

2171

2011-2012 Regular Sessions

I N A S S E M B L Y

January 14, 2011

Introduced by M. of A. ORTIZ, SCHROEDER, COLTON, MAISEL, GUNTHER, JAFFEE, GABRYSZAK, MAYERSOHN, GALEF, ROBINSON, TITUS -- Multi-Sponsored by -- M. of A. BOYLAND, BROOK-KRASNY, COOK, HAWLEY, KOLB, MARKEY, PHEFFER, REILLY, SCARBOROUGH, SWEENEY, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, the correction law, the penal law, the arts and cultural affairs law, the general business law, the labor law and the civil practice law and rules, in relation to enacting the "child sexual abuse and exploitation prevention act"; to amend the penal law, in relation to creating the crime of criminal use of encryption in the first and second degrees; to amend the penal law, the criminal procedure law, the civil rights law, the executive law, the family court act, the mental hygiene law, the multiple dwelling law, the public health law, the alcoholic beverage control law, the real property actions and proceedings law, the real property law and the vehicle and traffic law, in relation to prostitution offenses and creating the crime of sexual exploitation of a child; to amend the penal law, in relation to computer sex crimes against children; and repealing certain provisions of the penal law relating thereto

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "child sexual abuse and exploitation prevention act".
3 S 2. Legislative intent. The legislature hereby finds and declares
4 that the sexual abuse and exploitation of children is a continuing seri-
5 ous problem and such exploitation is being aided by technological
6 advances that utilize the internet. The proliferation of child pornogra-
7 phy must be addressed through legislative means that supply law enforce-
8 ment with the tools needed to combat this problem, impose penalties on
9 those determined to abuse children and provide a safe environment for
10 child victims.

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

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1 S 3. Subdivision 2 of section 60.42 of the criminal procedure law, as
2 added by chapter 230 of the laws of 1975, is amended to read as follows:

3 2. proves or tends to prove that the victim has been convicted of an
4 offense under section 230.00 OR 230.01 of the penal law within three
5 years prior to the sex offense which is the subject of the prosecution;
6 or

7 S 4. Paragraph (d) of subdivision 1 of section 160.10 of the criminal
8 procedure law, as amended by chapter 232 of the laws of 2010, is amended
9 and a new paragraph (e) is added to read as follows:

10 (d) Loitering for the purpose of engaging in a prostitution offense as
11 defined in subdivision two of section 240.37 of the penal law[.]; OR

12 (E) UNLAWFUL PROSTITUTION AS DEFINED IN SECTION 230.01 OF THE PENAL
13 LAW.

14 S 5. Section 190.30 of the criminal procedure law is amended by adding
15 a new subdivision 9 to read as follows:

16 9. BUSINESS RECORDS MAY BE RECEIVED AT GRAND JURY PROCEEDINGS AS
17 EVIDENCE OF THE FACTS STATED IN SUCH RECORDS, PROVIDED SUCH RECORDS ARE
18 ACCOMPANIED BY A WRITTEN STATEMENT, UNDER OATH, OF THE RECORD'S CUSTO-
19 DIAN OR OTHER QUALIFIED WITNESS OF THE BUSINESS. SUCH STATEMENT SHALL
20 CONTAIN A LIST OR DESCRIPTION OF THE RECORDS ATTACHED AND STATE IN
21 SUBSTANCE THAT THE PERSON IS A DULY AUTHORIZED CUSTODIAN OF THE RECORDS
22 OR OTHER QUALIFIED WITNESS WITH KNOWLEDGE THAT SUCH RECORDS WERE MADE IN
23 THE REGULAR COURSE OF BUSINESS AND THAT IT WAS THE REGULAR COURSE OF
24 SUCH BUSINESS TO MAKE SUCH RECORDS AT THE TIME OF THE ACT, TRANSACTION,
25 OCCURRENCE OR EVENT, OR WITHIN A REASONABLE TIME THEREAFTER. SUCH WRIT-
26 TEN STATEMENT MAY ALSO INCLUDE A STATEMENT THAT THE BUSINESS DOES NOT
27 POSSESS A PARTICULAR RECORD OR RECORDS, AND SUCH STATEMENT MAY BE
28 RECEIVED AT GRAND JURY PROCEEDINGS AS EVIDENCE OF THE FACT THAT THE
29 BUSINESS DOES NOT POSSESS SUCH RECORD OR RECORDS. WHEN IT IS NECESSARY
30 FOR THE BUSINESS WHOSE RECORDS ARE BEING OFFERED INTO EVIDENCE TO SUBMIT
31 A WRITTEN STATEMENT UNDER OATH FROM MORE THAN ONE OF ITS EMPLOYEES IN
32 ORDER TO COMPLY WITH THIS SUBDIVISION, MORE THAN ONE WRITTEN STATEMENT
33 UNDER OATH MAY BE ATTACHED TO THE RECORDS. FOR THE PURPOSE OF THIS
34 SUBDIVISION, THE TERM "BUSINESS" INCLUDES A BUSINESS, PROFESSION, OCCU-
35 PATION AND CALLING OF EVERY KIND.

36 S 6. Subdivisions 4 and 7 of section 200.50 of the criminal procedure
37 law, as amended by chapter 7 of the laws of 2007, are amended to read as
38 follows:

39 4. A statement in each count that the grand jury, or, where the accu-
40 satory instrument is a superior court information, the district attor-
41 ney, accuses the defendant or defendants of a designated offense,
42 provided that in any prosecution under article four hundred eighty-five
43 of the penal law, the designated offense shall be the specified offense,
44 as defined in subdivision three of section 485.05 of the penal law,
45 followed by the phrase "as a hate crime", and provided further that in
46 any prosecution under section 490.25 of the penal law, the designated
47 offense shall be the specified offense, as defined in subdivision three
48 of section 490.05 of the penal law, followed by the phrase "as a crime
49 of terrorism"; and provided further that in any prosecution under
50 section 130.91 of the penal law, the designated offense shall be the
51 specified offense, as defined in subdivision two of section 130.91 of
52 the penal law, followed by the phrase "as a sexually motivated felony";
53 and PROVIDED FURTHER THAT IN ANY PROSECUTION UNDER SECTION 263.18 OF THE
54 PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE UNDERLYING SEX CRIME
55 AGAINST A CHILD, AS DEFINED IN SUBDIVISION TWO OF SECTION 263.18 OF THE
56 PENAL LAW, FOLLOWED BY THE PHRASE "AS A COMPUTER SEX CRIME"; AND

1 7. A plain and concise factual statement in each count which, without
2 allegations of an evidentiary nature,

3 (a) asserts facts supporting every element of the offense charged and
4 the defendant's or defendants' commission thereof with sufficient preci-
5 sion to clearly apprise the defendant or defendants of the conduct which
6 is the subject of the accusation; and

7 (b) in the case of any armed felony, as defined in subdivision forty-
8 one of section 1.20 OF THIS CHAPTER, states that such offense is an
9 armed felony and specifies the particular implement the defendant or
10 defendants possessed, were armed with, used or displayed or, in the case
11 of an implement displayed, specifies what the implement appeared to be;
12 and

13 (c) in the case of any hate crime, as defined in section 485.05 of the
14 penal law, specifies, as applicable, that the defendant or defendants
15 intentionally selected the person against whom the offense was committed
16 or intended to be committed; or intentionally committed the act or acts
17 constituting the offense, in whole or in substantial part because of a
18 belief or perception regarding the race, color, national origin, ances-
19 try, gender, religion, religious practice, age, disability or sexual
20 orientation of a person; and

21 (d) in the case of a crime of terrorism, as defined in section 490.25
22 of the penal law, specifies, as applicable, that the defendant or
23 defendants acted with intent to intimidate or coerce a civilian popu-
24 lation, influence the policy of a unit of government by intimidation or
25 coercion, or affect the conduct of a unit of government by murder,
26 assassination or kidnapping; and

27 (e) in the case of a sexually motivated felony, as defined in section
28 130.91 of the penal law, asserts facts supporting the allegation that
29 the offense was sexually motivated; and

30 (F) IN THE CASE OF A COMPUTER SEX CRIME, AS DEFINED IN SUBDIVISION ONE
31 OF SECTION 263.18 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE, THAT THE
32 DEFENDANT OR DEFENDANTS FACILITATED THE COMMISSION OF A SEX CRIME
33 AGAINST A CHILD, AS DEFINED IN SUBDIVISION TWO OF SECTION 263.18 OF THE
34 PENAL LAW, BY USING OR CAUSING TO BE USED A COMPUTER OR COMPUTER SERVICE
35 TO COMMUNICATE WITH THE CHILD AGAINST WHOM SUCH OFFENSE IS COMMITTED.

36 S 7. Subdivision 6 of section 380.50 of the criminal procedure law, as
37 amended by chapter 320 of the laws of 2006, is amended to read as
38 follows:

39 6. Regardless of whether the victim requests to make a statement with
40 regard to the defendant's sentence, where the defendant is sentenced for
41 a violent felony offense as defined in section 70.02 of the penal law or
42 a felony defined in article one hundred twenty-five of such law or any
43 of the following provisions of such law sections 130.25, 130.30, 130.40,
44 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10,
45 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or
46 230.32, the prosecutor shall, within sixty days of the imposition of
47 sentence, provide the victim with a form on which the victim may indi-
48 cate a demand to be informed of any petition to change the name of such
49 defendant. Such forms shall be maintained by such prosecutor. Upon
50 receipt of a notice of a petition to change the name of any such defend-
51 ant, pursuant to subdivision two of section sixty-two of the civil
52 rights law, the prosecutor shall promptly notify the victim at the most
53 current address or telephone number provided by such victim in the most
54 reasonable and expedient possible manner of the time and place such
55 petition will be presented to the court.

1 S 8. Section 610.10 of the criminal procedure law is amended by adding
2 a new subdivision 4 to read as follows:

3 4. A "NON-JUDICIAL SUBPOENA" IS A PROCESS ISSUED BY A DISTRICT ATTOR-
4 NEY OR THE ATTORNEY GENERAL, WHERE APPROPRIATE, OR THE CHIEF EXECUTIVE
5 OFFICER OF A POLICE DEPARTMENT, AS DEFINED IN SUBDIVISION A OF SECTION
6 EIGHT HUNDRED THIRTY-SEVEN-C OF THE EXECUTIVE LAW, OR THE DESIGNEE OF
7 SUCH CHIEF EXECUTIVE OFFICER, IN ACCORDANCE WITH THE PROVISIONS OF
8 SUBDIVISION FOUR OF SECTION 610.20 OF THIS ARTICLE.

9 S 9. Section 610.20 of the criminal procedure law is amended by adding
10 a new subdivision 4 to read as follows:

11 4. IN THE INVESTIGATION OF AN OFFENSE AGAINST A MINOR OR AN ATTEMPT TO
12 COMMIT AN OFFENSE AGAINST A MINOR, OR IN ANY INSTANCE WHERE THE LIFE OR
13 SAFETY OF A PERSON IS IN IMMINENT DANGER, A NON-JUDICIAL SUBPOENA MAY BE
14 ISSUED AND DIRECTED TO AN INTERNET SERVICE PROVIDER OR A PROVIDER OF
15 E-MAIL SERVICES REQUIRING THE PROVIDER TO DISCLOSE THE IDENTITY AND
16 ADDRESS OF A SUBSCRIBER RELATIVE TO A SCREEN NAME.

