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I N A S S E M B L Y

January 10, 2012

Introduced by M. of A. SCARBOROUGH, P. RIVERA, SIMANOWITZ, M. MILLER, COLTON, GIBSON, ORTIZ, CRESPO, GUNTHER, CASTRO, JAFFEE, TITONE, COOK, ENGLEBRIGHT, SCHIMMINGER, LINARES, ROBERTS, RODRIGUEZ, WEPRIN -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, BURLING, CERETTO, CORWIN, CROUCH, FINCH, GALEF, GIGLIO, JOHNS, LOSQUADRO, MARKEY, McENEANY, MONTESANO, MURRAY, RAIA, REILLY, TOBACCO, WALTER -- read once 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 penal law, in relation to the electronic stalking of a minor, criminal impersonation by means of electronic communications and aggravated harassment by means of electronic communication

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

- 1 Section 1. Section 120.40 of the penal law is amended by adding a new  
2 subdivision 6 to read as follows:  
3 6. "ELECTRONIC COMMUNICATION" SHALL MEAN ANY TRANSFER OF SIGNS,  
4 SIGNALS, WRITINGS, IMAGES, SOUNDS, DATA OR INTELLIGENCE OF ANY NATURE  
5 TRANSMITTED IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC,  
6 PHOTO-ELECTRONIC OR PHOTO-OPTIONAL SYSTEM. ELECTRONIC COMMUNICATION  
7 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE TRANSFER OF SUCH COMMUNI-  
8 CATIONS THROUGH THE INTERNET.  
9 S 2. Subdivision 4 of section 120.50 of the penal law, as added by  
10 chapter 635 of the laws of 1999, is amended and a new subdivision 5 is  
11 added to read as follows:  
12 4. Commits the crime of stalking in the fourth degree and has previ-  
13 ously been convicted within the preceding ten years of stalking in the  
14 fourth degree[.]; OR  
15 5. INTENTIONALLY, AND FOR NO LEGITIMATE PURPOSE, ENGAGES IN A COURSE  
16 OF CONDUCT USING ELECTRONIC COMMUNICATION DIRECTED AT A CHILD UNDER THE  
17 AGE OF TWENTY-ONE YEARS, AND SUCH CONDUCT:  
18 (A) IS LIKELY TO CAUSE SUCH CHILD A REASONABLE FEAR OF MATERIAL HARM  
19 TO HIS OR HER PHYSICAL HEALTH, SAFETY OR PROPERTY; OR

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

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1 (B) IS LIKELY TO CAUSE MATERIAL HARM TO THE PHYSICAL HEALTH, EMOTIONAL  
2 HEALTH, SAFETY OR PROPERTY OF SUCH CHILD.

3 FOR THE PURPOSES OF THIS SUBDIVISION, ANY ELECTRONIC COMMUNICATIONS  
4 DIRECTED AT A CHILD UNDER THE AGE OF TWENTY-ONE YEARS AND TRANSMITTED TO  
5 MULTIPLE RECIPIENTS NEED NOT BE RECEIVED BY THE CHILD AT WHOM SUCH  
6 COMMUNICATIONS ARE DIRECTED.

7 S 3. Paragraph (b) of subdivision 3 and subdivision 4 of section  
8 190.25 of the penal law, paragraph (b) of subdivision 3 as amended by  
9 chapter 27 of the laws of 1980 and subdivision 4 as added by chapter 304  
10 of the laws of 2008, are amended and a new subdivision 5 is added to  
11 read as follows:

12 (b) so acts with intent to induce another to submit to such pretended  
13 official authority, to solicit funds or to otherwise cause another to  
14 act in reliance upon that pretense[.]; OR

15 4. Impersonates another by communication by internet website or elec-  
16 tronic means with intent to obtain a benefit or injure or defraud another,  
17 or by such communication pretends to be a public servant in order to  
18 induce another to submit to such authority or act in reliance on such  
19 pretense[.]; OR

