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

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2011-2012 Regular Sessions

I N A S S E M B L Y

June 3, 2011

Introduced by M. of A. PERRY, P. RIVERA, MAISEL, ROBERTS, JAFFEE, GIBSON, STEVENSON, MOYA -- Multi-Sponsored by -- M. of A. ARROYO, BOYLAND, CRESPO, McENENY, SCARBOROUGH, THIELE -- read once and referred to the Committee on Social Services -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, the family court act and the penal law, in relation to creating an education reform program for certain individuals charged with certain offenses involving the creation, exhibition or distribution of a photograph depicting nudity through the use of an electronic communication device, an interactive wireless communications device or a computer

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

1 Section 1. This act shall be known and may be cited as "the cyber-
2 crime youth rescue act".
3 S 2. Article 6 of the social services law is amended by adding a new
4 title 11 to read as follows:
5 TITLE 11
6 EDUCATION REFORM PROGRAM
7 SECTION 458-L. EDUCATION REFORM PROGRAM.
8 S 458-L. EDUCATION REFORM PROGRAM. 1. AS USED IN THIS SECTION:
9 (A) "ELIGIBLE PERSON" MEANS AN INDIVIDUAL WHO IS THE SUBJECT OF A
10 PENDING PETITION IN FAMILY COURT ALLEGING HE OR SHE HAS COMMITTED AN
11 ELIGIBLE OFFENSE OR A PERSON WHO HAS BEEN CHARGED, IN CRIMINAL COURT,
12 WITH AN ELIGIBLE OFFENSE AS THAT TERM IS DEFINED IN PARAGRAPH (B) OF
13 THIS SUBDIVISION.
14 (B) "ELIGIBLE OFFENSE" MEANS A CRIME OR OFFENSE COMMITTED BY AN ELIGI-
15 BLE PERSON THAT INVOLVED CYBERBULLYING OR THE SENDING OR RECEIPT OF

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

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OBSCENITY, AS DEFINED IN SUBDIVISION ONE OF SECTION 235.00 OF THE PENAL LAW, OR NUDITY, AS DEFINED IN SUBDIVISION TWO OF SECTION 235.20 OF THE PENAL LAW, WHEN THE SENDER AND THE RECEIVER THEREOF WERE BOTH UNDER THE AGE OF TWENTY AT THE TIME OF SUCH COMMUNICATION, BUT NOT MORE THAN FIVE YEARS APART IN AGE.

(C) "PROGRAM" MEANS THE EDUCATION REFORM PROGRAM DEVELOPED PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

2. THE OFFICE OF CHILDREN AND FAMILY SERVICES, HEREINAFTER THE "OFFICE," SHALL DEVELOP AND IMPLEMENT, IN CONSULTATION WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE STATE EDUCATION DEPARTMENT, AN EDUCATION REFORM PROGRAM FOR ELIGIBLE PERSONS WHO HAVE BEEN REQUIRED TO COMPLETE SUCH PROGRAM PURSUANT TO ARTICLE THREE OR SEVEN OF THE FAMILY COURT ACT OR SECTION 60.37 OF THE PENAL LAW.

3. THE PROGRAM SHALL BE AVAILABLE IN EVERY JUDICIAL DISTRICT IN THE STATE; PROVIDED THAT IF THE OFFICE DETERMINES THAT THERE IS NOT A SUFFICIENT NUMBER OF ELIGIBLE OFFENSES IN A JUDICIAL DISTRICT TO MANDATE THE IMPLEMENTATION OF A PROGRAM, PROVISIONS SHALL BE MADE FOR THE RESIDENTS OF SUCH JUDICIAL DISTRICT TO PARTICIPATE IN A PROGRAM IN ANOTHER JUDICIAL DISTRICT WHERE A PROGRAM EXISTS IF PRACTICABLE WITH REGARD TO TRAVEL AND COST, OR TO COMPLETE THE EDUCATION COURSE ONLINE.

4. THE PROGRAM SHALL INVOLVE UP TO EIGHT HOURS OF INSTRUCTION AND SHALL PROVIDE, AT A MINIMUM, INFORMATION CONCERNING:

(A) THE LEGAL CONSEQUENCES OF AND POTENTIAL PENALTIES FOR SHARING SEXUALLY SUGGESTIVE MATERIALS, EXPLICIT MATERIALS OR ABUSIVE MATERIALS, INCLUDING SANCTIONS IMPOSED UNDER APPLICABLE FEDERAL AND STATE STATUTES;

(B) THE NON-LEGAL CONSEQUENCES OF SHARING SEXUALLY SUGGESTIVE MATERIALS, EXPLICIT MATERIALS OR ABUSIVE MATERIALS, INCLUDING, BUT NOT LIMITED TO, THE POSSIBLE EFFECT ON RELATIONSHIPS, LOSS OF EDUCATIONAL AND EMPLOYMENT OPPORTUNITIES, AND THE POTENTIAL FOR BEING BARRED OR REMOVED FROM SCHOOL PROGRAMS AND EXTRACURRICULAR ACTIVITIES;

(C) HOW THE UNIQUE CHARACTERISTICS OF CYBERSPACE AND THE INTERNET, INCLUDING THE POTENTIAL ABILITY OF AN INFINITE AUDIENCE TO UTILIZE THE INTERNET TO SEARCH FOR AND REPLICATE MATERIALS, CAN PRODUCE LONG-TERM AND UNFORESEEN CONSEQUENCES FOR SHARING SEXUALLY SUGGESTIVE MATERIALS, EXPLICIT MATERIALS OR ABUSIVE MATERIALS; AND

(D) THE POTENTIAL CONNECTION BETWEEN BULLYING AND CYBER-BULLYING AND JUVENILES SHARING SEXUALLY SUGGESTIVE MATERIALS, EXPLICIT MATERIALS OR ABUSIVE MATERIALS.