17 S 10. Paragraph (h) of subdivision 8 of section 700.05 of the criminal
18 procedure law, as amended by chapter 154 of the laws of 1990, is amended
19 to read as follows:

20 (h) Promoting prostitution in the first degree, as defined in section
21 230.32 of the penal law, promoting prostitution in the second degree, as
22 defined by subdivision one of section 230.30 of the penal law, COMPEL-
23 LING PROSTITUTION, AS DEFINED IN SECTION 230.33 OF THE PENAL LAW;

24 S 11. Subdivision 8 of section 700.05 of the criminal procedure law is
25 amended by adding a new paragraph (u) to read as follows:

26 (U) USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE AS
27 DEFINED IN SECTION 263.06 OF THE PENAL LAW, USE OF A CHILD IN A SEXUAL
28 PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.07 OF THE
29 PENAL LAW, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
30 SECOND DEGREE AS DEFINED IN SECTION 263.08 OF THE PENAL LAW, PROMOTING
31 AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED
32 IN SECTION 263.09 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL
33 PERFORMANCE BY A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 263.10
34 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN
35 THE SECOND DEGREE AS DEFINED IN SECTION 263.11 OF THE PENAL LAW,
36 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE
37 AS DEFINED IN SECTION 263.12 OF THE PENAL LAW, PROMOTING A SEXUAL
38 PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.13
39 OF THE PENAL LAW, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
40 DEGREE AS DEFINED IN SECTION 263.14 OF THE PENAL LAW, POSSESSING A SEXU-
41 AL PERFORMANCE BY A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION
42 263.15 OF THE PENAL LAW, POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN
43 THE SECOND DEGREE AS DEFINED IN SECTION 263.16 OF THE PENAL LAW,
44 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS
45 DEFINED IN SECTION 263.17 OF THE PENAL LAW, COMPUTER SEX CRIMES AS
46 DEFINED IN SECTION 263.18 OF THE PENAL LAW, CRIMINAL USE OF ENCRYPTION
47 IN THE SECOND DEGREE AS DEFINED IN SECTION 156.40 OF THE PENAL LAW,
48 CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE AS DEFINED IN SECTION
49 156.41 OF THE PENAL LAW, LURING A CHILD AS DEFINED IN SECTION 263.01 OF
50 THE PENAL LAW AND DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST
51 DEGREE AS DEFINED IN SECTION 263.03 OF THE PENAL LAW.

52 S 12. Paragraph (a) of subdivision 2 of section 168-a of the
53 correction law, as amended by chapter 405 of the laws of 2008, is
54 amended to read as follows:

55 (a) (i) a conviction of or a conviction for an attempt to commit any
56 of the provisions of sections [120.70,] 130.20, 130.25, 130.30, 130.40,

1 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two
2 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20
3 or 135.25 of such law relating to kidnapping offenses, provided the
4 victim of such kidnapping or related offense is less than seventeen
5 years old and the offender is not the parent of the victim, or section
6 230.04, where the person patronized is in fact less than seventeen years
7 of age, 230.05 [or], 230.06 OR 230.06-A, or subdivision two of section
8 230.30, or section 230.32 [or], 230.33 OR 230.45 of the penal law, or
9 (ii) [a conviction of or a conviction for an attempt to commit any of
10 the provisions of section 235.22 of the penal law, or (iii)] a
11 conviction of or a conviction for an attempt to commit any provisions of
12 the foregoing sections committed or attempted as a hate crime defined in
13 section 485.05 of the penal law or as a crime of terrorism defined in
14 section 490.25 of such law or as a sexually motivated felony defined in
15 section 130.91 of such law; or

16 S 13. Paragraphs d and e of subdivision 2 of section 168-b of the
17 correction law are relettered paragraphs e and f and a new paragraph d
18 is added to read as follows:

19 D. THE REGISTRY IS AUTHORIZED TO MAKE AVAILABLE THE INFORMATION
20 PROVIDED FOR IN SECTION ONE HUNDRED SIXTY-EIGHT-Q OF THIS ARTICLE AND,
21 IN ADDITION, PROVIDE INFORMATION ON ANY INTERNET ACCOUNTS REGISTERED TO
22 SUCH SEX OFFENDER AND ANY INTERNET SCREEN NAMES USED BY SUCH OFFENDER TO
23 AN INTERACTIVE COMPUTER SERVICE, WHICH SHALL BE DEFINED AS ANY INFORMA-
24 TION SERVICE, SYSTEM OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR
25 ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUD-
26 ING SPECIFICALLY A SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTER-
27 NET.

28 S 14. Paragraph (b) of subdivision 2 of section 168-f of the
29 correction law, as added by chapter 192 of the laws of 1995, is amended
30 to read as follows:

31 (b) The verification form shall be signed by the sex offender, and
32 state that he OR SHE still resides at the address last reported to the
33 division AND SHALL PROVIDE INFORMATION ON ANY INTERNET ACCOUNTS BELONG-
34 ING TO SUCH SEX OFFENDER AND ANY INTERNET SCREEN NAME OR NAMES USED BY
35 SUCH OFFENDER.

36 S 15. Sections 120.70, 235.20, 235.21, 235.22, 235.23 and 235.24 of
37 the penal law are REPEALED.

38 S 16. Section 60.13 of the penal law, as added by chapter 7 of the
39 laws of 2007, is amended to read as follows:

40 S 60.13 Authorized dispositions; felony sex offenses.

41 When a person is to be sentenced upon a conviction for any felony
42 defined in article one hundred thirty of this chapter, including a sexu-
43 ally motivated felony, or patronizing a prostitute in the first degree
44 as defined in section 230.06 of this chapter, SEXUAL EXPLOITATION OF A
45 CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, incest in the
46 second degree as defined in section 255.26 of this chapter, or incest in
47 the first degree as defined in section 255.27 of this chapter, or a
48 felony attempt or conspiracy to commit any of these crimes, the court
49 must sentence the defendant in accordance with the provisions of section
50 70.80 of this title.

51 S 17. Subdivision 1 of section 70.02 of the penal law, as separately
52 amended by chapters 764 and 765 of the laws of 2005, paragraph (a) as
53 amended by chapter 320 of the laws of 2006, paragraphs (b) and (c) as
54 amended by chapter 405 of the laws of 2010 and paragraph (d) as amended
55 by chapter 7 of the laws of 2007, is amended to read as follows:

1 1. Definition of a violent felony offense. A violent felony offense is
2 a class B violent felony offense, a class C violent felony offense, a
3 class D violent felony offense, or a class E violent felony offense,
4 defined 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, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION
20 230.06-A, PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN
21 SECTION 230.32, COMPELLING PROSTITUTION AS DEFINED IN SECTION 230.33,
22 incest in the first degree as defined in section 255.27, USE OF A CHILD
23 IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION
24 263.07, criminal possession of a weapon in the first degree as defined
25 in section 265.04, criminal use of a firearm in the first degree as
26 defined in section 265.09, criminal sale of a firearm in the first
27 degree as defined in section 265.13, aggravated assault upon a police
28 officer or a peace officer as defined in section 120.11, gang assault in
29 the first degree as defined in section 120.07, intimidating a victim or
30 witness in the first degree as defined in section 215.17, hindering
31 prosecution of terrorism in the first degree as defined in section
32 490.35, criminal possession of a chemical weapon or biological weapon in
33 the second degree as defined in section 490.40, and criminal use of a
34 chemical weapon or biological weapon in the third degree as defined in
35 section 490.47.

36 (b) Class C violent felony offenses: an attempt to commit any of the
37 class B felonies set forth in paragraph (a) of this subdivision; aggra-
38 vated criminally negligent homicide as defined in section 125.11, aggra-
39 vated manslaughter in the second degree as defined in section 125.21,
40 aggravated sexual abuse in the second degree as defined in section
41 130.67, assault on a peace officer, police officer, fireman or emergency
42 medical services professional as defined in section 120.08, gang assault
43 in the second degree as defined in section 120.06, strangulation in the
44 first degree as defined in section 121.13, burglary in the second degree
45 as defined in section 140.25, robbery in the second degree as defined in
46 section 160.10, PROMOTING PROSTITUTION IN THE SECOND DEGREE AS DEFINED
47 IN SECTION 230.30, DISSEMINATING INDECENT MATERIALS TO MINORS IN THE
48 FIRST DEGREE AS DEFINED IN SECTION 263.03, USE OF A CHILD IN A SEXUAL
49 PERFORMANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 263.06, PROMOTING
50 AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED
51 IN SECTION 263.09, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD
52 IN THE FIRST DEGREE AS DEFINED IN SECTION 263.12, PROMOTING A SEXUAL
53 PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14,
54 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS
55 DEFINED IN SECTION 263.17, criminal possession of a weapon in the second
56 degree as defined in section 265.03, criminal use of a firearm in the

1 second degree as defined in section 265.08, criminal sale of a firearm
2 in the second degree as defined in section 265.12, criminal sale of a
3 firearm with the aid of a minor as defined in section 265.14, soliciting
4 or providing support for an act of terrorism in the first degree as
5 defined in section 490.15, hindering prosecution of terrorism in the
6 second degree as defined in section 490.30, and criminal possession of a
7 chemical weapon or biological weapon in the third degree as defined in
8 section 490.37.

9 (c) Class D violent felony offenses: an attempt to commit any of the
10 class C felonies set forth in paragraph (b); reckless assault of a child
11 as defined in section 120.02, assault in the second degree as defined in
12 section 120.05, menacing a police officer or peace officer as defined in
13 section 120.18, stalking in the first degree, as defined in subdivision
14 one of section 120.60, strangulation in the second degree as defined in
15 section 121.12, rape in the second degree as defined in section 130.30,
16 criminal sexual act in the second degree as defined in section 130.45,
17 sexual abuse in the first degree as defined in section 130.65, course of
18 sexual conduct against a child in the second degree as defined in
19 section 130.80, aggravated sexual abuse in the third degree as defined
20 in section 130.66, facilitating a sex offense with a controlled
21 substance as defined in section 130.90, PATRONIZING A PROSTITUTE IN THE
22 FIRST DEGREE AS DEFINED IN SECTION 230.06, PROMOTING PROSTITUTION IN THE
23 THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 230.25, PROMOTING
24 AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED
25 IN SECTION 263.08, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE
26 SECOND DEGREE AS DEFINED IN SECTION 263.13, criminal possession of a
27 weapon in the third degree as defined in subdivision five, six, seven or
28 eight of section 265.02, criminal sale of a firearm in the third degree
29 as defined in section 265.11, intimidating a victim or witness in the
30 second degree as defined in section 215.16, soliciting or providing
31 support for an act of terrorism in the second degree as defined in
32 section 490.10, and making a terroristic threat as defined in section
33 490.20, falsely reporting an incident in the first degree as defined in
34 section 240.60, placing a false bomb or hazardous substance in the first
35 degree as defined in section 240.62, placing a false bomb or hazardous
36 substance in a sports stadium or arena, mass transportation facility or
37 enclosed shopping mall as defined in section 240.63, and aggravated
38 unpermitted use of indoor pyrotechnics in the first degree as defined in
39 section 405.18.

40 (d) Class E violent felony offenses: an attempt to commit any of the
41 felonies of criminal possession of a weapon in the third degree as
42 defined in subdivision five, six, seven or eight of section 265.02 as a
43 lesser included offense of that section as defined in section 220.20 of
44 the criminal procedure law, persistent sexual abuse as defined in
45 section 130.53, aggravated sexual abuse in the fourth degree as defined
46 in section 130.65-a, PATRONIZING A PROSTITUTE IN THE SECOND DEGREE AS
47 DEFINED IN SECTION 230.05, falsely reporting an incident in the second
48 degree as defined in section 240.55 and placing a false bomb or hazard-
49 ous substance in the second degree as defined in section 240.61.

50 S 18. Paragraph (a) of subdivision 1 of section 70.80 of the penal
51 law, as added by chapter 7 of the laws of 2007, is amended to read as
52 follows:

53 (a) For the purposes of this section, a "felony sex offense" means a
54 conviction of any felony defined in article one hundred thirty of this
55 chapter, including a sexually motivated felony, or patronizing a prosti-
56 tute in the first degree as defined in section 230.06 of this chapter,

1 incest in the second degree as defined in section 255.26 of this chap-
2 ter, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF
3 THIS CHAPTER, or incest in the first degree as defined in section 255.27
4 of this chapter, or a felony attempt or conspiracy to commit any of the
5 above.

