLOWING RESTRICTIONS:

(A) AN EMPLOYER OR VOLUNTEER ORGANIZATION SHALL DESIGNATE ONE PERSON WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION, AND ONLY SUCH PERSON AND THE NEW OR PROSPECTIVE EMPLOYEE AND VOLUNTEER WHO IN CONNECTION WITH SUCH EMPLOYMENT FOR SERVICE WILL BE IN CONTACT WITH PERSONS UNDER THE AGE OF EIGHTEEN TO WHICH THE CRIMINAL HISTORY INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION; PROVIDED, HOWEVER, THAT CRIMINAL HISTORY INFORMATION MAY BE DISCLOSED TO OTHER PERSONNEL AUTHORIZED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION WHO ARE EMPOWERED BY SUCH EMPLOYER OR VOLUNTEER ORGANIZATION TO MAKE HIRING DECISIONS CONCERNING NEW OR PROSPECTIVE EMPLOYEES OR VOLUNTEERS AND PROVIDED FURTHER THAT SUCH OTHER PERSONNEL SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE. AN EMPLOYER OR VOLUNTEER ORGANIZATION SHALL NOTIFY THE DIVISION OF EACH PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION;

(B) AN EMPLOYER OR VOLUNTEER ORGANIZATION REQUESTING CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION SHALL DO SO BY COMPLETING A FORM DEVELOPED FOR SUCH PURPOSE BY THE DIVISION. SUCH FORM SHALL INCLUDE A SWORN STATEMENT OF THE PERSON DESIGNATED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION CERTIFYING THAT (I) THE PERSON WHOSE CRIMINAL HISTORY INFORMATION IS REQUESTED IS NOT PRESENTLY BUT HAS APPLIED TO BE AN EMPLOYEE OR VOLUNTEER, OR IS A NEW EMPLOYEE OR VOLUNTEER; (II) SUCH CRIMINAL HISTORY INFORMATION WILL BE USED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION SOLELY FOR PURPOSES AUTHORIZED BY THIS ARTICLE; AND (III) THE EMPLOYER OR VOLUNTEER ORGANIZATION AND ITS STAFF ARE AWARE OF AND WILL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE;

(C) THE PERSON DESIGNATED BY AN EMPLOYER OR VOLUNTEER ORGANIZATION FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL UPON RECEIPT IMMEDIATELY MARK SUCH CRIMINAL HISTORY INFORMATION "CONFIDENTIAL", AND SHALL AT ALL TIMES MAINTAIN SUCH CRIMINAL HISTORY INFORMATION IN A SECURE PLACE. ANY PERSON WHO WILLFULLY PERMITS THE RELEASE OF ANY CONFIDENTIAL CRIMINAL HISTORY INFORMATION CONTAINED IN THE REPORT TO PERSONS NOT PERMITTED BY THIS ARTICLE TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDEMEANOR.

2. NOTWITHSTANDING SUBDIVISION EIGHT-A OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THIS ARTICLE THERE SHALL BE NO FEE CHARGED TO AN EMPLOYER OR VOLUNTEER ORGANIZATION OR AN EMPLOYEE OR VOLUNTEER FOR A REQUEST FOR CRIMINAL HISTORY INFORMATION SUBMITTED TO THE DIVISION PURSUANT TO THIS SECTION.

3. TO THE EXTENT PERMITTED BY LAW, AN EMPLOYER OR VOLUNTEER ORGANIZATION MAY REQUEST FROM A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER A STATEMENT OF HIS OR HER PRIOR CRIMINAL CONVICTIONS IN THIS STATE OR ANY OTHER JURISDICTION. PRIOR TO REQUESTING CRIMINAL HISTORY INFORMATION CONCERNING ANY NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER, EACH EMPLOYER OR VOLUNTEER ORGANIZATION SHALL:

(A) INFORM THE NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER IN WRITING THAT THE EMPLOYER OR VOLUNTEER ORGANIZATION IS REQUIRED TO REQUEST HIS OR HER CRIMINAL HISTORY INFORMATION FROM THE DIVISION AND REVIEW SUCH INFORMATION PURSUANT TO THIS SECTION;

(B) INFORM THE NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER THAT BEFORE THE EMPLOYER OR VOLUNTEER ORGANIZATION REQUESTS SUCH CRIMINAL HISTORY INFORMATION, THE NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER HAS THE RIGHT TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION;

(C) OBTAIN THE SIGNED INFORMED CONSENT OF THE NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER ON A FORM SUPPLIED BY THE DIVISION WHICH INDICATES THAT SUCH PERSON HAS:

(I) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

(II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMINAL HISTORY INFORMATION;

(III) CONSENTED TO SUCH REQUEST; AND

(D) UPON RECEIVING SUCH WRITTEN CONSENT, OBTAIN THE FINGERPRINTS OF SUCH NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER PURSUANT TO REGULATIONS ESTABLISHED BY THE DIVISION.

