

5226

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed 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.
11 S 3. Subdivision 2 of section 60.42 of the criminal procedure law, as
12 added by chapter 230 of the laws of 1975, is amended to read as follows:

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

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

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

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

10 (E) UNLAWFUL PROSTITUTION AS DEFINED IN SECTION 230.01 OF THE PENAL
11 LAW.

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

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

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

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

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

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

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

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

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

25 (e) in the case of a sexually motivated felony, as defined in section
26 130.91 of the penal law, asserts facts supporting the allegation that
27 the offense was sexually motivated; and

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

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

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

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

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

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

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

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

18 (h) Promoting prostitution in the first degree, as defined in section
19 230.32 of the penal law, promoting prostitution in the second degree, as
20 defined by subdivision one of section 230.30 of the penal law, COMPEL-
21 LING PROSTITUTION, AS DEFINED IN SECTION 230.33 OF THE PENAL LAW;

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

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

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

53 (a) (i) a conviction of or a conviction for an attempt to commit any
54 of the provisions of sections [120.70,] 130.20, 130.25, 130.30, 130.40,
55 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two
56 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20

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

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

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

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

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

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

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

38 S 60.13 Authorized dispositions; felony sex offenses.

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

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

54 1. Definition of a violent felony offense. A violent felony offense is
55 a class B violent felony offense, a class C violent felony offense, a

1 class D violent felony offense, or a class E violent felony offense,
2 defined as follows:

3 (a) Class B violent felony offenses: an attempt to commit the class
4 A-I felonies of murder in the second degree as defined in section
5 125.25, kidnapping in the first degree as defined in section 135.25, and
6 arson in the first degree as defined in section 150.20; manslaughter in
7 the first degree as defined in section 125.20, aggravated manslaughter
8 in the first degree as defined in section 125.22, rape in the first
9 degree as defined in section 130.35, criminal sexual act in the first
10 degree as defined in section 130.50, aggravated sexual abuse in the
11 first degree as defined in section 130.70, course of sexual conduct
12 against a child in the first degree as defined in section 130.75[;],
13 assault in the first degree as defined in section 120.10, kidnapping in
14 the second degree as defined in section 135.20, burglary in the first
15 degree as defined in section 140.30, arson in the second degree as
16 defined in section 150.15, robbery in the first degree as defined in
17 section 160.15, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION
18 230.06-A, PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN
19 SECTION 230.32, COMPELLING PROSTITUTION AS DEFINED IN SECTION 230.33,
20 incest in the first degree as defined in section 255.27, USE OF A CHILD
21 IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE AS DEFINED IN SECTION
22 263.07, criminal possession of a weapon in the first degree as defined
23 in section 265.04, criminal use of a firearm in the first degree as
24 defined in section 265.09, criminal sale of a firearm in the first
25 degree as defined in section 265.13, aggravated assault upon a police
26 officer or a peace officer as defined in section 120.11, gang assault in
27 the first degree as defined in section 120.07, intimidating a victim or
28 witness in the first degree as defined in section 215.17, hindering
29 prosecution of terrorism in the first degree as defined in section
30 490.35, criminal possession of a chemical weapon or biological weapon in
31 the second degree as defined in section 490.40, and criminal use of a
32 chemical weapon or biological weapon in the third degree as defined in
33 section 490.47.

34 (b) Class C violent felony offenses: an attempt to commit any of the
35 class B felonies set forth in paragraph (a) of this subdivision; aggra-
36 vated criminally negligent homicide as defined in section 125.11, aggra-
37 vated manslaughter in the second degree as defined in section 125.21,
38 aggravated sexual abuse in the second degree as defined in section
39 130.67, assault on a peace officer, police officer, fireman or emergency
40 medical services professional as defined in section 120.08, gang assault
41 in the second degree as defined in section 120.06, strangulation in the
42 first degree as defined in section 121.13, burglary in the second degree
43 as defined in section 140.25, robbery in the second degree as defined in
44 section 160.10, PROMOTING PROSTITUTION IN THE SECOND DEGREE AS DEFINED
45 IN SECTION 230.30, DISSEMINATING INDECENT MATERIALS TO MINORS IN THE
46 FIRST DEGREE AS DEFINED IN SECTION 263.03, USE OF A CHILD IN A SEXUAL
47 PERFORMANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 263.06, PROMOTING
48 AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED
49 IN SECTION 263.09, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD
50 IN THE FIRST DEGREE AS DEFINED IN SECTION 263.12, PROMOTING A SEXUAL
51 PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14,
52 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS
53 DEFINED IN SECTION 263.17, criminal possession of a weapon in the second
54 degree as defined in section 265.03, criminal use of a firearm in the
55 second degree as defined in section 265.08, criminal sale of a firearm
56 in the second degree as defined in section 265.12, criminal sale of a

firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

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

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

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

(a) For the purposes of this section, a "felony sex offense" means a conviction of any felony defined in article one hundred thirty of this chapter, including a sexually motivated felony, or patronizing a prostitute in the first degree as defined in section 230.06 of this chapter, incest in the second degree as defined in section 255.26 of this chapter, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF

1 THIS CHAPTER, or incest in the first degree as defined in section 255.27
2 of this chapter, or a felony attempt or conspiracy to commit any of the
3 above.

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

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

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

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

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

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

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

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

54 S 22. The penal law is amended by adding two new sections 156.40 and
55 156.41 to read as follows:

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

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

3 1. COMMIT, FURTHER, FACILITATE OR PROMOTE CONDUCT CONSTITUTING A
4 CRIME;

5 2. CONCEAL THE COMMISSION OF ANY CRIME;

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

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

10 CRIMINAL USE OF ENCRYPTION IN THE SECOND DEGREE IS A CLASS A MISDEMEA-
11 NOR.

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

13 A PERSON IS GUILTY OF CRIMINAL USE OF ENCRYPTION IN THE FIRST DEGREE
14 WHEN HE OR SHE COMMITS THE CRIME OF CRIMINAL USE OF ENCRYPTION IN THE
15 SECOND DEGREE AND HE OR SHE:

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

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

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

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

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

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

24 S 215.40 Tampering with physical evidence.

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

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

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

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

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

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

46 S 230.00 [Prostitution] CRIMINAL PROSTITUTION.

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

50 [Prostitution] CRIMINAL PROSTITUTION is a class B [Misdemeanor] MISDE-
51 MEANOR.

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

54 S 230.01 UNLAWFUL PROSTITUTION.

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

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

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

10 S 230.05 Patronizing a prostitute in the second degree.

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

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

16 S 230.06 Patronizing a prostitute in the first degree.

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

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

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

24 S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

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

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

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

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

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

33 S 230.07 Patronizing a prostitute; defense.

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

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

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

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

46 S 230.11 PROSTITUTION; DEFENSE.

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

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

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

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

56 S 230.33 Compelling prostitution.

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

5 Compelling prostitution is a class B felony.

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

8 S 230.40 Permitting prostitution IN THE SECOND DEGREE.

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

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

15 S 230.45 PERMITTING PROSTITUTION IN THE FIRST DEGREE.

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

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

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

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

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

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

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

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

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

53 S 37. Article 263 of the penal law is REPEALED and a new article 263
54 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.

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

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

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

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

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

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

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

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

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

15. "TELEPHONIC COMMUNICATION" AND "ELECTRONIC COMMUNICATION" SHALL HAVE THE MEANING GIVEN TO THOSE TERMS BY SUBDIVISIONS THREE AND FIVE RESPECTIVELY, OF SECTION 250.00 OF THIS CHAPTER.

S 263.01 LURING A CHILD.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 THERE-
26 OF, 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:

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

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

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

S 263.20 SEXUAL PERFORMANCE BY A CHILD; AFFIRMATIVE DEFENSES.

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

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

S 263.25 PROOF OF AGE OF CHILD.