6 S 19. Subdivision 2 of section 130.91 of the penal law, as amended by
7 chapter 405 of the laws of 2010, is amended to read as follows:

8 2. A "specified offense" is a felony offense defined by any of the
9 following provisions of this chapter: assault in the second degree as
10 defined in section 120.05, assault in the first degree as defined in
11 section 120.10, gang assault in the second degree as defined in section
12 120.06, gang assault in the first degree as defined in section 120.07,
13 stalking in the first degree as defined in section 120.60, strangulation
14 in the second degree as defined in section 121.12, strangulation in the
15 first degree as defined in section 121.13, manslaughter in the second
16 degree as defined in subdivision one of section 125.15, manslaughter in
17 the first degree as defined in section 125.20, murder in the second
18 degree as defined in section 125.25, aggravated murder as defined in
19 section 125.26, murder in the first degree as defined in section 125.27,
20 kidnapping in the second degree as defined in section 135.20, kidnapping
21 in the first degree as defined in section 135.25, burglary in the third
22 degree as defined in section 140.20, burglary in the second degree as
23 defined in section 140.25, burglary in the first degree as defined in
24 section 140.30, arson in the second degree as defined in section 150.15,
25 arson in the first degree as defined in section 150.20, robbery in the
26 third degree as defined in section 160.05, robbery in the second degree
27 as defined in section 160.10, robbery in the first degree as defined in
28 section 160.15, promoting prostitution in the second degree as defined
29 in section 230.30, promoting prostitution in the first degree as defined
30 in section 230.32, compelling prostitution as defined in section 230.33,
31 disseminating indecent material to minors in the first degree as defined
32 in section [235.22] 263.03, use of a child in a sexual performance IN
33 THE SECOND DEGREE as defined in section [263.05] 263.06, USE OF A CHILD
34 IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION
35 263.07, promoting an obscene sexual performance by a child IN THE SECOND
36 DEGREE as defined in section [263.10] 263.08, PROMOTING AN OBSCENE SEXU-
37 AL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION
38 263.09, promoting a sexual performance by a child IN THE SECOND DEGREE
39 as defined in section [263.15] 263.13, PROMOTING A SEXUAL PERFORMANCE BY
40 A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14, or any felony
41 attempt or conspiracy to commit any of the foregoing offenses.

42 S 20. Subdivision 3 of section 130.95 of the penal law, as added by
43 chapter 107 of the laws of 2006, is amended to read as follows:

44 3. He or she has previously been subjected to a conviction for a felo-
45 ny defined in this article, incest as defined in section 255.25 of this
46 chapter or use of a child in a sexual performance as defined in [section
47 263.05] SECTIONS 263.06 AND 263.07 of this chapter.

48 S 21. Section 156.00 of the penal law is amended by adding a new
49 subdivision 10 to read as follows:

50 10. "ENCRYPTION" MEANS ANY PROTECTIVE OR DISRUPTIVE MEASURE, INCLUD-
51 ING, WITHOUT LIMITATION, CRYPTOGRAPHY, ENCIPHERING OR ENCODING, WHICH:

52 (A) CAUSES OR MAKES ANY DATA, INFORMATION, IMAGE, PROGRAM, SIGNAL OR
53 SOUND UNINTELLIGIBLE OR UNUSABLE; OR

54 (B) PREVENTS, IMPEDES, DELAYS OR DISRUPTS ACCESS TO ANY DATA, INFORMA-
55 TION, IMAGE, PROGRAM, SIGNAL OR SOUND.

1 S 22. The penal law is amended by adding two new sections 156.40 and
2 156.41 to read as follows:

3 S 156.40 CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE.

4 A PERSON IS GUILTY OF CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE
5 WHEN HE OR SHE INTENTIONALLY USES OR ATTEMPTS TO USE ENCRYPTION TO:

6 1. COMMIT, FURTHER, FACILITATE OR PROMOTE CONDUCT CONSTITUTING A
7 CRIME;

8 2. CONCEAL THE COMMISSION OF ANY CRIME;

9 3. CONCEAL OR PROTECT THE IDENTITY OF A PERSON WHO HAS COMMITTED ANY
10 CRIME; OR

11 4. PREVENT, IMPEDE, DELAY OR DISRUPT THE NORMAL OPERATION OR USE OF A
12 COMPUTER, COMPUTER PROGRAM OR COMPUTER SYSTEM.

13 CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE IS A CLASS A MISDEMEA-
14 NOR.

15 S 156.41 CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE.

16 A PERSON IS GUILTY OF CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE
17 WHEN HE OR SHE COMMITS THE CRIME OF CRIMINAL USE OF ENCRYPTION IN THE
18 SECOND DEGREE AND HE OR SHE:

19 1. DOES SO WITH AN INTENT TO COMMIT OR ATTEMPT TO COMMIT OR FURTHER
20 THE COMMISSION OF A FELONY;

21 2. DOES SO WITH AN INTENT TO CONCEAL THE COMMISSION OF ANY FELONY;

22 3. DOES SO WITH THE INTENT TO PROTECT THE IDENTITY OF A PERSON WHO HAS
23 COMMITTED ANY FELONY; OR

24 4. HAS BEEN PREVIOUSLY CONVICTED OF ANY CRIME UNDER THIS ARTICLE.

25 CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE IS A CLASS E FELONY.

26 S 23. Section 215.40 of the penal law is amended to read as follows:

27 S 215.40 Tampering with physical evidence.

28 A person is guilty of tampering with physical evidence when:

29 1. With intent that it be used or introduced in, OR BELIEVING THAT IT
30 HAS BEEN REQUESTED OR MAY BE GATHERED DURING OR PURSUANT TO an official
31 proceeding or a prospective official proceeding, [he] SUCH PERSON: (a)
32 knowingly makes, devises or prepares false physical evidence, or (b)
33 produces or offers such evidence at such a proceeding knowing it to be
34 false; or

35 2. Believing that certain physical evidence [is about to] HAS BEEN OR
36 MAY be REQUESTED, GATHERED, produced or used in OR PURSUANT TO an offi-
37 cial proceeding or a prospective official proceeding, and intending to
38 prevent such production or use, [he] SUCH PERSON suppresses it by any
39 act of concealment, alteration, ENCRYPTION or destruction, or by employ-
40 ing force, intimidation or deception against any person.

41 3. NO ELECTRONIC COMMUNICATIONS SERVICE OR REMOTE COMPUTING SERVICE,
42 AS DEFINED UNDER THE FEDERAL ELECTRONIC COMMUNICATIONS PRIVACY ACT,
43 WHICH IS ACTING WITHIN THE ORDINARY COURSE OF BUSINESS, SHALL BE OBLI-
44 GATED TO RETAIN CUSTOMER INFORMATION AND/OR CONTENT UNLESS IN RECEIPT OF
45 AN OFFICIAL REQUEST TO RETAIN PHYSICAL EVIDENCE.

46 Tampering with physical evidence is a class [E] D felony.

47 S 24. Section 230.00 of the penal law, as amended by chapter 169 of
48 the laws of 1969, is amended to read as follows:

49 S 230.00 [Prostitution] CRIMINAL PROSTITUTION.

50 A person is guilty of CRIMINAL prostitution when, BEING SEVENTEEN
51 YEARS OLD OR MORE, such person engages or agrees or offers to engage in
52 sexual conduct with another person in return for a fee.

53 [Prostitution] CRIMINAL PROSTITUTION is a class B [Misdemeanor] MISDE-
54 MEANOR.

55 S 25. The penal law is amended by adding a new section 230.01 to read
56 as follows:

1 S 230.01 UNLAWFUL PROSTITUTION.

2 A PERSON IS GUILTY OF UNLAWFUL PROSTITUTION WHEN, BEING LESS THAN
3 SEVENTEEN YEARS OLD, SUCH PERSON ENGAGES OR AGREES OR OFFERS TO ENGAGE
4 IN SEXUAL CONDUCT WITH ANOTHER PERSON IN RETURN FOR A FEE.

5 UNLAWFUL PROSTITUTION IS A VIOLATION, PROVIDED, HOWEVER, THAT ANY
6 PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A CRIME DEFINED IN THIS
7 ARTICLE OR SECTION 240.37 OF THIS PART SHALL BE GUILTY OF A CLASS B
8 MISDEMEANOR.

9 S 26. Sections 230.05 and 230.06 of the penal law, as added by chap-
10 ter 627 of the laws of 1978, are amended to read as follows:

11 S 230.05 Patronizing a prostitute in the second degree.

12 A person is guilty of patronizing a prostitute in the second degree
13 when, being [over eighteen] TWENTY-ONE years of age OR MORE, he OR SHE
14 patronizes a prostitute and the person patronized is less than [four-
15 teen] SEVENTEEN years of age.

16 Patronizing a prostitute in the second degree is a class E felony.

17 S 230.06 Patronizing a prostitute in the first degree.

18 A person is guilty of patronizing a prostitute in the first degree
19 when, BEING EIGHTEEN YEARS OF AGE OR MORE, he OR SHE patronizes a pros-
20 titute and the person patronized is less than [eleven] FIFTEEN years of
21 age.

22 Patronizing a prostitute in the first degree is a class D felony.

23 S 27. The penal law is amended by adding a new section 230.06-a to
24 read as follows:

25 S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

26 A PERSON IS GUILTY OF SEXUAL EXPLOITATION OF A CHILD WHEN:

27 1. BEING EIGHTEEN YEARS OF AGE OR MORE HE OR SHE PATRONIZES A PROSTI-
28 TUTE AND THE PERSON PATRONIZED IS LESS THAN THIRTEEN YEARS OF AGE; OR

29 2. HE OR SHE PATRONIZES A PROSTITUTE AND THE PERSON PATRONIZED IS LESS
30 THAN ELEVEN YEARS OF AGE.

31 SEXUAL EXPLOITATION OF A CHILD IS A CLASS B FELONY.

32 S 28. Section 230.07 of the penal law, as amended by chapter 74 of the
33 laws of 2007, is amended to read as follows:

34 S 230.07 Patronizing a prostitute; defense.

35 In any prosecution for patronizing a prostitute in the first or second
36 degrees OR SEXUAL EXPLOITATION OF A CHILD, it is [a] AN AFFIRMATIVE
37 defense that the defendant did not have reasonable grounds to believe
38 that the person was less than the age specified.

39 S 29. The opening paragraph of section 230.10 of the penal law is
40 amended to read as follows:

41 In any prosecution for SEXUAL EXPLOITATION OF A CHILD, prostitution or
42 patronizing a prostitute, the sex of the two parties or prospective
43 parties to the sexual conduct engaged in, contemplated or solicited is
44 immaterial, and it is no defense that:

45 S 30. The penal law is amended by adding a new section 230.11 to read
46 as follows:

47 S 230.11 PROSTITUTION; DEFENSE.

48 IN ANY PROSECUTION FOR UNLAWFUL PROSTITUTION OR CRIMINAL PROSTITUTION,
49 IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS A VICTIM OF SEX TRAF-
50 FICKING.

51 S 31. Subdivision 2 of section 230.30 of the penal law, as amended by
52 chapter 627 of the laws of 1978, is amended to read as follows:

53 2. Advances or profits from prostitution of a person less than
54 [sixteen] SEVENTEEN years old.

55 S 32. Section 230.33 of the penal law, as added by chapter 450 of the
56 laws of 2005, is amended to read as follows:

1 S 230.33 Compelling prostitution.

2 A person is guilty of compelling prostitution when, being twenty-one
3 years of age or older, he or she knowingly advances prostitution by
4 compelling a person less than [sixteen] SEVENTEEN years old, by force or
5 intimidation, to engage in prostitution.

6 Compelling prostitution is a class B felony.

7 S 33. Section 230.40 of the penal law is amended and a new section
8 230.45 is added to read as follows:

9 S 230.40 Permitting prostitution IN THE SECOND DEGREE.

10 A person is guilty of permitting prostitution IN THE SECOND DEGREE
11 when, having possession or control of premises which he OR SHE knows are
12 being used for prostitution purposes, he OR SHE fails to make reasonable
13 effort to halt or abate such use.