4. A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER MAY WITHDRAW FROM THE APPLICATION PROCESS, WITHOUT PREJUDICE, AT ANY TIME REGARDLESS OF WHETHER OR NOT HE OR SHE HAS REVIEWED HIS OR HER CRIMINAL HISTORY INFORMATION OR THE EMPLOYER OR VOLUNTEER ORGANIZATION HAS RECEIVED CRIMINAL HISTORY INFORMATION. WHERE A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER WITHDRAWS FROM THE APPLICATION PROCESS, ANY FINGERPRINTS AND CRIMINAL HISTORY INFORMATION CONCERNING SUCH NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER RECEIVED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION SHALL BE IMMEDIATELY RETURNED TO SUCH NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER BY THE PERSON DESIGNATED FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION.

5. IN ALL CASES THE FINGERPRINTS AND CRIMINAL HISTORY INFORMATION CONCERNING A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER SHALL BE IMMEDIATELY RETURNED TO SUCH PERSON BY THE PERSON DESIGNATED FOR RECEIPT OF CRIMINAL HISTORY INFORMATION UPON THE DENIAL OF EMPLOYMENT OR VOLUNTARY SERVICES OR TERMINATION OF EMPLOYMENT OR VOLUNTARY SERVICES OF SUCH EMPLOYEE OR VOLUNTEER.

6. THE DIVISION SHALL PROVIDE REQUESTED CRIMINAL HISTORY INFORMATION AND RETURN FINGERPRINTS TO AN EMPLOYER OR VOLUNTEER ORGANIZATION WITHIN FIFTEEN BUSINESS DAYS AFTER THE RECEIPT OF A REQUEST FOR CRIMINAL HISTORY INFORMATION IF SUCH REQUEST IS:

(A) MADE BY THE PERSON DESIGNATED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION AND ACCOMPANIED BY THE

CERTIFICATION REQUIRED BY PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION;

(B) ACCOMPANIED BY THE COMPLETED FORM DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION; AND

(C) ACCOMPANIED BY FINGERPRINTS OF THE NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER OBTAINED PURSUANT TO PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION.

7. THE COMMISSIONER SHALL PROMULGATE ALL RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE, WHICH SHALL INCLUDE CONVENIENT PROCEDURES FOR NEW AND PROSPECTIVE EMPLOYEES AND VOLUNTEERS TO PROMPTLY VERIFY THE ACCURACY OF THEIR CRIMINAL HISTORY INFORMATION AND, TO THE EXTENT AUTHORIZED BY LAW, TO HAVE ACCESS TO RELEVANT DOCUMENTS RELATED THERETO.

S 2. The sum of fifty thousand dollars ($50,000), or so much thereof as may be necessary, is hereby appropriated out of moneys in the state treasury in the general fund to the credit of the state purposes account, not otherwise appropriated, and made immediately available to the division of criminal justice services for distribution to non-profit organizations required to perform criminal history checks pursuant to this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved in the manner prescribed by law.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.

PART E

Section 1. The penal law is amended by adding a new section 135.17 to read as follows:

S 135.17 ATTEMPTING TO LURE OR ENTICE A MINOR.

1. A PERSON IS GUILTY OF ATTEMPTING TO LURE OR ENTICE A MINOR WHEN: (A) BEING EIGHTEEN OR MORE YEARS OLD HE OR SHE ATTEMPTS TO LURE OR ENTICE A MINOR INTO A MOTOR VEHICLE, AIRCRAFT, WATERCRAFT, BUILDING OR ISOLATED AREA FOR THE PURPOSE OF COMMITTING A CRIMINAL OFFENSE WITH OR AGAINST SUCH MINOR; OR

(B) BEING EIGHTEEN YEARS OLD OR MORE AND WITH INTENT TO LURE, ENTICE, PERSUADE, CONVINCE, HARASS, ANNOY, THREATEN OR ALARM ANOTHER PERSON, HE OR SHE, BY MEANS OF A COMPUTER COMMUNICATIONS SYSTEM, COMMUNICATES OR CAUSES A COMMUNICATION TO BE INITIATED PURPORTING TO SOLICIT:

(1) SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT OR SEXUAL CONTACT WITH A PERSON WHOM HE OR SHE KNOWS OR REASONABLY SHOULD KNOW IS LESS THAN SEVENTEEN YEARS OLD; OR

(2) A SEXUAL PERFORMANCE BY A PERSON WHOM HE OR SHE KNOWS OR REASONABLY SHOULD KNOW IS LESS THAN SEVENTEEN YEARS OLD; OR

(3) ANY IN-PERSON CONTACT THAT RESULTS IN THE COMMISSION OR ATTEMPTED COMMISSION OF A CRIMINAL OFFENSE WITH OR AGAINST A MINOR.

2. FOR PURPOSES OF THIS SECTION: (A) "MINOR" MEANS A PERSON LESS THAN SEVENTEEN YEARS OF AGE, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A LAW ENFORCEMENT OFFICIAL POSING AS A MINOR DURING THE COURSE OF HIS OR HER OFFICIAL DUTIES.