20 5. IMPERSONATES ANOTHER PERSON BY ELECTRONIC COMMUNICATION, AND THERE-  
21 BY COMMITS A MISDEMEANOR. FOR THE PURPOSES OF THIS SUBDIVISION, "ELEC-  
22 TRONIC COMMUNICATION" SHALL MEAN ANY TRANSFER OF SIGNS, SIGNALS, WRIT-  
23 INGS, IMAGES, SOUNDS, DATA OR INTELLIGENCE OF ANY NATURE TRANSMITTED IN  
24 WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC, PHOTO-ELECTRONIC OR  
25 PHOTO-OPTIONAL SYSTEM. ELECTRONIC COMMUNICATION SHALL INCLUDE, BUT NOT  
26 BE LIMITED TO, THE TRANSFER OF SUCH COMMUNICATIONS THROUGH THE INTERNET.

27 S 4. Subdivision 3 of section 190.26 of the penal law, as added by  
28 chapter 2 of the laws of 1998, is amended and a new subdivision 4 is  
29 added to read as follows:

30 3. Pretending to be a duly licensed physician or other person author-  
31 ized to issue a prescription for any drug or any instrument or device  
32 used in the taking or administering of drugs for which a prescription is  
33 required by law, communicates to a pharmacist an oral prescription which  
34 is required to be reduced to writing pursuant to section thirty-three  
35 hundred thirty-two of the public health law[.]; OR

36 4. IMPERSONATES ANOTHER PERSON BY ELECTRONIC COMMUNICATION, AND THERE-  
37 BY COMMITS A FELONY. FOR THE PURPOSES OF THIS SUBDIVISION, "ELECTRONIC  
38 COMMUNICATION" SHALL MEAN ANY TRANSFER OF SIGNS, SIGNALS, WRITINGS,  
39 IMAGES, SOUNDS, DATA OR INTELLIGENCE OF ANY NATURE TRANSMITTED IN WHOLE  
40 OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC, PHOTO-ELECTRONIC OR  
41 PHOTO-OPTIONAL SYSTEM. ELECTRONIC COMMUNICATION SHALL INCLUDE, BUT NOT  
42 BE LIMITED TO, THE TRANSFER OF SUCH COMMUNICATIONS THROUGH THE INTERNET.

43 S 5. Section 240.00 of the penal law is amended by adding a new subdi-  
44 vision 7 to read as follows:

45 7. "ELECTRONIC COMMUNICATION" MEANS ANY TRANSFER OF SIGNS, SIGNALS,  
46 WRITINGS, IMAGES, SOUNDS, DATA OR INTELLIGENCE OF ANY NATURE TRANSMITTED  
47 IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC, PHOTO-ELECTRONIC  
48 OR PHOTO-OPTIONAL SYSTEM. ELECTRONIC COMMUNICATION SHALL INCLUDE, BUT  
49 NOT BE LIMITED TO, THE TRANSFER OF SUCH COMMUNICATIONS THROUGH THE  
50 INTERNET.

51 S 6. Subdivision 1 of section 240.30 of the penal law, as amended by  
52 chapter 510 of the laws of 2008, is amended to read as follows:

53 1. Either (a) communicates with a person, anonymously or otherwise, by  
54 telephone, BY ELECTRONIC COMMUNICATION, by telegraph, or by mail, or by  
55 transmitting or delivering any other form of written communication, in a  
56 manner likely to cause annoyance or alarm; or

1 (b) causes a communication to be initiated by mechanical or electronic  
2 means or otherwise with a person, anonymously or otherwise, by tele-  
3 phone, BY ELECTRONIC COMMUNICATION, by telegraph, or by mail, or by  
4 transmitting or delivering any other form of written communication, in a  
5 manner likely to cause annoyance or alarm; or

6 S 7. This act shall take effect on the first of November next succeed-  
7 ing the date on which it shall have become a law.