14 Permitting prostitution IN THE SECOND DEGREE is a class [B] A misde-
15 meanor.

16 S 230.45 PERMITTING PROSTITUTION IN THE FIRST DEGREE.

17 A PERSON IS GUILTY OF PERMITTING PROSTITUTION IN THE FIRST DEGREE WHEN
18 HAVING POSSESSION OR CONTROL OF PREMISES WHICH HE OR SHE KNOWS ARE BEING
19 USED FOR PROSTITUTION PURPOSES INCLUDING THE PROSTITUTION OF A CHILD
20 LESS THAN SEVENTEEN YEARS OF AGE, HE OR SHE FAILS TO MAKE REASONABLE
21 EFFORT TO HALT OR ABATE SUCH USE.

22 PERMITTING PROSTITUTION IN THE FIRST DEGREE IS A CLASS E FELONY.

23 S 34. The section heading and subdivision 1 of section 235.15 of the
24 penal law, as amended by chapter 600 of the laws of 1996, are amended to
25 read as follows:

26 Obscenity [or disseminating indecent material to minors in the second
27 degree]; defense.

28 1. In any prosecution for obscenity[, or disseminating indecent mate-
29 rial to minors in the second degree in violation of subdivision three of
30 section 235.21 of this article,] it is an affirmative defense that the
31 persons to whom allegedly obscene or indecent material was dissem-
32 inated, or the audience to an allegedly obscene performance, consisted
33 of persons or institutions having scientific, educational, governmental
34 or other similar justification for possessing, disseminating or viewing
35 the same.

36 S 35. Subdivision 2 of section 240.37 of the penal law, as added by
37 chapter 344 of the laws of 1976, is amended to read as follows:

38 2. Any person who remains or wanders about in a public place and
39 repeatedly beckons to, or repeatedly stops, or repeatedly attempts to
40 stop, or repeatedly attempts to engage passers-by in conversation, or
41 repeatedly stops or attempts to stop motor vehicles, or repeatedly
42 interferes with the free passage of other persons, for the purpose of
43 prostitution, or of patronizing a prostitute as those terms are defined
44 in article two hundred thirty of [the penal law] THIS CHAPTER, shall be
45 guilty of a violation and is guilty of a class B misdemeanor if such
46 person has previously been convicted of a violation of this section or
47 of [sections] SECTION 230.00, 230.01 or 230.05 of [the penal law] THIS
48 CHAPTER.

49 S 36. Subdivision 2 of section 250.65 of the penal law, as added by
50 chapter 69 of the laws of 2003, is amended to read as follows:

51 2. With respect to sections 250.55 and 250.60 of this article, the
52 provisions of subdivision two of section 235.15 and subdivisions one and
53 two of section [235.24] 263.05 of this chapter shall apply.

54 S 37. Article 263 of the penal law is REPEALED and a new article 263
55 is added to read as follows:

ARTICLE 263
CHILD SEXUAL ABUSE, EXPLOITATION
AND PORNOGRAPHY OFFENSES

- SECTION 263.00 DEFINITIONS.
- 263.01 LURING A CHILD.
- 263.02 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE.
- 263.03 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE.
- 263.04 DISSEMINATING INDECENT MATERIAL TO MINORS; PRESUMPTION AND DEFENSES.
- 263.05 DISSEMINATING INDECENT MATERIAL TO MINORS; LIMITATIONS.
- 263.06 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE.
- 263.07 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE.
- 263.08 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
- 263.09 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
- 263.10 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE.
- 263.11 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
- 263.12 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
- 263.13 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
- 263.14 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
- 263.15 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE.
- 263.16 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.
- 263.17 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.
- 263.18 COMPUTER SEX CRIMES AGAINST CHILDREN.
- 263.19 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.
- 263.20 SEXUAL PERFORMANCE BY A CHILD; AFFIRMATIVE DEFENSES.
- 263.25 PROOF OF AGE OF CHILD.

S 263.00 DEFINITIONS.

AS USED IN THIS ARTICLE THE FOLLOWING DEFINITIONS SHALL APPLY:

- 1. "MINOR" MEANS ANY PERSON LESS THAN SEVENTEEN YEARS OLD.
- 2. "NUDITY" MEANS THE SHOWING OF THE HUMAN MALE OR FEMALE GENITALS, PUBIC AREA OR BUTTOCKS WITH LESS THAN A FULL OPAQUE COVERING, OR THE SHOWING OF THE FEMALE BREAST WITH LESS THAN A FULLY OPAQUE COVERING OF ANY PORTION THEREOF BELOW THE TOP OF THE NIPPLE, OR THE DEPICTION OF COVERED MALE GENITALS IN A DISCERNIBLY TURGID STATE.
- 3. "SEXUAL CONDUCT" MEANS ACTUAL OR SIMULATED SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT, SEXUAL BESTIALITY, MASTURBATION, SADOMASOCHISTIC ABUSE, OR LEWD EXHIBITION OF THE GENITALS.
- 4. "SEXUAL EXCITEMENT" MEANS THE CONDITION OF HUMAN MALE OR FEMALE GENITALS WHEN IN A STATE OF SEXUAL STIMULATION OR AROUSAL.
- 5. "SEXUAL PERFORMANCE" MEANS ANY PERFORMANCE OR PART THEREOF WHICH INCLUDES SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A CHILD LESS THAN SEVENTEEN YEARS OF AGE.

1 6. "OBSCENE SEXUAL PERFORMANCE" MEANS ANY PERFORMANCE WHICH INCLUDES
2 SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A
3 CHILD LESS THAN SEVENTEEN YEARS OF AGE, IN ANY MATERIAL WHICH IS
4 OBSCENE, AS SUCH TERM IS DEFINED IN SECTION 235.00 OF THIS CHAPTER.

5 7. "SEXUAL INTERCOURSE", "SEXUAL CONTACT", "ORAL SEXUAL CONDUCT" AND
6 "ANAL SEXUAL CONDUCT" MEAN THE CONDUCT DEFINED BY SECTION 130.00 OF THIS
7 CHAPTER.

8 8. "SADOMASOCHISTIC ABUSE" MEANS FLAGELLATION OR TORTURE BY OR UPON A
9 PERSON CLAD IN UNDERGARMENTS, A MASK OR BIZARRE COSTUME, OR THE CONDI-
10 TION OF BEING FETTERED, BOUND OR OTHERWISE PHYSICALLY RESTRAINED ON THE
11 PART OF ONE SO CLOTHED.

12 9. "PERFORMANCE" MEANS ANY PLAY, MOTION PICTURE, PHOTOGRAPH OR DANCE,
13 FILM, VIDEO, DIGITAL IMAGE OR DATA STORED ON A COMPUTER DISK OR BY ELEC-
14 TRONIC MEANS WHERE SUCH DATA IS CAPABLE OF CONVERSION INTO A VISUAL
15 IMAGE. PERFORMANCE ALSO MEANS ANY OTHER VISUAL REPRESENTATION EXHIBITED
16 BEFORE AN AUDIENCE.

17 10. "PROMOTE" MEANS TO PROCURE, MANUFACTURE, ISSUE, SELL, GIVE,
18 PROVIDE, LEND, MAIL, DELIVER, TRANSFER, TRANSMUTE, PUBLISH, DISTRIBUTE,
19 CIRCULATE, DISSEMINATE, PRESENT, EXHIBIT OR ADVERTISE, OR TO OFFER OR
20 AGREE TO DO THE SAME.

21 11. "SIMULATED" MEANS THE EXPLICIT DEPICTION OF ANY OF THE CONDUCT SET
22 FORTH IN SUBDIVISION THREE OF THIS SECTION WHICH CREATES THE APPEARANCE
23 OF SUCH CONDUCT.

24 12. "HARMFUL TO MINORS" MEANS THAT QUALITY OF ANY DESCRIPTION OR
25 REPRESENTATION, IN WHATEVER FORM, OF NUDITY, SEXUAL CONDUCT, SEXUAL
26 EXCITEMENT, OR SADOMASOCHISTIC ABUSE, WHEN IT: (A) CONSIDERED AS A
27 WHOLE, APPEALS TO THE PRURIENT INTEREST IN SEX OF MINORS; AND (B) IS
28 PATENTLY OFFENSIVE TO PREVAILING STANDARDS IN THE ADULT COMMUNITY AS A
29 WHOLE WITH RESPECT TO WHAT IS SUITABLE MATERIAL FOR MINORS; AND (C)
30 CONSIDERED AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL AND
31 SCIENTIFIC VALUE FOR MINORS.

32 13. "ACCESS SOFTWARE" MEANS SOFTWARE (INCLUDING CLIENT OR SERVER SOFT-
33 WARE) OR ENABLING TOOLS THAT DO NOT CREATE OR PROVIDE THE CONTENT OF THE
34 COMMUNICATION BUT THAT ALLOW A USER TO DO ANY ONE OR MORE OF THE FOLLOW-
35 ING: (A) FILTER, SCREEN, ALLOW OR DISALLOW CONTENT; (B) PICK, CHOOSE,
36 ANALYZE OR DIGEST CONTENT; OR (C) TRANSMIT, RECEIVE, DISPLAY, FORWARD,
37 CACHE, SEARCH, SUBSET, ORGANIZE, REORGANIZE OR TRANSLATE CONTENT.

38 14. "COMPUTER" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY
39 SECTION 156.00 OF THIS CHAPTER.

40 15. "TELEPHONIC COMMUNICATION" AND "ELECTRONIC COMMUNICATION" SHALL
41 HAVE THE MEANING GIVEN TO THOSE TERMS BY SUBDIVISIONS THREE AND FIVE
42 RESPECTIVELY, OF SECTION 250.00 OF THIS CHAPTER.
43 S 263.01 LURING A CHILD.

44 1. A PERSON IS GUILTY OF LURING A CHILD WHEN HE OR SHE LURES A CHILD
45 INTO A MOTOR VEHICLE, AIRCRAFT, WATERCRAFT, ISOLATED AREA, BUILDING, OR
46 PART THEREOF, FOR THE PURPOSE OF COMMITTING AGAINST SUCH CHILD ANY OF
47 THE FOLLOWING OFFENSES: AN OFFENSE AS DEFINED IN SECTION 70.02 OF THIS
48 CHAPTER; AN OFFENSE AS DEFINED IN SECTION 125.25 OR 125.27 OF THIS CHAP-
49 TER; A FELONY OFFENSE THAT IS A VIOLATION OF ARTICLE ONE HUNDRED THIRTY
50 OF THIS CHAPTER; AN OFFENSE AS DEFINED IN SECTION 135.25 OF THIS CHAP-
51 TER; AN OFFENSE AS DEFINED IN SECTIONS 230.30, 230.33 OR 230.34 OF THIS
52 CHAPTER; AN OFFENSE AS DEFINED IN SECTIONS 255.25, 255.26, OR 255.27 OF
53 THIS CHAPTER; OR AN OFFENSE AS DEFINED IN THIS ARTICLE. FOR PURPOSES OF
54 THIS SUBDIVISION "CHILD" MEANS A PERSON LESS THAN SEVENTEEN YEARS OF
55 AGE. NOTHING IN THIS SECTION SHALL BE DEEMED TO PRECLUDE, IF THE
56 EVIDENCE WARRANTS, A CONVICTION FOR THE COMMISSION OR ATTEMPTED COMMIS-

1 SION OF ANY CRIME, INCLUDING BUT NOT LIMITED TO A CRIME DEFINED IN ARTI-
2 CLE ONE HUNDRED THIRTY-FIVE OF THIS CHAPTER.

3 2. LURING A CHILD IS A CLASS E FELONY, PROVIDED, HOWEVER, THAT IF THE
4 UNDERLYING OFFENSE THE ACTOR INTENDED TO COMMIT AGAINST SUCH CHILD
5 CONSTITUTED A CLASS A OR A CLASS B FELONY, THEN THE OFFENSE OF LURING A
6 CHILD IN VIOLATION OF THIS SECTION SHALL BE DEEMED RESPECTIVELY, A CLASS
7 C FELONY OR CLASS D FELONY.