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

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

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; 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 section 54 of subpart B of part C of chapter 62 of the laws of 2011,
40 is amended to read as follows:

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

53 S 41. Subdivision 2 of section 62 of the civil rights law, as amended
54 by section 55 of subpart B of part C of chapter 62 of the laws of 2011,
55 is amended to read as follows:

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

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

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

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

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

46 aggravated assault upon a person less than eleven years old, as
47 defined in section 120.12 of the penal law; menacing in the first
48 degree, as defined in section 120.13 of the penal law; reckless endan-
49 germent in the first degree, as defined in section 120.25 of the penal
50 law; stalking in the second degree, as defined in section 120.55 of the
51 penal law; criminally negligent homicide, as defined in section 125.10
52 of the penal law; vehicular manslaughter in the second degree, as
53 defined in section 125.12 of the penal law; vehicular manslaughter in
54 the first degree, as defined in section 125.13 of the penal law;
55 persistent sexual abuse, as defined in section 130.53 of the penal law;
56 aggravated sexual abuse in the fourth degree, as defined in section

1 130.65-a of the penal law; female genital mutilation, as defined in
2 section 130.85 of the penal law; facilitating a sex offense with a
3 controlled substance, as defined in section 130.90 of the penal law;
4 unlawful imprisonment in the first degree, as defined in section 135.10
5 of the penal law; custodial interference in the first degree, as defined
6 in section 135.50 of the penal law; criminal trespass in the first
7 degree, as defined in section 140.17 of the penal law; criminal tamper-
8 ing in the first degree, as defined in section 145.20 of the penal law;
9 tampering with a consumer product in the first degree, as defined in
10 section 145.45 of the penal law; robbery in the third degree as defined
11 in section 160.05 of the penal law; identity theft in the second degree,
12 as defined in section 190.79 of the penal law; identity theft in the
13 first degree, as defined in section 190.80 of the penal law; promoting
14 prison contraband in the first degree, as defined in section 205.25 of
15 the penal law; tampering with a witness in the third degree, as defined
16 in section 215.11 of the penal law; tampering with a witness in the
17 second degree, as defined in section 215.12 of the penal law; tampering
18 with a witness in the first degree, as defined in section 215.13 of the
19 penal law; criminal contempt in the first degree, as defined in subdivi-
20 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
21 criminal contempt, as defined in section 215.52 of the penal law; bail
22 jumping in the second degree, as defined in section 215.56 of the penal
23 law; bail jumping in the first degree, as defined in section 215.57 of
24 the penal law; patronizing a prostitute in the second degree, as defined
25 in section 230.05 of the penal law; patronizing a prostitute in the
26 first degree, as defined in section 230.06 of the penal law; SEXUAL
27 EXPLOITATION OF A CHILD, AS DEFINED IN SECTION 230.06-A; promoting pros-
28 titution in the second degree, as defined in section 230.30 of the penal
29 law; promoting prostitution in the first degree, as defined in section
30 230.32 of the penal law; compelling prostitution, as defined in section
31 230.33 of the penal law; disseminating indecent [materials] MATERIAL to
32 minors in the second degree, as defined in section [235.21] 263.02 of
33 the penal law; disseminating indecent [materials] MATERIAL to minors in
34 the first degree, as defined in section [235.22] 263.03 of the penal
35 law; riot in the first degree, as defined in section 240.06 of the penal
36 law; criminal anarchy, as defined in section 240.15 of the penal law;
37 aggravated harassment of an employee by an inmate, as defined in section
38 240.32 of the penal law; unlawful surveillance in the second degree, as
39 defined in section 250.45 of the penal law; unlawful surveillance in the
40 first degree, as defined in section 250.50 of the penal law; endangering
41 the welfare of a vulnerable elderly person in the second degree, as
42 defined in section 260.32 of the penal law; endangering the welfare of a
43 vulnerable elderly person in the first degree, as defined in section
44 260.34 of the penal law; use of a child in a sexual performance IN THE
45 SECOND DEGREE, as defined in section [263.05] 263.06 of the penal law;
46 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE, AS DEFINED
47 IN SECTION 263.07 OF THE PENAL LAW; promoting an obscene sexual perform-
48 ance by a child IN THE SECOND DEGREE, as defined in section [263.10]
49 263.08 of the penal law; PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
50 CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.09 OF THE PENAL
51 LAW; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE THIRD
52 DEGREE, AS DEFINED IN SECTION 263.10 OF THE PENAL LAW; POSSESSING AN
53 OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE, AS DEFINED
54 IN SECTION 263.11 OF THE PENAL LAW; possessing an obscene sexual
55 performance by a child IN THE FIRST DEGREE, as defined in section
56 [263.11] 263.12 of the penal law; promoting a sexual performance by a