(B) "BUILDING" IN ADDITION TO ITS ORDINARY MEANING, INCLUDES ANY STRUCTURE, VEHICLE, AIRCRAFT OR WATERCRAFT USED FOR OVERNIGHT LODGING OF PERSONS, OR USED BY PERSONS FOR CARRYING ON BUSINESS THEREIN, OR AN ENCLOSED MOTOR TRUCK, OR AN ENCLOSED MOTOR TRUCK TRAILER.

(C) "COMPUTER" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 156.00 OF THIS PART.

(D) "ORAL SEXUAL CONDUCT" AND "ANAL SEXUAL CONDUCT" SHALL HAVE THE SAME MEANINGS AS ASCRIBED TO SUCH TERMS BY SECTION 130.00 OF THIS TITLE.

(E) "SEXUAL CONTACT" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 130.00 OF THIS TITLE.

(F) "SEXUAL INTERCOURSE" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 130.00 OF THIS TITLE.

(G) "SEXUAL PERFORMANCE" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SECTION 263.00 OF THIS PART.

3. NOTHING IN THIS SECTION SHALL BE DEEMED TO PRECLUDE, IF THE EVIDENCE SO WARRANTS, AN INDICTMENT AND CONVICTION FOR ATTEMPTED KIDNAPPING UNDER THE PROVISIONS OF SECTIONS 110.00 AND 135.00 OF THIS PART.

ATTEMPTING TO LURE OR ENTICE A MINOR IS A CLASS D FELONY.

S 2. Subdivisions 1 and 2 of section 235.22 of the penal law, subdivision 1 as amended by chapter 8 of the laws of 2007 and subdivision 2 as amended by chapter 264 of the laws of 2003, are amended to read as follows:

1. knowing the character and content of the communication which, in whole or in part, depicts or describes, either in words or images actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor, LESS THAN SEVENTEEN YEARS OF AGE, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A LAW ENFORCEMENT OFFICIAL POSING AS A MINOR DURING THE COURSE OF HIS OR HER OFFICIAL DUTIES; and

2. by means of such communication he importunes, invites or induces a minor, LESS THAN SEVENTEEN YEARS OF AGE, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A LAW ENFORCEMENT OFFICIAL POSING AS A MINOR DURING THE COURSE OF HIS OR HER OFFICIAL DUTIES to engage in sexual intercourse, oral sexual conduct or anal sexual conduct, or sexual contact with him OR HER, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his OR HER benefit.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

PART F

Section 1. Subdivision 5 of section 220.10 of the criminal procedure law is amended by adding a new paragraph (i) to read as follows:

(I) WHERE THE INDICTMENT CHARGES A FELONY CONTAINED IN ARTICLE ONE HUNDRED THIRTY OR SECTION 255.25, 263.05, 263.10 OR 263.15 OF THE PENAL LAW, ANY PLEA OF GUILTY THEREAFTER ENTERED IN SATISFACTION OF SUCH CHARGE MUST INCLUDE AT LEAST A PLEA OF GUILTY TO THE VIOLATION OF ONE OF THE ABOVE ENUMERATED OFFENSES AND NO OTHER DISPOSITION BY PLEA OF GUILTY TO ANY OTHER CHARGE IN SATISFACTION OF SUCH CHARGE SHALL BE AUTHORIZED, PROVIDED, HOWEVER, IF THE DISTRICT ATTORNEY UPON REVIEWING THE AVAILABLE EVIDENCE DETERMINES THAT THE CHARGE OF A VIOLATION OF THE ABOVE ENUMERATED FELONIES IS NOT WARRANTED, SUCH DISTRICT ATTORNEY MAY CONSENT, AND THE COURT MAY ALLOW A DISPOSITION BY PLEA OF GUILTY TO ANOTHER CHARGE IN SATISFACTION OF SUCH CHARGE; PROVIDED, HOWEVER, IN ALL SUCH CASES, THE COURT SHALL SET FORTH UPON THE RECORD THE BASIS FOR SUCH DISPOSITION.

S 2. Section 530.50 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 530.50 Order of recognizance or bail; during pendency of appeal.

A judge who is otherwise authorized pursuant to section 460.50 or section 460.60 to issue an order of recognizance or bail pending the determination of an appeal, may do so unless the defendant received a class A felony sentence, A CLASS B OR CLASS C FELONY SENTENCE FOR A SEX OFFENSE THAT REQUIRES THE DEFENDANT TO REGISTER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW, or a sentence for any class B or class C felony offense defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age.