8 S 263.02 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE.

9 A PERSON IS GUILTY OF DISSEMINATING INDECENT MATERIAL TO MINORS IN THE
10 SECOND DEGREE WHEN:

11 1. WITH KNOWLEDGE OF ITS CHARACTER AND CONTENT, HE OR SHE SELLS OR
12 LOANS TO A MINOR FOR MONETARY CONSIDERATION:

13 (A) ANY PICTURE, PHOTOGRAPH, DRAWING, SCULPTURE, MOTION PICTURE FILM,
14 OR SIMILAR VISUAL REPRESENTATION OR IMAGE OF A PERSON OR PORTION OF THE
15 HUMAN BODY WHICH DEPICTS NUDITY, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE
16 AND WHICH IS HARMFUL TO MINORS; OR

17 (B) ANY BOOK, PAMPHLET, MAGAZINE, PRINTED MATTER HOWEVER REPRODUCED,
18 OR SOUND RECORDING WHICH CONTAINS ANY MATTER ENUMERATED IN PARAGRAPH (A)
19 OF THIS SUBDIVISION, OR EXPLICIT AND DETAILED VERBAL DESCRIPTIONS OR
20 NARRATIVE ACCOUNTS OF SEXUAL EXCITEMENT, SEXUAL CONDUCT OR SADOMASOCHIS-
21 TIC ABUSE AND WHICH, TAKEN AS A WHOLE, IS HARMFUL TO MINORS; OR

22 2. KNOWING THE CHARACTER AND CONTENT OF A MOTION PICTURE, SHOW OR
23 OTHER PRESENTATION WHICH, IN WHOLE OR IN PART, DEPICTS NUDITY, SEXUAL
24 CONDUCT OR SADOMASOCHISTIC ABUSE, AND WHICH IS HARMFUL TO MINORS, HE OR
25 SHE:

26 (A) EXHIBITS SUCH MOTION PICTURE, SHOW OR OTHER PRESENTATION TO A
27 MINOR FOR MONETARY CONSIDERATION; OR

28 (B) SELLS TO A MINOR AN ADMISSION TICKET OR PASS TO PREMISES WHEREON
29 THERE IS EXHIBITED OR TO BE EXHIBITED SUCH MOTION PICTURE, SHOW OR OTHER
30 PRESENTATION; OR

31 (C) ADMITS A MINOR FOR A MONETARY CONSIDERATION TO PREMISES WHEREON
32 THERE IS EXHIBITED OR TO BE EXHIBITED SUCH MOTION PICTURE SHOW OR OTHER
33 PRESENTATION; OR

34 3. KNOWING THE CHARACTER AND CONTENT OF THE COMMUNICATION WHICH, IN
35 WHOLE OR IN PART, DEPICTS OR DESCRIBES, EITHER IN WORDS OR IMAGES ACTUAL
36 OR SIMULATED NUDITY, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE, AND WHICH
37 IS HARMFUL TO MINORS, HE OR SHE INTENTIONALLY USES ANY COMPUTER COMMUNI-
38 CATION SYSTEM ALLOWING THE INPUT, OUTPUT, EXAMINATION OR TRANSFER, OF
39 COMPUTER DATA OR COMPUTER PROGRAMS FROM ONE COMPUTER TO ANOTHER, TO
40 INITIATE OR ENGAGE IN SUCH COMMUNICATION WITH A PERSON WHO IS A MINOR.

41 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE IS A
42 CLASS E FELONY.

43 S 263.03 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE.

44 A PERSON IS GUILTY OF DISSEMINATING INDECENT MATERIAL TO MINORS IN THE
45 FIRST DEGREE WHEN:

46 1. KNOWING THE CHARACTER AND CONTENT OF THE COMMUNICATION WHICH, IN
47 WHOLE OR IN PART, DEPICTS OR DESCRIBES, EITHER IN WORDS OR IMAGES ACTUAL
48 OR SIMULATED NUDITY, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE, AND WHICH
49 IS HARMFUL TO MINORS, HE OR SHE INTENTIONALLY USES ANY TELEPHONIC COMMU-
50 NICATION, ELECTRONIC COMMUNICATION OR COMPUTER COMMUNICATION SYSTEM
51 ALLOWING THE INPUT, OUTPUT, EXAMINATION OR TRANSFER, OF COMPUTER DATA OR
52 COMPUTER PROGRAMS FROM ONE COMPUTER TO ANOTHER, TO INITIATE OR ENGAGE IN
53 SUCH COMMUNICATION WITH A PERSON WHO IS A MINOR OR A PERSON WHO, REGARD-
54 LESS OF HIS OR HER AGE, IS A POLICE OFFICER AND THE ACTOR REASONABLY
55 BELIEVES SUCH OFFICER TO BE A MINOR; AND

1 2. BY MEANS OF SUCH COMMUNICATION HE OR SHE IMPORTUNES, INVITES OR
2 INDUCES A MINOR OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE, IS A
3 POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH OFFICER TO BE A
4 MINOR TO ENGAGE IN SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT OR ANAL SEXU-
5 AL CONDUCT, OR SEXUAL CONTACT WITH HIM OR HER, OR TO ENGAGE IN A SEXUAL
6 PERFORMANCE, OBSCENE SEXUAL PERFORMANCE, OR SEXUAL CONDUCT FOR HIS OR
7 HER BENEFIT.

8 DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE IS A
9 CLASS C FELONY.

10 S 263.04 DISSEMINATING INDECENT MATERIAL TO MINORS; PRESUMPTION AND
11 DEFENSES.

12 1. A PERSON WHO ENGAGES IN THE CONDUCT PROSCRIBED BY SECTION 263.02 OF
13 THIS ARTICLE IS PRESUMED TO DO SO WITH KNOWLEDGE OF THE CHARACTER AND
14 CONTENT OF THE MATERIAL SOLD OR LOANED, OR THE MOTION PICTURE, SHOW OR
15 PRESENTATION EXHIBITED OR TO BE EXHIBITED.

16 2. IN ANY PROSECUTION FOR DISSEMINATING INDECENT MATERIAL TO MINORS IN
17 THE SECOND DEGREE PURSUANT TO SUBDIVISION ONE OR TWO OF SECTION 263.02
18 OF THIS ARTICLE, IT IS AN AFFIRMATIVE DEFENSE THAT:

19 (A) THE DEFENDANT HAD REASONABLE CAUSE TO BELIEVE THAT THE MINOR
20 INVOLVED WAS SEVENTEEN YEARS OLD OR MORE; AND

21 (B) SUCH MINOR EXHIBITED TO THE DEFENDANT A DRAFT CARD, DRIVER'S
22 LICENSE, BIRTH CERTIFICATE OR OTHER OFFICIAL OR APPARENTLY OFFICIAL
23 DOCUMENT PURPORTING TO ESTABLISH THAT SUCH MINOR WAS SEVENTEEN YEARS OLD
24 OR MORE.

25 3. IN ANY PROSECUTION FOR DISSEMINATING INDECENT MATERIAL TO MINORS IN
26 THE SECOND DEGREE IN VIOLATION OF SUBDIVISION THREE OF SECTION 263.02 OF
27 THIS ARTICLE, IT IS AN AFFIRMATIVE DEFENSE THAT THE PERSONS TO WHOM
28 ALLEGEDLY OBSCENE OR INDECENT MATERIAL WAS DISSEMINATED, OR THE AUDIENCE
29 TO AN ALLEGEDLY OBSCENE PERFORMANCE, CONSISTED OF PERSONS OR INSTI-
30 TUTIONS HAVING SCIENTIFIC, EDUCATIONAL, GOVERNMENTAL OR OTHER SIMILAR
31 JUSTIFICATION FOR POSSESSING, DISSEMINATING OR VIEWING THE SAME.

32 4. IN ANY PROSECUTION FOR DISSEMINATING INDECENT MATERIAL TO MINORS IN
33 THE SECOND DEGREE PURSUANT TO SUBDIVISION THREE OF SECTION 263.02 OF
34 THIS ARTICLE OR DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST
35 DEGREE PURSUANT TO SECTION 263.03 OF THIS ARTICLE, IT SHALL BE A DEFENSE
36 THAT:

37 (A) THE DEFENDANT MADE A REASONABLE EFFORT TO ASCERTAIN THE TRUE AGE
38 OF THE MINOR AND WAS UNABLE TO DO SO AS A RESULT OF ACTIONS TAKEN BY THE
39 MINOR; OR

40 (B) THE DEFENDANT HAS TAKEN, IN GOOD FAITH, REASONABLE, EFFECTIVE AND
41 APPROPRIATE ACTIONS UNDER THE CIRCUMSTANCES TO RESTRICT OR PREVENT
42 ACCESS BY MINORS TO MATERIALS SPECIFIED IN SUCH SUBDIVISION, WHICH MAY
43 INVOLVE ANY APPROPRIATE MEASURES TO RESTRICT MINORS FROM ACCESS TO SUCH
44 COMMUNICATIONS, INCLUDING ANY METHOD WHICH IS FEASIBLE UNDER AVAILABLE
45 TECHNOLOGY; OR

46 (C) THE DEFENDANT HAS RESTRICTED ACCESS TO SUCH MATERIALS BY REQUIRING
47 USE OF A VERIFIED CREDIT CARD, DEBIT ACCOUNT, ADULT ACCESS CODE OR ADULT
48 PERSONAL IDENTIFICATION NUMBER; OR

49 (D) THE DEFENDANT HAS IN GOOD FAITH ESTABLISHED A MECHANISM SUCH THAT
50 THE LABELLING, SEGREGATION OR OTHER MECHANISM ENABLES SUCH MATERIAL TO
51 BE AUTOMATICALLY BLOCKED OR SCREENED BY SOFTWARE OR OTHER CAPABILITIES
52 REASONABLY AVAILABLE TO RESPONSIBLE ADULTS WISHING TO EFFECT SUCH BLOCK-
53 ING OR SCREENING AND THE DEFENDANT HAS NOT OTHERWISE SOLICITED MINORS
54 NOT SUBJECT TO SUCH SCREENING OR BLOCKING CAPABILITIES TO ACCESS THAT
55 MATERIAL OR TO CIRCUMVENT ANY SUCH SCREENING OR BLOCKING.

56 S 263.05 DISSEMINATING INDECENT MATERIAL TO MINORS; LIMITATIONS.

1 IN ANY PROSECUTION FOR DISSEMINATING INDECENT MATERIAL TO MINORS IN
2 THE SECOND DEGREE PURSUANT TO SUBDIVISION THREE OF SECTION 263.02 OF
3 THIS ARTICLE OR DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST
4 DEGREE PURSUANT TO SECTION 263.03 OF THIS ARTICLE:

5 1. NO PERSON SHALL BE HELD TO HAVE VIOLATED SUCH PROVISIONS SOLELY FOR
6 PROVIDING ACCESS OR CONNECTION TO OR FROM A FACILITY, SYSTEM, OR NETWORK
7 NOT UNDER THAT PERSON'S CONTROL, INCLUDING TRANSMISSION, DOWNLOADING,
8 INTERMEDIATE STORAGE, ACCESS SOFTWARE, OR OTHER RELATED CAPABILITIES
9 THAT ARE INCIDENTAL TO PROVIDING SUCH ACCESS OR CONNECTION THAT DO NOT
10 INCLUDE THE CREATION OF THE CONTENT OF THE COMMUNICATION.

11 (A) THE LIMITATIONS PROVIDED BY THIS SUBDIVISION SHALL NOT BE APPLICA-
12 BLE TO A PERSON WHO IS A CONSPIRATOR WITH AN ENTITY ACTIVELY INVOLVED IN
13 THE CREATION OR KNOWING DISTRIBUTION OF COMMUNICATIONS THAT VIOLATE SUCH
14 PROVISIONS, OR WHO KNOWINGLY ADVERTISES THE AVAILABILITY OF SUCH COMMU-
15 NICATIONS.

16 (B) THE LIMITATIONS PROVIDED BY THIS SUBDIVISION SHALL NOT BE APPLICA-
17 BLE TO A PERSON WHO PROVIDES ACCESS OR CONNECTION TO A FACILITY, SYSTEM,
18 OR NETWORK ENGAGED IN THE VIOLATION OF SUCH PROVISIONS THAT IS OWNED OR
19 CONTROLLED BY SUCH PERSON.