5. UPON RECEIPT OF THE COURT ORDER, PURSUANT TO THE FAMILY COURT ACT OR SECTION 60.37 OF THE PENAL LAW, DIRECTING AN ELIGIBLE PERSON TO ATTEND THE PROGRAM, THE OFFICE, AFTER CONSULTATION WITH THE ELIGIBLE PERSON AND THE ATTORNEY FOR SUCH PERSON, SHALL SCHEDULE THE ELIGIBLE PERSON TO ATTEND THE NEXT AVAILABLE SESSION OF THE PROGRAM AND SHALL SEND WRITTEN NOTICE OF THE SCHEDULING, ALONG WITH THE DATE, TIME AND LOCATION OF THE SESSION OR SESSIONS, TO THE ELIGIBLE PERSON, THE ATTORNEY FOR SUCH PERSON AND THE CLERK OF THE REFERRING COURT.

6. WITHIN TWENTY DAYS OF THE DATE UPON WHICH THE ELIGIBLE PERSON COMPLETES THE PROGRAM, THE OFFICE SHALL PROVIDE SUCH PERSON WITH A CERTIFICATION THAT HE OR SHE HAS SUCCESSFULLY COMPLETED THE PROGRAM.

S 3. Subdivision 1 of section 315.3 of the family court act, as amended by chapter 237 of the laws of 1991, is amended to read as follows:

1. Except where the petition alleges that the respondent has committed a designated felony act, the court may at any time prior to the entering of a finding under section 352.1 and with the consent of the respondent order that the proceeding be "adjourned in contemplation of dismissal".

An adjournment in contemplation of dismissal is an adjournment of the proceeding, for a period not to exceed six months, with a view to ultimate dismissal of the petition in furtherance of justice. Upon issuing such an order, providing such terms and conditions as the court deems appropriate, the court must release the respondent. The court may, as a condition of an adjournment in contemplation of dismissal order, in cases where the record indicates that the consumption of alcohol may have been a contributing factor, require the respondent to attend and complete an alcohol awareness program established pursuant to [paragraph six-a] of subdivision (a) of section 19.07 of the mental hygiene law. THE COURT MAY, AS A CONDITION OF AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL ORDER, IN CASES WHERE THE RECORD INDICATES THAT THE RESPONDENT IS AN ELIGIBLE PERSON AS DEFINED IN SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW AND HAS ALLEGEDLY COMMITTED AN ELIGIBLE OFFENSE AS DEFINED IN SUCH SECTION, DIRECT THE RESPONDENT TO ATTEND AND COMPLETE AN EDUCATION REFORM PROGRAM ESTABLISHED PURSUANT TO SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW. Upon ex parte motion by the presentment agency, or upon the court's own motion, made at the time the order is issued or at any time during its duration, the court may restore the matter to the calendar. If the proceeding is not restored, the petition is, at the expiration of the order, deemed to have been dismissed by the court in furtherance of justice.

S 4. Subdivision 1 of section 353.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

1. The court may conditionally discharge the respondent if the court, having regard for the nature and circumstances of the crime and for the history, character and condition of the respondent, is of the opinion that consistent with subdivision two of section 352.2, neither the public interest nor the ends of justice would be served by a placement and that probation supervision is not appropriate. THE COURT MAY, AS A CONDITION OF A CONDITIONAL DISCHARGE, IN CASES WHERE THE RECORD INDICATES THE RESPONDENT QUALIFIES AS AN ELIGIBLE PERSON AND HAS BEEN ADJUDICATED FOR AN ELIGIBLE OFFENSE AS DEFINED IN SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW, REQUIRE THE RESPONDENT TO ATTEND AND COMPLETE AN EDUCATION REFORM PROGRAM ESTABLISHED PURSUANT TO SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW.

S 5. Paragraph (i) of subdivision (d) of section 735 of the family court act, as added by section 7 of part E of chapter 57 of the laws of 2005, is amended to read as follows:

(i) providing, at the first contact, information on the availability of or a referral to services in the geographic area where the youth and his or her family are located that may be of benefit in avoiding the need to file a petition under this article; including the availability, for up to twenty-one days, of a residential respite program, if the youth and his or her parent or other person legally responsible for his or her care agree, and the availability of other non-residential crisis intervention programs such as family crisis counseling or alternative dispute resolution programs OR AN EDUCATIONAL PROGRAM AS DEFINED IN SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW.

S 6. The penal law is amended by adding a new section 60.37 to read as follows:

S 60.37 AUTHORIZED DISPOSITION; CERTAIN OFFENSES.

WHEN A PERSON HAS BEEN CHARGED WITH AN OFFENSE AND THE ELEMENTS OF SUCH OFFENSE MEET THE CRITERIA OF AN "ELIGIBLE OFFENSE" AND SUCH PERSON QUALIFIES AS AN "ELIGIBLE PERSON" AS SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW, THE COURT MAY, AS

A CONDITION OF PROBATION OR A CONDITIONAL DISCHARGE, DIRECT THAT THE DEFENDANT PARTICIPATE IN AN EDUCATION REFORM PROGRAM PURSUANT TO SUBDIVISION TWO OF SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW.

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that, effective immediately, the commissioner of the office of children and family services shall promulgate any rules and regulations and take all other actions necessary to implement the provisions of this act on or before such effective date.