S 3. Section 65.10 of the penal law is amended by adding a new subdivision 4-b to read as follows:

4-B. POLYGRAPH AUTHORIZATION. WHEN IMPOSING A SENTENCE OF PROBATION THE COURT MAY, IN ADDITION TO ANY CONDITIONS IMPOSED PURSUANT TO SUBDIVISIONS TWO AND THREE OF THIS SECTION, REQUIRE A DEFENDANT, UNDER SUPERVISION FOR CONVICTION OF A SEX OFFENSE DEFINED IN ARTICLE SIX-C OF THE CORRECTION LAW, TO SUBMIT TO POLYGRAPHIC EXAMINATIONS TO ENSURE COMPLIANCE WITH THE TERMS OF PROBATION. THE COURT MAY ORDER THE OFFENDER TO PAY ALL OR A PORTION OF THE COSTS OF THE EXAMINATIONS. THE FEE MAY BE WAIVED IF THE OFFENDER IS INDIGENT OR IF PAYMENT WOULD RESULT IN AN ECONOMIC HARDSHIP TO THE OFFENDER'S IMMEDIATE FAMILY. BY SEPTEMBER FIRST, TWO THOUSAND TEN THE CHIEF JUSTICE OF THE COURT OF APPEALS IN CONSULTATION WITH THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL DEVELOP A PROTOCOL FOR THE USE OF POLYGRAPHIC EXAMINATIONS FOR SEX OFFENDERS PLACED ON PROBATION. THIS PROTOCOL SHALL BE DISTRIBUTED TO JUDGES ACROSS THE STATE.

S 4. Subdivision 3 of section 130.00 of the penal law, as amended by chapter 650 of the laws of 1984, is amended to read as follows:

3. "Sexual contact" means any INTENTIONAL touching of the sexual or other intimate parts of [a] ANOTHER person [not married to the actor for the purpose of gratifying sexual desire of either party] FOR NO LEGITIMATE PURPOSE. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.

S 5. Subdivisions 1 and 2 of section 168-a of the correction law, subdivision 1 as added by chapter 192 of the laws of 1995, subdivision 2 as amended by chapter 11 of the laws of 2002, paragraph (a) of subdivision 2 as amended by chapter 405 of the laws of 2008, subparagraph (i) of paragraph (d) of subdivision 2 as amended by chapter 146 of the laws of 2004, subparagraph (iii) of paragraph (d) of subdivision 2 as amended by chapter 232 of the laws of 2008, and paragraph (e) of subdivision 2 as added by chapter 69 of the laws of 2003, are amended to read as follows:

1. "Sex offender" includes any person who is convicted of (A) any of the offenses set forth in subdivision two or three of this section OR (B) ANY OTHER FELONY OFFENSE COMMITTED WITHIN FIVE YEARS OF THE DATE ON WHICH HE OR SHE WAS ADJUDICATED A YOUTHFUL OFFENDER PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW FOR ANY OF THE OFFENSES SET FORTH IN SUBDIVISION TWO OR THREE OF THIS SECTION. Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this article as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this article.

2. "Sex offense" means: (a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 130.80, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law,

or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of section 235.22 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law or as a sexually motivated felony defined in section 130.91 of such law; or

(b) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, provided the victim of such offense is less than eighteen years of age; or

(c) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law regardless of the age of the victim and the offender has previously been convicted of: (i) a sex offense defined in this article, (ii) a sexually violent offense defined in this article, or (iii) any of the provisions of section 130.52 or 130.55 of the penal law, or an attempt thereof; or

(d) a conviction of (i) an offense in any other jurisdiction which includes all of the essential elements of any such crime provided for in paragraph (a), (b) or (c) of this subdivision or (ii) a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred or, (iii) any of the provisions of 18 U.S.C. 2251, 18 U.S.C. 2251A, 18 U.S.C. 2252, 18 U.S.C. 2252A, 18 U.S.C. 2260, 18 U.S.C. 2422(b), 18 U.S.C. 2423, or 18 U.S.C. 2425, provided that the elements of such crime of conviction are substantially the same as those which are a part of such offense as of the date on which this subparagraph takes effect.

(e) a conviction of any of the provisions of subdivision two, three or four of section 250.45 OR SECTION 245.00 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[.]; OR

(F) A CONVICTION FOR ANY OFFENSE SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION WHICH WAS REPLACED BY A YOUTHFUL OFFENDER FINDING PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW.

S 6. Section 450.10 of the criminal procedure law is amended by adding a new subdivision 6 to read as follows:

6. AN ORDER, ENTERED PURSUANT TO SECTION 530.42 OF THIS CHAPTER, GRANTING IN WHOLE OR IN PART AN APPLICATION OF THE PEOPLE.

S 7. Subdivision 4 of section 450.20 of the criminal procedure law is amended to read as follows:

4. A sentence other than one of death, as prescribed in subdivisions two and three of section 450.30, UNLESS THE APPEAL IS BASED SOLELY UPON THE GROUND THAT A SENTENCE WAS UNDULY LENIENT WHEN SUCH SENTENCE WAS PREDICATED UPON ENTRY OF A PLEA OF GUILTY AND THE SENTENCE IMPOSED WAS NOT LESS THAN THAT WHICH WAS AGREED TO BY THE PEOPLE AS A CONDITION OF THE PLEA AND SET FORTH IN THE RECORD OR FILED WITH THE COURT AS REQUIRED BY SUBDIVISION FIVE OF SECTION 220.50 OF THIS CHAPTER OR SUBDIVISION FOUR OF SECTION 340.20 OF THIS CHAPTER;

S 8. Section 450.20 of the criminal procedure law is amended by adding a new subdivision 12 to read as follows:

12. AN ORDER, ENTERED PURSUANT TO SECTION 530.42 OF THIS CHAPTER, DENYING IN WHOLE OR IN PART AN APPLICATION OF THE PEOPLE.