20 2. NO EMPLOYER SHALL BE HELD LIABLE UNDER SUCH PROVISIONS FOR THE
21 ACTIONS OF AN EMPLOYEE OR AGENT UNLESS THE EMPLOYEE'S OR AGENT'S CONDUCT
22 IS WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT OR AGENCY AND THE EMPLOYER
23 HAVING KNOWLEDGE OF SUCH CONDUCT, AUTHORIZES OR RATIFIES SUCH CONDUCT,
24 OR RECKLESSLY DISREGARDS SUCH CONDUCT.

25 S 263.06 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE.

26 A PERSON IS GUILTY OF THE USE OF A CHILD IN A SEXUAL PERFORMANCE IN
27 THE SECOND DEGREE IF KNOWING THE CHARACTER AND CONTENT THEREOF HE OR SHE
28 EMPLOYS, AUTHORIZES OR INDUCES A MINOR TO ENGAGE IN A SEXUAL PERFORMANCE
29 OR OBSCENE SEXUAL PERFORMANCE OR BEING A PARENT, LEGAL GUARDIAN OR
30 CUSTODIAN OF SUCH MINOR, HE OR SHE CONSENTS TO THE PARTICIPATION BY SUCH
31 MINOR IN A SEXUAL PERFORMANCE OR OBSCENE SEXUAL PERFORMANCE.

32 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE IS A CLASS
33 C FELONY.

34 S 263.07 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE.

35 A PERSON IS GUILTY OF THE USE OF A CHILD IN A SEXUAL PERFORMANCE IN
36 THE FIRST DEGREE IF KNOWING THE CHARACTER AND CONTENT THEREOF HE OR SHE
37 EMPLOYS, AUTHORIZES OR INDUCES A CHILD LESS THAN ELEVEN YEARS OF AGE TO
38 ENGAGE IN A SEXUAL PERFORMANCE OR OBSCENE SEXUAL PERFORMANCE OR BEING A
39 PARENT, LEGAL GUARDIAN OR CUSTODIAN OF SUCH CHILD, HE OR SHE CONSENTS TO
40 THE PARTICIPATION BY SUCH CHILD IN A SEXUAL PERFORMANCE OR OBSCENE SEXU-
41 AL PERFORMANCE.

42 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE IS A CLASS
43 B FELONY.

44 S 263.08 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
45 SECOND DEGREE.

46 A PERSON IS GUILTY OF PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
47 CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THER-
48 EOF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES ANY OBSCENE PERFORMANCE
49 WHICH INCLUDES SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL
50 CONDUCT, BY A MINOR.

51 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND
52 DEGREE IS A CLASS D FELONY.

53 S 263.09 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
54 DEGREE.

1 A PERSON IS GUILTY OF PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
2 CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-
3 OF, HE OR SHE PRODUCES, DIRECTS OR PROMOTES:

4 1. TEN OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT, OR
5 WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR; OR

6 2. ANY OBSCENE PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT, OR WHAT
7 REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR AND HE OR SHE
8 PROMOTES SUCH PERFORMANCE TO A MINOR, OR A PERSON WHO, REGARDLESS OF HIS
9 OR HER AGE, IS A POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH
10 OFFICER TO BE A MINOR.

11 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE
12 IS A CLASS C FELONY.

13 S 263.10 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
14 THIRD DEGREE.

15 A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A
16 CHILD IN THE THIRD DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-
17 OF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ANY
18 OBSCENE PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT OR WHAT REASONABLY
19 APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

20 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD
21 DEGREE IS A CLASS E FELONY.

22 S 263.11 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
23 SECOND DEGREE.

24 A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A
25 CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THER-
26 EOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL TEN OR
27 MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR WHAT REASON-
28 ABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

29 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND
30 DEGREE IS A CLASS D FELONY.

31 S 263.12 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE
32 FIRST DEGREE.

33 A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A
34 CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-
35 OF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ONE
36 HUNDRED OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR
37 WHAT REASONABLY APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

38 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
39 DEGREE IS A CLASS C FELONY.

40 S 263.13 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.

41 A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE
42 SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE
43 PRODUCES, DIRECTS OR PROMOTES ANY PERFORMANCE WHICH INCLUDES SEXUAL
44 CONDUCT BY A MINOR.

45 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A
46 CLASS D FELONY.

47 S 263.14 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

48 A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE
49 FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE
50 PRODUCES, DIRECTS OR PROMOTES:

51 1. TEN OR MORE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT, OR WHAT
52 REASONABLY APPEARS TO BE SEXUAL CONDUCT, BY A MINOR; OR

53 2. ANY PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT, OR WHAT REASONABLY
54 APPEARS TO BE SEXUAL CONDUCT, BY A MINOR AND HE OR SHE PROMOTES SUCH
55 PERFORMANCE TO A MINOR, OR A PERSON WHO, REGARDLESS OF HIS OR HER AGE,

1 IS A POLICE OFFICER AND THE ACTOR REASONABLY BELIEVES SUCH OFFICER TO BE
2 A MINOR.

3 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A
4 CLASS C FELONY.

5 S 263.15 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE.

6 A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN
7 THE THIRD DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR
8 SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ANY PERFORMANCE
9 WHICH INCLUDES SEXUAL CONDUCT, OR WHAT REASONABLY APPEARS TO BE SEXUAL
10 CONDUCT, BY A MINOR.

11 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE THIRD DEGREE IS A
12 CLASS E FELONY.

13 S 263.16 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND
14 DEGREE.

15 A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN
16 THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR
17 SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL TEN OR MORE
18 PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR WHAT REASONABLY APPEARS TO
19 BE SEXUAL CONDUCT BY A MINOR.

20 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A
21 CLASS D FELONY.

22 S 263.17 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

23 A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN
24 THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR
25 SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL ONE HUNDRED OR
26 MORE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT OR WHAT REASONABLY
27 APPEARS TO BE SEXUAL CONDUCT BY A MINOR.

28 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A
29 CLASS C FELONY.

30 S 263.18 COMPUTER SEX CRIMES AGAINST CHILDREN.

31 1. A PERSON COMMITS A COMPUTER SEX CRIME WHEN HE OR SHE COMMITS A SEX
32 CRIME AGAINST A CHILD AND FACILITATED THE COMMISSION OF SUCH OFFENSE BY
33 USING OR CAUSING TO BE USED A COMPUTER OR COMPUTER SERVICE TO COMMUNI-
34 CATE WITH THE CHILD AGAINST WHOM SUCH OFFENSE IS COMMITTED.

35 2. A "SEX CRIME AGAINST A CHILD" MEANS A FELONY OFFENSE (A) THE ESSEN-
36 TIAL ELEMENTS OF WHICH INCLUDE THE COMMISSION OR ATTEMPTED COMMISSION OF
37 SEXUAL CONDUCT, AS DEFINED IN SUBDIVISION TEN OF SECTION 130.00 OF THIS
38 CHAPTER, OR THE USE OR PROMOTION OF A SEXUAL OR OBSCENE SEXUAL PERFORM-
39 ANCE, AS DEFINED IN SECTION 263.00 OF THIS ARTICLE, (B) COMMITTED OR
40 ATTEMPTED TO BE COMMITTED AGAINST A CHILD LESS THAN SEVENTEEN YEARS OLD.

41 S 263.19 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.

42 1. WHEN A PERSON IS CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO
43 SECTION 263.18 OF THIS ARTICLE, AND THE UNDERLYING CRIME AGAINST A CHILD
44 IS A VIOLENT FELONY OFFENSE, AS DEFINED IN SECTION 70.02 OF THIS CHAP-
45 TER, THE COMPUTER SEX CRIME SHALL BE DEEMED A VIOLENT FELONY OFFENSE.

46 2. WHEN A PERSON IS CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO
47 SECTION 263.18 OF THIS ARTICLE, AND THE UNDERLYING SEX CRIME AGAINST A
48 CHILD IS A CLASS C, D OR E FELONY, THE COMPUTER SEX CRIME SHALL BE
49 DEEMED TO BE ONE CATEGORY HIGHER THAN THE SEX CRIME AGAINST A CHILD THE
50 DEFENDANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL
51 APPLICABLE TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO
52 COMMIT A SEX CRIME AGAINST A CHILD, WHICHEVER IS APPLICABLE.

53 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
54 CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 263.18 OF THIS
55 ARTICLE AND THE UNDERLYING SEX CRIME AGAINST A CHILD IS A CLASS B FELO-
56 NY:

1 (A) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS
2 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

3 (B) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS
4 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER;
5 AND

6 (C) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
7 FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF
8 THIS CHAPTER.

9 S 263.20 SEXUAL PERFORMANCE BY A CHILD; AFFIRMATIVE DEFENSES.

10 1. UNDER THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE
11 DEFENDANT IN GOOD FAITH REASONABLY BELIEVED THE PERSON APPEARING IN THE
12 PERFORMANCE WAS NOT A MINOR.

13 2. IN ANY PROSECUTION FOR ANY OFFENSE PURSUANT TO THIS ARTICLE, IT IS
14 AN AFFIRMATIVE DEFENSE THAT THE PERSON SO CHARGED WAS A LIBRARIAN
15 ENGAGED IN THE NORMAL COURSE OF HIS OR HER EMPLOYMENT, A MOTION PICTURE
16 PROJECTIONIST, STAGE EMPLOYEE OR SPOTLIGHT OPERATOR, CASHIER, DOORMAN,
17 USHER, CANDY STAND ATTENDANT, PORTER OR IN ANY OTHER NON-MANAGERIAL OR
18 NON-SUPERVISORY CAPACITY IN A MOTION PICTURE THEATRE; PROVIDED HE OR SHE
19 HAS NO FINANCIAL INTEREST, OTHER THAN HIS OR HER EMPLOYMENT, WHICH
20 EMPLOYMENT DOES NOT ENCOMPASS COMPENSATION BASED UPON ANY PROPORTION OF
21 THE GROSS RECEIPTS, IN THE PROMOTION OF A SEXUAL PERFORMANCE FOR SALE,
22 RENTAL OR EXHIBITION OR IN THE PROMOTION, PRESENTATION OR DIRECTION OF
23 ANY SEXUAL PERFORMANCE, OR IS IN ANY WAY RESPONSIBLE FOR ACQUIRING SUCH
24 MATERIAL FOR SALE, RENTAL OR EXHIBITION.

25 S 263.25 PROOF OF AGE OF CHILD.

26 WHENEVER IT BECOMES NECESSARY FOR THE PURPOSES OF THIS ARTICLE TO
27 DETERMINE WHETHER A CHILD WHO PARTICIPATED IN A SEXUAL PERFORMANCE WAS A
28 MINOR, THE COURT OR JURY MAY MAKE SUCH DETERMINATION BY ANY OF THE
29 FOLLOWING: PERSONAL INSPECTION OF THE CHILD; INSPECTION OF THE SEXUAL
30 PERFORMANCE; ORAL TESTIMONY BY A WITNESS TO THE SEXUAL PERFORMANCE AS TO
31 THE AGE OF THE CHILD BASED UPON THE CHILD'S APPEARANCE; EXPERT MEDICAL
32 TESTIMONY BASED UPON THE APPEARANCE OF THE CHILD IN THE SEXUAL PERFORM-
33 ANCE; AND ANY OTHER METHOD AUTHORIZED BY ANY APPLICABLE PROVISION OF LAW
34 OR BY THE RULES OF EVIDENCE AT COMMON LAW.