1 child[, as defined in section 263.15 of the penal law; possessing a
2 sexual performance by a child, as defined in section 263.16] IN THE
3 SECOND DEGREE, AS DEFINED IN SECTION 263.13 OF THE PENAL LAW; PROMOTING
4 A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN
5 SECTION 263.14 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORMANCE BY A
6 CHILD IN THE THIRD DEGREE, AS DEFINED IN SECTION 263.15 OF THE PENAL
7 LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE, AS
8 DEFINED IN SECTION 263.16 OF THE PENAL LAW; POSSESSING A SEXUAL PERFORM-
9 ANCE BY A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 263.17 of the
10 penal law; criminal possession of a weapon in the third degree, as
11 defined in section 265.02 of the penal law; criminal sale of a firearm
12 in the third degree, as defined in section 265.11 of the penal law;
13 criminal sale of a firearm to a minor, as defined in section 265.16 of
14 the penal law; unlawful wearing of a body vest, as defined in section
15 270.20 of the penal law; hate crimes as defined in section 485.05 of the
16 penal law; and crime of terrorism, as defined in section 490.25 of the
17 penal law; or

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

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

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

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

AL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09, promoting a sexual performance by a child IN THE SECOND DEGREE as defined in section [263.15] 263.13, PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14, or any felony attempt or conspiracy to commit any of the foregoing offenses.

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

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

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

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

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

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

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

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

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

1 S 50. Subdivisions 1 and 4 of section 126 of the alcoholic beverage
2 control law, as amended by section 50 of subpart B of part C of chapter
3 62 of the laws of 2011, are amended to read as follows:

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

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

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

51 2. For purposes of this section, two or more convictions of any person
52 or persons had, within a period of one year, for any of the offenses
53 described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30
54 [or], 230.40 OR 230.45 of the penal law arising out of conduct engaged
55 in at the same real property consisting of a dwelling as that term is
56 defined in subdivision four of section four of the multiple dwelling law

1 shall be presumptive evidence of conduct constituting use of the prem-
2 ises for purposes of prostitution.

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

6 3. For the purposes of this section, two or more convictions of any
7 person or persons had, within a period of one year, for any of the
8 offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25,
9 230.30, [or] 230.40 OR 230.45 of the penal law arising out of conduct
10 engaged in at the same premises consisting of a dwelling as that term is
11 defined in subdivision four of section four of the multiple dwelling law
12 shall be presumptive evidence of unlawful use of such premises and of
13 the owners knowledge of the same.

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

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

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

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

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

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

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

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

48 S 57. Paragraphs (b) and (c) of subdivision 4 of section 509-cc of the
49 vehicle and traffic law, paragraph (b) as amended by chapter 360 of the
50 laws of 1986 and paragraph (c) as amended by chapter 405 of the laws of
51 2010, are amended to read as follows:

52 (b) The offenses referred to in subparagraph (ii) of paragraph (a) of
53 subdivision one and paragraph (b) of subdivision two of this section
54 that result in permanent disqualification shall include a conviction
55 under sections 100.13, 105.15, 105.17, 115.08, 125.10, 125.15, 130.40,
56 130.60, 130.65, 135.20, 160.15, 220.18, 220.21, 220.39, 220.41, 220.43,

1 260.00, [263.05, 263.10, 263.15] 263.06, 263.07, 263.08, 263.09, 263.13,
2 263.14, 265.04 OR ARTICLE TWO HUNDRED SIXTY-THREE of the penal law or an
3 attempt to commit any of the aforesaid offenses under section 110.00 of
4 the penal law, or any offenses committed under a former section of the
5 penal law which would constitute violations of the aforesaid sections of
6 the penal law, or any offenses committed outside this state which would
7 constitute violations of the aforesaid sections of the penal law.

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

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