S 9. Subdivision 2 of section 450.30 of the criminal procedure law is amended to read as follows:

2. An appeal by the people from a sentence, as authorized by subdivision four of section 450.20, may be based [only] upon the ground that such sentence EITHER was (A) invalid as a matter of law OR (B) UNDULY LENIENT.

S 10. Paragraph (c) of subdivision 2 and paragraph (b) of subdivision 6 of section 470.15 of the criminal procedure law are amended to read as follows:

(c) Upon a determination that a sentence imposed upon a valid conviction is illegal [or], unduly harsh or severe OR UNDULY LENIENT, the court may modify the judgment by reversing it with respect to the sentence and by otherwise affirming it.

(b) That a sentence, though legal, was EITHER (I) unduly harsh or severe OR (II) UNDULY LENIENT.

S 11. Subdivision 6 of section 470.20 of the criminal procedure law is amended to read as follows:

6. Upon modifying a judgment or reversing a sentence as a matter of discretion in the interest of justice upon the ground that the sentence is unduly harsh or severe OR UNDULY LENIENT, the court must itself impose some legally authorized lesser OR GREATER sentence.

S 12. Subdivision 3 of section 530.30 of the criminal procedure law is renumbered subdivision 6 and three new subdivisions 3, 4 and 5 are added to read as follows:

3. WHEN A CRIMINAL ACTION IS PENDING IN A LOCAL CRIMINAL COURT, OTHER THAN ONE CONSISTING OF A SUPERIOR COURT JUDGE SITTING AS SUCH, A JUDGE OF A SUPERIOR COURT HOLDING A TERM THEREOF IN THE COUNTY, UPON APPLICATION OF THE PEOPLE, MAY REVOKE AN ORDER OF RECOGNIZANCE OR BAIL ENTERED BY A LOCAL CRIMINAL COURT AND FIX BAIL IN AN AMOUNT THE COURT DETERMINES SUFFICIENT OR, IF THE DEFENDANT IS CHARGED WITH ONE OR MORE CRIMES AT LEAST ONE OF WHICH IS A FELONY, COMMIT THE DEFENDANT TO THE CUSTODY OF THE SHERIFF.

4. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION, A SUPERIOR COURT JUDGE MAY NOT VACATE AN ORDER OF RECOGNIZANCE OR BAIL AND FIX BAIL OR COMMIT THE DEFENDANT TO THE CUSTODY OF THE SHERIFF UNLESS AND UNTIL:

(A) THE DEFENDANT HAS HAD AN OPPORTUNITY TO BE HEARD IN THE MATTER OR, AFTER KNOWLEDGE OR NOTICE TO THE DEFENDANT OR HIS COUNSEL OF THE APPLICATION AND REASONABLE OPPORTUNITY TO BE HEARD, HAS FAILED TO APPEAR AT THE PROCEEDING OR HAS OTHERWISE WAIVED HIS RIGHT TO DO SO; AND

(B) SUCH JUDGE HAS BEEN FURNISHED WITH A REPORT AS DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION 530.20 OF THIS ARTICLE.

5. WHEN A CRIMINAL ACTION IS PENDING IN A LOCAL CRIMINAL COURT AND AN ORDER FIXING BAIL HAS BEEN ENTERED, AND THEREAFTER A LOCAL CRIMINAL COURT ENTERS AN ORDER RELEASING THE DEFENDANT ON HIS OWN RECOGNIZANCE OR FIXING BAIL IN A LESSER AMOUNT OR IN A LESS BURDENSOME MANNER, THE PEOPLE MAY FILE WITH THE LOCAL CRIMINAL COURT A NOTICE OF INTENTION TO APPLY TO A SUPERIOR COURT JUDGE PURSUANT TO SUBDIVISION THREE OF THIS SECTION. THE FILING OF SUCH A NOTICE SHALL STAY THE EFFECT OF THE ORDER RELEASING THE DEFENDANT ON HIS OWN RECOGNIZANCE OR FIXING BAIL IN A LESSER AMOUNT OR IN A LESS BURDENSOME MANNER. A STAY PURSUANT TO THIS

SUBDIVISION SHALL REMAIN IN EFFECT FOR A PERIOD OF SEVENTY-TWO HOURS UNLESS EXTENDED OR VACATED BY THE JUDGE OF THE SUPERIOR COURT TO WHOM THE PEOPLE APPLY PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

S 13. The criminal procedure law is amended by adding a new section 530.42 to read as follows:

S 530.42 ORDER OF RECOGNIZANCE OR BAIL; REVIEW BY SUPERIOR COURT.

