

3411

2009-2010 Regular Sessions

I N   S E N A T E

March 18, 2009

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Introduced by Sens. YOUNG, ALESI, DeFRANCISCO, LARKIN, MORAHAN, PADAVAN,  
SALAND -- 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 the offenses  
of promoting and possessing a sex offense against a child

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

1     Section 1. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of  
2     the penal law, paragraph (a) as amended by chapter 320 of the laws of  
3     2006 and paragraph (b) as separately amended by chapters 764 and 765 of  
4     the laws of 2005, are amended to read as follows:  
5     (a) Class B violent felony offenses: an attempt to commit the class  
6     A-I felonies of murder in the second degree as defined in section  
7     125.25, kidnapping in the first degree as defined in section 135.25, and  
8     arson in the first degree as defined in section 150.20; manslaughter in  
9     the first degree as defined in section 125.20, aggravated manslaughter  
10    in the first degree as defined in section 125.22, rape in the first  
11    degree as defined in section 130.35, criminal sexual act in the first  
12    degree as defined in section 130.50, aggravated sexual abuse in the  
13    first degree as defined in section 130.70, course of sexual conduct  
14    against a child in the first degree as defined in section 130.75;  
15    assault in the first degree as defined in section 120.10, kidnapping in  
16    the second degree as defined in section 135.20, burglary in the first  
17    degree as defined in section 140.30, arson in the second degree as  
18    defined in section 150.15, robbery in the first degree as defined in  
19    section 160.15, *PROMOTING A SEX OFFENSE AGAINST A CHILD AS DEFINED IN*  
20    *SECTION 263.35*, incest in the first degree as defined in section 255.27,  
21    criminal possession of a weapon in the first degree as defined in  
22    section 265.04, criminal use of a firearm in the first degree as defined  
23    in section 265.09, criminal sale of a firearm in the first degree as  
24    defined in section 265.13, aggravated assault upon a police officer or a

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

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1 peace officer as defined in section 120.11, gang assault in the first  
2 degree as defined in section 120.07, intimidating a victim or witness in  
3 the first degree as defined in section 215.17, hindering prosecution of  
4 terrorism in the first degree as defined in section 490.35, criminal  
5 possession of a chemical weapon or biological weapon in the second  
6 degree as defined in section 490.40, and criminal use of a chemical  
7 weapon or biological weapon in the third degree as defined in section  
8 490.47.

9 (b) Class C violent felony offenses: an attempt to commit any of the  
10 class B felonies set forth in paragraph (a); aggravated criminally  
11 negligent homicide as defined in section 125.11, aggravated manslaughter  
12 in the second degree as defined in section 125.21, aggravated sexual  
13 abuse in the second degree as defined in section 130.67, assault on a  
14 peace officer, police officer, fireman or emergency medical services  
15 professional as defined in section 120.08, gang assault in the second  
16 degree as defined in section 120.06, burglary in the second degree as  
17 defined in section 140.25, robbery in the second degree as defined in  
18 section 160.10, POSSESSING A SEX OFFENSE AGAINST A CHILD AS DEFINED IN  
19 SECTION 263.40, criminal possession of a weapon in the second degree as  
20 defined in section 265.03, criminal use of a firearm in the second  
21 degree as defined in section 265.08, criminal sale of a firearm in the  
22 second degree as defined in section 265.12, criminal sale of a firearm  
23 with the aid of a minor as defined in section 265.14, soliciting or  
24 providing support for an act of terrorism in the first degree as defined  
25 in section 490.15, hindering prosecution of terrorism in the second  
26 degree as defined in section 490.30, and criminal possession of a chemi-  
27 cal weapon or biological weapon in the third degree as defined in  
28 section 490.37.

29 S 2. Section 263.00 of the penal law is amended by adding a new subdi-  
30 vision 9 to read as follows:

31 9. "INTERNET" MEANS THE SYSTEM OF LINKED COMPUTER NETWORKS, INTERNA-  
32 TIONAL IN SCOPE, THAT FACILITATES DATA TRANSMISSION AND EXCHANGE.

33 S 3. The penal law is amended by adding two new sections 263.35 and  
34 263.40 to read as follows:

35 S 263.35 PROMOTING A SEX OFFENSE AGAINST A CHILD.

36 A PERSON IS GUILTY OF PROMOTING A SEX OFFENSE AGAINST A CHILD WHEN,  
37 KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE PRODUCES, DIRECTS  
38 OR PROMOTES ANY VISUAL OR AUDIO REPRESENTATION OF THE COMMISSION OF ANY  
39 OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS PART AGAINST A  
40 CHILD LESS THAN SIXTEEN YEARS OF AGE, INCLUDING THE DISSEMINATION OF ANY  
41 SUCH REPRESENTATION ON THE INTERNET.

42 PROMOTING A SEX OFFENSE AGAINST A CHILD IS A CLASS B FELONY.

43 S 263.40 POSSESSING A SEX OFFENSE AGAINST A CHILD.

44 A PERSON IS GUILTY OF POSSESSING A SEX OFFENSE AGAINST A CHILD WHEN,  
45 KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN  
46 HIS OR HER POSSESSION OR CONTROL ANY VISUAL OR AUDIO REPRESENTATION OF  
47 THE COMMISSION OF ANY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF  
48 THIS PART AGAINST A CHILD LESS THAN SIXTEEN YEARS OF AGE.

49 POSSESSING A SEX OFFENSE AGAINST A CHILD IS A CLASS C FELONY.

50 S 4. This act shall take effect on the first of November next succeed-  
51 ing the date on which it shall have become a law.