

3411

2009-2010 Regular Sessions

I N S E N A T E

March 18, 2009

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 ASSEMBLY, 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.

LBD07206-01-9

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.