1. WHEN A CRIMINAL ACTION IS PENDING IN A LOCAL CRIMINAL COURT OR A SUPERIOR COURT, AND THE COURT HAS ORDERED RECOGNIZANCE OR BAIL, A JUDGE OF THE SUPERIOR COURT HOLDING A TERM THEREOF IN THE COUNTY, UPON APPLICATION OF THE PEOPLE, MAY REVIEW AN ORDER OF RECOGNIZANCE OR BAIL PREVIOUSLY ENTERED IN THE ACTION AND FIX BAIL IN AN AMOUNT THE COURT DETERMINES SUFFICIENT OR, IF THE DEFENDANT IS CHARGED WITH ONE OR MORE CRIMES AT LEAST ONE OF WHICH IS A FELONY, COMMIT THE DEFENDANT TO THE CUSTODY OF THE SHERIFF.

2. UPON AN APPLICATION FOR REVIEW PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE SUPERIOR COURT JUDGE MAY GRANT THE APPLICATION ONLY UPON A DETERMINATION THAT THE ORDER OF RECOGNIZANCE OR BAIL UNDER REVIEW CONSTITUTES AN ABUSE OF DISCRETION.

3. AN APPLICATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE ACCOMPANIED BY AN AFFIDAVIT OR AFFIRMATION WHICH SHALL STATE THE DATE, AND THE COURT OR JUDGE TO WHOM MADE, OF EVERY PREVIOUS APPLICATION, THE DISPOSITION OF EACH SUCH APPLICATION AND OF ANY APPEAL TAKEN, AND THE NEW FACTS PRESENTED IN THE APPLICATION THAT WERE NOT PRESENTED IN ANY PREVIOUS APPLICATION.

4. WHEN A CRIMINAL ACTION IS PENDING IN A SUPERIOR COURT AND AN ORDER IS ENTERED RELEASING THE DEFENDANT ON HIS OWN RECOGNIZANCE OR FIXING BAIL, THE PEOPLE MAY APPLY ON AN EMERGENCY BASIS TO THE COURT TO WHICH AN APPLICATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION WOULD BE MADE FOR AN INTERIM ORDER FIXING BAIL OR COMMITTING THE DEFENDANT TO THE CUSTODY OF THE SHERIFF. SUCH AN ORDER SHALL REMAIN IN EFFECT FOR A PERIOD OF SEVENTY-TWO HOURS UNLESS EXTENDED OR VACATED BY THE COURT TO WHICH THE PEOPLE APPLY PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

5. THE CHIEF ADMINISTRATOR OF THE COURTS, WITH THE ADVICE AND CONSENT OF THE ADMINISTRATIVE BOARD OF THE COURTS, SHALL ADOPT PROCEDURES REGULATING THE COURT OR COURTS IN THE COUNTY TO WHICH AN APPLICATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION MAY BE MADE.

S 14. Subdivision 1 of section 720.35 of the criminal procedure law, as amended by chapter 452 of the laws of 1992, is amended to read as follows:

1. A youthful offender adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority but shall be deemed a conviction [only] (I) for the purposes of transfer of supervision and custody pursuant to section two hundred fifty-nine-m of the executive law OR (II) FOR THE PURPOSE OF DETERMINING WHETHER THE PERSON IS SUBJECT TO THE REQUIREMENTS OF ARTICLE SIX-C OF THE CORRECTION LAW, WHENEVER THE PERSON HAS BEEN CONVICTED OF A FELONY OFFENSE COMMITTED WITHIN FIVE YEARS OF THE DATE ON WHICH HE OR SHE WAS ADJUDICATED A YOUTHFUL OFFENDER FOR A FELONY OFFENSE DEFINED IN SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW OR (III) FOR THE PURPOSE OF DETERMINING WHETHER THE PERSON IS A DESIGNATED OFFENDER WITHIN THE MEANING OF SUBDIVISION SEVEN OF SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW AND SUBJECT TO THE REQUIREMENTS OF ARTICLE FORTY-NINE-B OF THE EXECUTIVE LAW.

S 15. Section 720.35 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. NOTWITHSTANDING SUBDIVISION TWO OF THIS SECTION, WHENEVER A PERSON STANDS CONVICTED OF A FELONY OFFENSE COMMITTED WITHIN FIVE YEARS OF THE DATE ON WHICH HE OR SHE WAS ADJUDICATED A YOUTHFUL OFFENDER FOR A FELONY OFFENSE DEFINED IN SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW, ALL RECORDS PERTAINING TO THE YOUTHFUL OFFENDER ADJUDICATION SHALL NO LONGER BE CONFIDENTIAL.

S 16. The criminal procedure law is amended by adding a new section 60.41 to read as follows:

S 60.41 RULES OF EVIDENCE; PROOF OF PREVIOUS SEXUAL ASSAULT.