35 S 38. Paragraph (a) of subdivision 1 of section 460.10 of the penal
36 law, as amended by chapter 405 of the laws of 2010, is amended to read
37 as follows:

38 (a) Any of the felonies set forth in this chapter: sections 120.05,
39 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-
40 ing to strangulation; sections 125.10 to 125.27 relating to homicide;
41 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and
42 135.25 relating to kidnapping; section 135.35 relating to labor traf-
43 ficking; section 135.65 relating to coercion; sections 140.20, 140.25
44 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12
45 relating to criminal mischief; article one hundred fifty relating to
46 arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
47 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health
48 care fraud; article one hundred sixty relating to robbery; sections
49 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of
50 stolen property; sections 165.72 and 165.73 relating to trademark coun-
51 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
52 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
53 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
54 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating
55 to criminal diversion of prescription medications and prescriptions;
56 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,

1 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00,
2 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20
3 and 187.25 relating to residential mortgage fraud, sections 190.40 and
4 190.42 relating to criminal usury; section 190.65 relating to schemes to
5 defraud; sections 205.60 and 205.65 relating to hindering prosecution;
6 sections 210.10, 210.15, and 215.51 relating to perjury and contempt;
7 section 215.40 relating to tampering with physical evidence; sections
8 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41,
9 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled
10 substances; sections 225.10 and 225.20 relating to gambling; sections
11 230.25, 230.30, and 230.32 relating to promoting prostitution; section
12 230.34 relating to sex trafficking; sections 235.06[,] AND 235.07[,
13 235.21 and 235.22] relating to obscenity; sections [263.10] 263.01,
14 263.02, 263.03, 263.06, 263.07, 263.08, 263.09, 263.13 and [263.15]
15 263.14 relating to [promoting a sexual performance by a] child SEXUAL
16 ABUSE, EXPLOITATION AND PORNOGRAPHY; SECTION 263.18 RELATING TO SEX
17 CRIMES AGAINST CHILDREN; sections 265.02, 265.03, 265.04, 265.11,
18 265.12, 265.13 and the provisions of section 265.10 which constitute a
19 felony relating to firearms and other dangerous weapons; and sections
20 265.14 and 265.16 relating to criminal sale of a firearm; and section
21 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings;
22 and sections 470.05, 470.10, 470.15 and 470.20 relating to money laun-
23 dering; or

24 S 39. Subdivision 1 of section 50-b of the civil rights law, as
25 amended by chapter 320 of the laws of 2006, is amended to read as
26 follows:

27 1. The identity of any victim of a sex offense, as defined in article
28 one hundred thirty, ARTICLE TWO HUNDRED SIXTY-THREE or section 255.25,
29 255.26 or 255.27 of the penal law, or of an offense involving the
30 alleged transmission of the human immunodeficiency virus, shall be
31 confidential. No report, paper, picture, photograph, court file or other
32 documents, in the custody or possession of any public officer or employ-
33 ee, which identifies such a victim shall be made available for public
34 inspection. No such public officer or employee shall disclose any
35 portion of any police report, court file, or other document, which tends
36 to identify such a victim except as provided in subdivision two of this
37 section.

38 S 40. Subdivision 2 of section 61 of the civil rights law, as amended
39 by chapter 320 of the laws of 2006, is amended to read as follows:

40 2. If the petitioner stands convicted of a violent felony offense as
41 defined in section 70.02 of the penal law or a felony defined in article
42 one hundred twenty-five of such law or any of the following provisions
43 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
44 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06,
45 230.06-A, subdivision two of section 230.30 or 230.32, and is currently
46 confined as an inmate in any correctional facility or currently under
47 the supervision of the state division of parole or a county probation
48 department as a result of such conviction, the petition shall for each
49 such conviction specify such felony conviction, the date of such
50 conviction or convictions, and the court in which such conviction or
51 convictions were entered.

52 S 41. Subdivision 2 of section 62 of the civil rights law, as amended
53 by chapter 320 of the laws of 2006, is amended to read as follows:

54 2. If the petition be to change the name of a person currently
55 confined as an inmate in any correctional facility or currently under
56 the supervision of the state division of parole or a county probation

1 department as a result of a conviction for a violent felony offense as
2 defined in section 70.02 of the penal law or a felony defined in article
3 one hundred twenty-five of such law or any of the following provisions
4 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
5 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06,
6 230.06-A, subdivision two of section 230.30 or 230.32, notice of the
7 time and place when and where the petition will be presented shall be
8 served, in like manner as a notice of a motion upon an attorney in an
9 action, upon the district attorney of every county in which such person
10 has been convicted of such felony and upon the court or courts in which
11 the sentence for such felony was entered. Unless a shorter period of
12 time is ordered by the court, said notice shall be served upon each such
13 district attorney and court or courts not less than sixty days prior to
14 the date on which such petition is noticed to be heard.

15 S 42. The closing paragraph of section 64 of the civil rights law, as
16 separately amended by chapters 258, 320 and 481 of the laws of 2006, is
17 amended to read as follows:

18 Upon compliance with the order and the filing of the affidavit of the
19 publication, as provided in this section, the clerk of the court in
20 which the order has been entered shall certify that the order has been
21 complied with; and, if the petition states that the petitioner stands
22 convicted of a violent felony offense as defined in section 70.02 of the
23 penal law or a felony defined in article one hundred twenty-five of such
24 law or any of the following provisions of such law sections 130.25,
25 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred
26 sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two
27 of section 230.30 or 230.32, such clerk (1) shall deliver, by first
28 class mail, a copy of such certified order to the division of criminal
29 justice services at its office in the county of Albany and (2) upon the
30 clerk of the court reviewing the petitioner's application for name
31 change and subsequent in-court inquiry, may, in the clerk's discretion,
32 deliver, by first class mail, the petitioner's new name with such certi-
33 fied order to the court of competent jurisdiction which imposed the
34 orders of support. Such certification shall appear on the original
35 order and on any certified copy thereof and shall be entered in the
36 clerk's minutes of the proceeding.

37 S 43. Paragraph (d) of subdivision 7 of section 995 of the executive
38 law, as amended by chapter 2 of the laws of 2006, is amended to read as
39 follows:

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

42 aggravated assault upon a person less than eleven years old, as
43 defined in section 120.12 of the penal law; menacing in the first
44 degree, as defined in section 120.13 of the penal law; reckless endan-
45 germent in the first degree, as defined in section 120.25 of the penal
46 law; stalking in the second degree, as defined in section 120.55 of the
47 penal law; criminally negligent homicide, as defined in section 125.10
48 of the penal law; vehicular manslaughter in the second degree, as
49 defined in section 125.12 of the penal law; vehicular manslaughter in
50 the first degree, as defined in section 125.13 of the penal law;
51 persistent sexual abuse, as defined in section 130.53 of the penal law;
52 aggravated sexual abuse in the fourth degree, as defined in section
53 130.65-a of the penal law; female genital mutilation, as defined in
54 section 130.85 of the penal law; facilitating a sex offense with a
55 controlled substance, as defined in section 130.90 of the penal law;
56 unlawful imprisonment in the first degree, as defined in section 135.10

1 of the penal law; custodial interference in the first degree, as defined
2 in section 135.50 of the penal law; criminal trespass in the first
3 degree, as defined in section 140.17 of the penal law; criminal tamper-
4 ing in the first degree, as defined in section 145.20 of the penal law;
5 tampering with a consumer product in the first degree, as defined in
6 section 145.45 of the penal law; robbery in the third degree as defined
7 in section 160.05 of the penal law; identity theft in the second degree,
8 as defined in section 190.79 of the penal law; identity theft in the
9 first degree, as defined in section 190.80 of the penal law; promoting
10 prison contraband in the first degree, as defined in section 205.25 of
11 the penal law; tampering with a witness in the third degree, as defined
12 in section 215.11 of the penal law; tampering with a witness in the
13 second degree, as defined in section 215.12 of the penal law; tampering
14 with a witness in the first degree, as defined in section 215.13 of the
15 penal law; criminal contempt in the first degree, as defined in subdivi-
16 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
17 criminal contempt, as defined in section 215.52 of the penal law; bail
18 jumping in the second degree, as defined in section 215.56 of the penal
19 law; bail jumping in the first degree, as defined in section 215.57 of
20 the penal law; patronizing a prostitute in the second degree, as defined
21 in section 230.05 of the penal law; patronizing a prostitute in the
22 first degree, as defined in section 230.06 of the penal law; SEXUAL
23 EXPLOITATION OF A CHILD, AS DEFINED IN SECTION 230.06-A; promoting pros-
24 titution in the second degree, as defined in section 230.30 of the penal
25 law; promoting prostitution in the first degree, as defined in section
26 230.32 of the penal law; compelling prostitution, as defined in section
27 230.33 of the penal law; disseminating indecent [materials] MATERIAL to
28 minors in the second degree, as defined in section [235.21] 263.02 of
29 the penal law; disseminating indecent [materials] MATERIAL to minors in
30 the first degree, as defined in section [235.22] 263.03 of the penal
31 law; riot in the first degree, as defined in section 240.06 of the penal
32 law; criminal anarchy, as defined in section 240.15 of the penal law;
33 aggravated harassment of an employee by an inmate, as defined in section
34 240.32 of the penal law; unlawful surveillance in the second degree, as
35 defined in section 250.45 of the penal law; unlawful surveillance in the
36 first degree, as defined in section 250.50 of the penal law; endangering
37 the welfare of a vulnerable elderly person in the second degree, as
38 defined in section 260.32 of the penal law; endangering the welfare of a
39 vulnerable elderly person in the first degree, as defined in section
40 260.34 of the penal law; use of a child in a sexual performance IN THE
41 SECOND DEGREE, as defined in section [263.05] 263.06 of the penal law;
42 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE, AS DEFINED
43 IN SECTION 263.07 OF THE PENAL LAW; promoting an obscene sexual perform-
44 ance by a child IN THE SECOND DEGREE, as defined in section [263.10]
45 263.08 of the penal law; PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
46 CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.09 OF THE PENAL
47 LAW; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD
48 DEGREE, AS DEFINED IN SECTION 263.10 OF THE PENAL LAW; POSSESSING AN
49 OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE, AS DEFINED
50 IN SECTION 263.11 OF THE PENAL LAW; possessing an obscene sexual
51 performance by a child IN THE FIRST DEGREE, as defined in section
52 [263.11] 263.12 of the penal law; promoting a sexual performance by a
53 child[, as defined in section 263.15 of the penal law; possessing a
54 sexual performance by a child, as defined in section 263.16] IN THE
55 SECOND DEGREE, AS DEFINED IN SECTION 263.13 OF THE PENAL LAW; PROMOTING
56 A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN

1 SECTION 263.14 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORMANCE BY A
2 CHILD IN THE THIRD DEGREE, AS DEFINED IN SECTION 263.15 OF THE PENAL
3 LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE, AS
4 DEFINED IN SECTION 263.16 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORM-
5 ANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.17 of the
6 penal law; criminal possession of a weapon in the third degree, as
7 defined in section 265.02 of the penal law; criminal sale of a firearm
8 in the third degree, as defined in section 265.11 of the penal law;
9 criminal sale of a firearm to a minor, as defined in section 265.16 of
10 the penal law; unlawful wearing of a body vest, as defined in section
11 270.20 of the penal law; hate crimes as defined in section 485.05 of the
12 penal law; and crime of terrorism, as defined in section 490.25 of the
13 penal law; or

14 S 44. Subdivision 2 of section 344.4 of the family court act, as added
15 by chapter 761 of the laws of 1987, is amended to read as follows:

16 2. proves or tends to prove that the victim has been convicted of an
17 offense under section 230.00 OR 230.01 of the penal law within three
18 years prior to the sex offense which is the subject of the juvenile
19 delinquency proceeding; or

20 S 45. Subdivisions (f) and (p) of section 10.03 of the mental hygiene
21 law, subdivision (f) as amended by chapter 405 of the laws of 2010 and
22 subdivision (p) as added by chapter 7 of the laws of 2007, are amended
23 to read as follows:

24 (f) "Designated felony" means any felony offense defined by any of the
25 following provisions of the penal law: assault in the second degree as
26 defined in section 120.05, assault in the first degree as defined in
27 section 120.10, gang assault in the second degree as defined in section
28 120.06, gang assault in the first degree as defined in section 120.07,
29 stalking in the first degree as defined in section 120.60, strangulation
30 in the second degree as defined in section 121.12, strangulation in the
31 first degree as defined in section 121.13, manslaughter in the second
32 degree as defined in subdivision one of section 125.15, manslaughter in
33 the first degree as defined in section 125.20, murder in the second
34 degree as defined in section 125.25, aggravated murder as defined in
35 section 125.26, murder in the first degree as defined in section 125.27,
36 kidnapping in the second degree as defined in section 135.20, kidnapping
37 in the first degree as defined in section 135.25, burglary in the third
38 degree as defined in section 140.20, burglary in the second degree as
39 defined in section 140.25, burglary in the first degree as defined in
40 section 140.30, arson in the second degree as defined in section 150.15,
41 arson in the first degree as defined in section 150.20, robbery in the
42 third degree as defined in section 160.05, robbery in the second degree
43 as defined in section 160.10, robbery in the first degree as defined in
44 section 160.15, promoting prostitution in the second degree as defined
45 in section 230.30, promoting prostitution in the first degree as defined
46 in section 230.32, compelling prostitution as defined in section 230.33,
47 disseminating indecent material to minors in the first degree as defined
48 in section [235.22] 263.03, use of a child in a sexual performance IN
49 THE SECOND DEGREE as defined in section [263.05] 263.06, USE OF A CHILD
50 IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION
51 263.07, promoting an obscene sexual performance by a child IN THE SECOND
52 DEGREE as defined in section [263.10] 263.08, PROMOTING AN OBSCENE SEXU-
53 AL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION
54 263.09, promoting a sexual performance by a child IN THE SECOND DEGREE
55 as defined in section [263.15] 263.13, PROMOTING A SEXUAL PERFORMANCE BY

1 A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14, or any felony
2 attempt or conspiracy to commit any of the foregoing offenses.

