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

6132--A

I N S E N A T E

(PREFILED)

January 4, 2012

Introduced by Sens. KLEIN, CARLUCCI, SAVINO, VALESKY, ADAMS, ADDABBO, ALESI, AVELLA, BRESLIN, ESPAILLAT, GOLDEN, GRISANTI, HUNTLEY, KENNEDY, MARTINS, RANZENHOFER, STAVISKY, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to the electronic stalking of a minor, criminal impersonation by means of electronic communications and aggravated harassment by means of electronic communication

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

Section 1. Section 120.40 of the penal law is amended by adding a new subdivision 6 to read as follows:

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

S 2. Subdivision 4 of section 120.50 of the penal law, as added by chapter 635 of the laws of 1999, is amended and a new subdivision 5 is added to read as follows:

4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree[.]; OR

5. INTENTIONALLY, AND FOR NO LEGITIMATE PURPOSE, ENGAGES IN A COURSE OF CONDUCT USING ELECTRONIC COMMUNICATION DIRECTED AT A CHILD UNDER THE AGE OF TWENTY-ONE YEARS, AND SUCH CONDUCT:

(A) IS LIKELY TO CAUSE SUCH CHILD A REASONABLE FEAR OF MATERIAL HARM TO HIS OR HER PHYSICAL HEALTH, SAFETY OR PROPERTY; OR

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

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

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

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

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

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

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

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

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

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

S 5. Section 240.00 of the penal law is amended by adding a new subdivision 7 to read as follows:

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

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

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

(b) causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by tele-

phone, BY ELECTRONIC COMMUNICATION, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or

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