1. IN ANY PROSECUTION IN WHICH A DEFENDANT IS CHARGED WITH AN OFFENSE OF SEXUAL ASSAULT, EVIDENCE OF THE DEFENDANT'S COMMISSION OF ANOTHER OFFENSE OR OFFENSES OF SEXUAL ASSAULT IS ADMISSIBLE AND MAY BE CONSIDERED FOR ITS BEARING ON ANY MATTER TO WHICH IT IS RELEVANT, INCLUDING THE DEFENDANT'S PROPENSITY TO COMMIT AN OFFENSE OF SEXUAL ASSAULT OR THE CREDIBILITY OF THE ALLEGED VICTIM OF THE SEXUAL ASSAULT, UNLESS THE COURT DETERMINES THAT ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNDUE PREJUDICE TO THE DEFENDANT.

2. FOR PURPOSES OF THIS SECTION, "OFFENSE OF SEXUAL ASSAULT" MEANS ANY CONDUCT PROSCRIBED BY ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, OR ANY ATTEMPT TO ENGAGE IN SUCH CONDUCT, WHETHER COMMITTED IN THIS STATE OR ELSEWHERE, REGARDLESS OF WHETHER THE DEFENDANT WAS CONVICTED FOR THE CONDUCT.

S 17. Section 60.40 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. IN ACCORDANCE WITH SECTION 60.41 OF THIS ARTICLE, THE PEOPLE MAY PROVE THAT A DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF AN OFFENSE OF SEXUAL ASSAULT.

S 18. This act shall take effect on the first of November next succeeding the date on which it shall have become a law provided that section three of this act shall take effect January 1, 2010.

PART G

Section 1. Paragraphs (e) and (f) of subdivision 3 of section 30.10 of the criminal procedure law are REPEALED, paragraph (g) is relettered paragraph (f) and a new paragraph (e) is added to read as follows:

(E) A PROSECUTION FOR A SEX OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, OTHER THAN A SEXUAL OFFENSE DELINEATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST IN THE FIRST, SECOND OR THIRD DEGREE AS DEFINED IN SECTIONS 255.27, 255.26 AND 255.25 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, OR USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, MAY BE COMMENCED WITHIN FIFTEEN YEARS AFTER SUCH CHILD HAS REACHED THE AGE OF EIGHTEEN.

S 2. This act shall take effect immediately and shall apply to offenses committed on and after such date as well as to offenses committed prior thereto, provided that this act shall not apply to offenses committed prior to such date on which the prosecution thereof was barred under the provisions of section 30.10 of the criminal procedure law in effect immediately prior to such date.

PART H

Section 1. Subparagraph (ii) of paragraph (a) of subdivision 3 of section 70.00 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(ii) For a class A-II felony, such minimum period shall not be less than three years nor more than eight years four months, except that for the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter [or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter,] such minimum period shall be not less than ten years nor more than twenty-five years AND FOR THE CLASS A-II FELONY OF PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THIS CHAPTER SUCH MINIMUM PERIOD SHALL BE NOT LESS THAN TWENTY-FIVE YEARS AND THE MAXIMUM TERM SHALL BE LIFE IMPRISONMENT.

S 2. Paragraph (a) of subdivision 4 of section 70.06 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(a) The minimum period of imprisonment for a second felony offender convicted of a class A-II felony must be fixed by the court at no less than six years and not to exceed twelve and one-half years and must be specified in the sentence, except that for the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter [or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter,] such minimum period shall be not less than ten years nor more than twenty-five years AND FOR THE CLASS A-II FELONY OF PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THIS CHAPTER SUCH MINIMUM PERIOD SHALL BE NOT LESS THAN TWENTY-FIVE YEARS AND THE MAXIMUM TERM SHALL BE LIFE IMPRISONMENT.

S 3. Subdivision 1 of section 70.40 of the penal law is amended by adding a new paragraph (d) to read as follows:

(D) A PERSON WHO HAS BEEN PAROLED AFTER SERVING A SENTENCE OF IMPRISONMENT FOR THE CRIME OF PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THIS CHAPTER SHALL BE UNDER THE SUPERVISION OF THE STATE BOARD OF PAROLE FOR THE DURATION OF THEIR LIFETIME.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

PART I

Section 1. Section 245.00 of the penal law, as amended by chapter 748 of the laws of 1968, is amended to read as follows:

S 245.00 Public lewdness.

A person is guilty of public lewdness when he intentionally exposes the private or intimate parts of his OR HER body in a lewd manner or commits any other lewd act (a) in a public place, or (b) in private premises under circumstances in which he OR SHE may readily be observed from either a public place or from other private premises, and with intent that he OR SHE be so observed.

Public lewdness is a class B misdemeanor.

A SECOND OFFENSE UNDER THIS SECTION COMMITTED WITHIN A TEN YEAR PERIOD IS A CLASS A MISDEMEANOR.

A THIRD OR SUBSEQUENT OFFENSE UNDER THIS SECTION COMMITTED WITHIN A TEN YEAR PERIOD IS A CLASS E FELONY.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

PART J

Section 1. Section 130.53 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 130.53 Persistent sexual abuse.