3 (p) "Sex offense" means an act or acts constituting: (1) any felony
4 defined in article one hundred thirty of the penal law, including a
5 sexually motivated felony; (2) patronizing a prostitute in the first
6 degree as defined in section 230.06 of the penal law, incest in the
7 second degree as defined in section 255.26 of the penal law, SEXUAL
8 EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THE PENAL LAW,
9 or incest in the first degree as defined in section 255.27 of the penal
10 law; (3) a felony attempt or conspiracy to commit any of the foregoing
11 offenses set forth in this subdivision; or (4) a designated felony, as
12 defined in subdivision (f) of this section, if sexually motivated and
13 committed prior to the effective date of this article.

14 S 46. Subdivision 2 of section 353 of the multiple dwelling law, as
15 amended by chapter 680 of the laws of 1967, is amended to read as
16 follows:

17 2. If there be two or more convictions in such dwelling within a peri-
18 od of six months, under sections 230.00, 230.01, 230.25, [or] 230.40 OR
19 230.45 of the penal law.

20 S 47. Subdivision 1 of section 2302 of the public health law, as
21 amended by chapter 680 of the laws of 1967, is amended to read as
22 follows:

23 1. Every person arrested charged with a violation of section 230.00
24 [or], 230.01, 230.40 OR 230.45 of the penal law, or arrested for failure
25 to comply with the order of a judge or justice issued pursuant to the
26 provisions of section two thousand three hundred one of this chapter, or
27 any person arrested for frequenting disorderly houses or houses of pros-
28 titution, shall be reported within twenty-four hours by the court or
29 magistrate before whom such person is arraigned to the health officer of
30 the health district in which the alleged offense occurred, and shall be
31 examined in accordance with the provisions of section two thousand three
32 hundred of this chapter.

33 S 48. Paragraph (b) of subdivision 3 of section 2324 of the public
34 health law, as amended by chapter 680 of the laws of 1967, is amended to
35 read as follows:

36 (b) An admission or finding of guilt of any person of a violation of
37 section 230.40 OR 230.45 of the penal law at such place shall be
38 presumptive evidence of the nuisance, and a plea of guilty or a
39 conviction in a criminal action of maintaining a nuisance at the place
40 described in the complaint shall be prima facie evidence of the
41 nuisance, and the records of any court in the jurisdiction shall be
42 admissible as evidence to prove the conviction or plea of guilty.

43 S 49. Section 2324-a of the public health law, as amended by chapter
44 260 of the laws of 1978, is amended to read as follows:

45 S 2324-a. Presumptive evidence. For the purposes of this title, two or
46 more convictions of any person or persons had, within a period of one
47 year, for any of the offenses described in section 230.00, 230.01,
48 230.05, 230.20, 230.25 or 230.30 of the penal law arising out of conduct
49 engaged in at the same real property consisting of a dwelling as that
50 term is defined in subdivision four of section four of the multiple
51 dwelling law shall be presumptive evidence of conduct constituting use
52 of the premises for purposes of prostitution.

53 S 50. Subdivisions 1 and 4 of section 126 of the alcoholic beverage
54 control law, as amended by chapter 366 of the laws of 1992, are amended
55 to read as follows:

1 1. Except as provided in subdivision one-a of this section, a person
2 who has been convicted of a felony or any of the misdemeanors mentioned
3 in section eleven hundred forty-six of the former penal law as in force
4 and effect immediately prior to September first, nineteen hundred
5 sixty-seven, or of an offense defined in section 230.20 [or], 230.40 OR
6 230.45 of the penal law, unless subsequent to such conviction such
7 person shall have received an executive pardon therefor removing this
8 disability, a certificate of good conduct granted by the board of
9 parole, or a certificate of relief from disabilities granted by the
10 board of parole or a court of this state pursuant to the provisions of
11 article twenty-three of the correction law to remove the disability
12 under this section because of such conviction.

13 4. A copartnership or a corporation, unless each member of the part-
14 nership, or each of the principal officers and directors of the corpo-
15 ration, is a citizen of the United States or an alien lawfully admitted
16 for permanent residence in the United States, not less than twenty-one
17 years of age, and has not been convicted of any felony or any of the
18 misdemeanors, specified in section eleven hundred forty-six of the
19 former penal law as in force and effect immediately prior to September
20 first, nineteen hundred sixty-seven, or of an offense defined in section
21 230.20 [or], 230.40 OR 230.45 of the penal law, or if so convicted has
22 received, subsequent to such conviction, an executive pardon therefor
23 removing this disability a certificate of good conduct granted by the
24 board of parole, or a certificate of relief from disabilities granted by
25 the board of parole or a court of this state pursuant to the provisions
26 of article twenty-three of the correction law to remove the disability
27 under this section because of such conviction; provided however that a
28 corporation which otherwise conforms to the requirements of this section
29 and chapter may be licensed if each of its principal officers and more
30 than one-half of its directors are citizens of the United States or
31 aliens lawfully admitted for permanent residence in the United States;
32 and provided further that a corporation organized under the not-for-pro-
33 fit corporation law or the education law which otherwise conforms to the
34 requirements of this section and chapter may be licensed if each of its
35 principal officers and more than one-half of its directors are not less
36 than twenty-one years of age and none of its directors are less than
37 eighteen years of age; and provided further that a corporation organized
38 under the not-for-profit corporation law or the education law and
39 located on the premises of a college as defined by section two of the
40 education law which otherwise conforms to the requirements of this
41 section and chapter may be licensed if each of its principal officers
42 and each of its directors are not less than eighteen years of age.

43 S 51. Subdivision 2 of section 715 of the real property actions and
44 proceedings law, as added by chapter 494 of the laws of 1976, is amended
45 to read as follows:

46 2. For purposes of this section, two or more convictions of any person
47 or persons had, within a period of one year, for any of the offenses
48 described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30
49 [or], 230.40 OR 230.45 of the penal law arising out of conduct engaged
50 in at the same real property consisting of a dwelling as that term is
51 defined in subdivision four of section four of the multiple dwelling law
52 shall be presumptive evidence of conduct constituting use of the prem-
53 ises for purposes of prostitution.

54 S 52. Subdivision 3 of section 231 of the real property law, as
55 amended by chapter 203 of the laws of 1980, is amended to read as
56 follows:

1 3. For the purposes of this section, two or more convictions of any
2 person or persons had, within a period of one year, for any of the
3 offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25,
4 230.30, [or] 230.40 OR 230.45 of the penal law arising out of conduct
5 engaged in at the same premises consisting of a dwelling as that term is
6 defined in subdivision four of section four of the multiple dwelling law
7 shall be presumptive evidence of unlawful use of such premises and of
8 the owners knowledge of the same.

9 S 53. Subdivision 2 of section 35.07 of the arts and cultural affairs
10 law, as added by chapter 160 of the laws of 2007, is amended to read as
11 follows:

12 2. It shall be unlawful for any person to employ, use or exhibit any
13 person under eighteen years of age as a dancer or performer in any
14 portion of a facility open to the public wherein performers appear and
15 dance or otherwise perform unclothed, under circumstances in which such
16 employment would be harmful to such person in the manner defined in
17 subdivision [six] TWELVE of section [235.20] 263.00 of the penal law.

18 S 54. Subdivision 1 of section 390-c of the general business law, as
19 added by chapter 160 of the laws of 2007, is amended to read as follows:

20 1. No person under the age of eighteen years shall be admitted to any
21 portion of a facility open to the public wherein performers appear and
22 dance or otherwise perform unclothed, under circumstances where viewing
23 such dancing or performance would be harmful to such person, in the
24 manner described in subdivision [six] TWELVE of section [235.20] 263.00
25 of the penal law.

26 S 55. Paragraph s of subdivision 2 of section 133 of the labor law, as
27 added by chapter 160 of the laws of 2007, is amended to read as follows:

28 s. as a dancer or performer in any portion of a facility open to the
29 public wherein performers appear and dance or otherwise perform
30 unclothed, under circumstances in which such employment would be harmful
31 to such person in the manner defined in subdivision [six] TWELVE of
32 section [235.20] 263.00 of the penal law.

33 S 56. Subdivision 6 of section 6330 of the civil practice law and
34 rules, as amended by chapter 826 of the laws of 1972, is amended to read
35 as follows:

36 6. The court, in its adjudication, may (1) grant the relief sought (2)
37 deny the relief sought or (3) enjoin the sale, further sale, display,
38 distribution, further distribution, acquisition, publication, or
39 possession of the material, to persons under the age of seventeen, upon
40 a finding that the material is of the kind described in paragraph [a]
41 (A) or [b] (B) of subdivision one of section [235.21] 263.02 of the
42 penal law.

43 S 57. Paragraphs (b) and (c) of subdivision 4 of section 509-cc of the
44 vehicle and traffic law, paragraph (b) as amended by chapter 360 of the
45 laws of 1986 and paragraph (c) as amended by chapter 405 of the laws of
46 2010, are amended to read as follows:

47 (b) The offenses referred to in subparagraph (ii) of paragraph (a) of
48 subdivision one and paragraph (b) of subdivision two of this section
49 that result in permanent disqualification shall include a conviction
50 under sections 100.13, 105.15, 105.17, 115.08, 125.10, 125.15, 130.40,
51 130.60, 130.65, 135.20, 160.15, 220.18, 220.21, 220.39, 220.41, 220.43,
52 260.00, [263.05, 263.10, 263.15] 263.06, 263.07, 263.08, 263.09, 263.13,
53 263.14, 265.04 OR ARTICLE TWO HUNDRED SIXTY-THREE of the penal law or an
54 attempt to commit any of the aforesaid offenses under section 110.00 of
55 the penal law, or any offenses committed under a former section of the
56 penal law which would constitute violations of the aforesaid sections of

1 the penal law, or any offenses committed outside this state which would
2 constitute violations of the aforesaid sections of the penal law.

3 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
4 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
5 of this section that result in disqualification for a period of five
6 years shall include a conviction under sections 100.10, 105.13, 115.05,
7 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,
8 125.13, 125.14, 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55,
9 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06,
10 220.09, 220.16, 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00,
11 230.01, 230.05, 230.06, 230.06-A, 230.20, 230.25, 230.30, 230.32,
12 235.05, 235.06, 235.07, [235.21,] 240.06, 245.00, 260.10, subdivision
13 two of section 260.20 and sections 260.25, 263.02, 265.02, 265.03,
14 265.08, 265.09, 265.10, 265.12, 265.35 of the penal law or an attempt to
15 commit any of the aforesaid offenses under section 110.00 of the penal
16 law, or any similar offenses committed under a former section of the
17 penal law, or any offenses committed under a former section of the penal
18 law which would constitute violations of the aforesaid sections of the
19 penal law, or any offenses committed outside this state which would
20 constitute violations of the aforesaid sections of the penal law.

21 S 58. This act shall take effect on the first of November next
22 succeeding the date on which it shall have become a law.