A person is guilty of persistent sexual abuse when he or she [commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony] STANDS CONVICTED OF ANY SEX OFFENSE ENUMERATED IN THIS ARTICLE, AND WITHIN THE PREVIOUS TEN YEAR PERIOD, HAS BEEN CONVICTED TWO OR MORE TIMES, IN SEPARATE CRIMINAL TRANSACTIONS FOR WHICH SENTENCE WAS IMPOSED ON SEPARATE OCCASIONS, OF ANY SEX OFFENSE ENUMERATED IN THIS ARTICLE.

Persistent sexual abuse is a class E felony.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

PART K

Section 1. Section 250.05 of the penal law, as amended by chapter 744 of the laws of 1988, is amended to read as follows:

S 250.05 Eavesdropping.

A person is guilty of eavesdropping when he unlawfully engages in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication, EXCEPT WHEN A PARENT OR LEGAL GUARDIAN IS INTERCEPTING A COMMUNICATION BETWEEN THE CHILD AND A FAMILY MEMBER OR ANY THIRD PARTY, WHERE THE PARENT OR LEGAL GUARDIAN SUSPECTS THAT THE CHILD IS INVOLVED IN AN ILLEGAL SEXUAL RELATIONSHIP OR THE SUBJECT OF AN ATTEMPTED LURING, AND THE BASIS FOR INTERCEPTING SUCH COMMUNICATION IS MOTIVATED BY GOOD FAITH CONCERN BY THE PARENT OR LEGAL GUARDIAN FOR THE CHILD'S WELFARE AND/OR SAFETY.

Eavesdropping is a class E felony.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

PART L

Section 1. The penal law is amended by adding a new section 260.12 to read as follows:

S 260.12 ENDANGERING THE WELFARE OF A CHILD IN A SEXUAL MANNER.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A CHILD IN A SEXUAL MANNER WHEN HE OR SHE COMMITS THE CRIME OF ENDANGERING THE WELFARE OF A CHILD AND THE INJURIOUS MANNER IN WHICH THE PERSON ACTED, OR THE OCCUPATION THE CHILD WAS DIRECTED OR AUTHORIZED TO ENGAGE IN, OR THE REASON FOR THE CHILD BEING DEEMED AN "ABUSED CHILD," A "NEGLECTED CHILD," A "JUVENILE DELINQUENT" AND/OR A "PERSON IN NEED OF SUPERVISION" IS OF A SEXUAL NATURE.

ENDANGERING THE WELFARE OF A CHILD IN A SEXUAL MANNER IS A CLASS E FELONY.

S 2. Section 260.11 of the penal law, as amended by chapter 89 of the laws of 1984, is amended to read as follows:

S 260.11 Endangering the welfare of a child; corroboration.

A person shall not be convicted of endangering the welfare of a child OR ENDANGERING THE WELFARE OF A CHILD IN A SEXUAL MANNER, or of an attempt to commit the same, upon the testimony of a victim who is incapable of consent because of mental defect or mental incapacity as to conduct that constitutes an offense or an attempt to commit an offense referred to in section 130.16, without additional evidence sufficient pursuant to section 130.16 to sustain a conviction of an offense referred to in section 130.16, or of an attempt to commit the same.

S 3. Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 405 of the laws of 2008, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 260.13, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or

S 4. This act shall take effect immediately.

PART M

Section 1. Subdivision 5 of section 70.00 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole, IN ACCORDANCE WITH THE PROCEDURES PROVIDED BY LAW FOR IMPOSING SUCH A SENTENCE, EITHER: (A) upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter [and in accordance with the procedures provided by law for imposing a sentence for such crime]; OR (B) UPON CONVICTION OF A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE WHEN SUCH DEFENDANT HAS PREVIOUSLY BEEN SUBJECTED TO TWO OR MORE PREDICATE VIOLENT FELONY CONVICTIONS AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.04 OF THIS ARTICLE. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter, OR IS ALSO CONVICTED OF A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF

SECTION 70.02 OF THIS ARTICLE WHEN SUCH DEFENDANT HAS PREVIOUSLY BEEN SUBJECTED TO TWO OR MORE PREDICATE VIOLENT FELONY CONVICTIONS AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.04 OF THIS ARTICLE. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in section 125.26 of this chapter.

S 2. Subdivision 2 of section 70.08 of the penal law, as added by chapter 481 of the laws of 1978, is amended to read as follows:

2. Authorized sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a persistent violent felony offender the court must impose [an indeterminate sentence of imprisonment, the maximum term of which shall be life imprisonment. The minimum period of imprisonment under such sentence must be in accordance with subdivision three of this section] A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE PURSUANT TO SECTION 70.00 OF THIS ARTICLE.

S 3. Subdivision 3 of section 70.08 of the penal law is REPEALED.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.

S 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 5. This act shall take effect immediately provided, however, that the applicable effective date of parts A through M of this act shall be as specifically set forth in the last section of such parts.