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

2598

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. RABBITT, CORWIN, CROUCH, DUPREY, GIGLIO -- Multi-Sponsored by -- M. of A. BARCLAY, BURLING, BUTLER, CALHOUN, CONTE, FINCH, GABRYSZAK, GALEF, HAWLEY, HAYES, JORDAN, KOLB, MAGEE, McDONOUGH, McKEVITT, MENG, MOLINARO, RAIA, REILICH, TOBACCO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to creating the new crime of cyber harassment; and increasing penalties for the crimes of harassment and stalking

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

Section 1. The penal law is amended by adding a new section 240.33 to read as follows:

S 240.33 CYBER HARASSMENT.

1. A PERSON IS GUILTY OF CYBER HARASSMENT WHEN, FOR THE PURPOSE OF FRIGHTENING OR DISTURBING ANOTHER PERSON, HE OR SHE TRANSMITS OR CAUSES THE TRANSMISSION OF AN ELECTRONIC COMMUNICATION, OR KNOWINGLY PERMITS AN ELECTRONIC COMMUNICATION TO BE TRANSMITTED TO ANOTHER PERSON FROM AN ELECTRONIC COMMUNICATION DEVICE UNDER HIS OR HER CONTROL:

(A) USING COARSE LANGUAGE OFFENSIVE TO A PERSON OF AVERAGE SENSIBILITY; OR

(B) ANONYMOUSLY OR REPEATEDLY TRANSMITTING SUCH COMMUNICATION WHETHER OR NOT CONVERSATION OCCURS; OR

(C) THREATENING TO COMMIT ANY FELONY.

2. NO PERSON SHALL MAKE OR CAUSE TO BE MADE AN ELECTRONIC COMMUNICATION, OR PERMIT AN ELECTRONIC COMMUNICATION TO BE MADE FROM AN ELECTRONIC COMMUNICATION DEVICE UNDER SUCH PERSON'S CONTROL, WITH THE INTENT TO FRIGHTEN OR DISTURB ANY OTHER PERSON IN ANY MANNER DESCRIBED IN THIS SECTION EITHER BY THE DIRECT ACTION OF THE PERSON INITIATING THE COMMUNICATION OR THROUGH THE ACTIONS OF A THIRD PARTY WHOSE ACTIONS ARE INSTIGATED, INITIATED, PROMPTED, OR BROUGHT ABOUT BY SUCH PERSON'S COMMUNICATION.

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

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3. ANY OFFENSE COMMITTED UNDER THIS SECTION MAY BE DEEMED TO HAVE BEEN COMMITTED EITHER AT THE PLACE FROM WHICH THE COMMUNICATION WAS MADE OR AT THE PLACE WHERE THE COMMUNICATION WAS RECEIVED.

4. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL MEAN:

(A) "AN ADULT" IS ANY PERSON TWENTY-ONE YEARS OR OLDER;

(B) "A CHILD" IS ANY PERSON UNDER SEVENTEEN YEARS OF AGE;

(C) "ELECTRONIC COMMUNICATIONS" ARE THE ORIGINATION, EMISSION, DISSEMINATION, TRANSMISSION, OR RECEPTION OF DATA, IMAGES, SIGNALS, SOUNDS, OR OTHER INTELLIGENCE OR EQUIVALENCE OF INTELLIGENCE OF ANY NATURE OVER ANY COMMUNICATIONS SYSTEM BY ANY METHOD, INCLUDING, BUT NOT LIMITED TO, A FIBER OPTIC, ELECTRONIC, MAGNETIC, OPTICAL, DIGITAL, OR ANALOG METHOD. SUCH ELECTRONIC COMMUNICATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO ELECTRONIC MAIL, INTERNET-BASED COMMUNICATIONS, PAGER SERVICE, AND ELECTRONIC TEXT MESSAGING; AND

(D) "AN ELECTRONIC COMMUNICATIONS DEVICE" IS ANY INSTRUMENT, EQUIPMENT, MACHINE, OR OTHER DEVICE THAT FACILITATES TELECOMMUNICATION, INCLUDING, BUT NOT LIMITED TO, A COMPUTER, COMPUTER NETWORK, COMPUTER CHIP, COMPUTER CIRCUIT, SCANNER, TELEPHONE, CELLULAR TELEPHONE, PAGER, PERSONAL COMMUNICATIONS DEVICE, TRANSPONDER, RECEIVER, RADIO, MODEM, OR DEVICE THAT ENABLES THE USE OF A MODEM.

CYBER HARASSMENT IS A CLASS A MISDEMEANOR. CYBER HARASSMENT IS A CLASS D FELONY WHEN COMMITTED BY AN ADULT AGAINST A CHILD.

S 2. Section 240.25 of the penal law, as amended by chapter 109 of the laws of 1994, is amended to read as follows:

S 240.25 Harassment in the first degree.

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury. This section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Harassment in the first degree is a class B misdemeanor. HARASSMENT IN THE FIRST DEGREE IS A CLASS D FELONY WHEN COMMITTED BY AN ADULT AGAINST A CHILD.

S 3. Section 240.26 of the penal law, as amended by chapter 109 of the laws of 1994, is amended to read as follows:

S 240.26 Harassment in the second degree.

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or

2. He or she follows a person in or about a public place or places; or

3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

Subdivisions two and three of this section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Harassment in the second degree is a violation. HARASSMENT IN THE SECOND DEGREE IS A CLASS E FELONY WHEN COMMITTED BY AN ADULT AGAINST A CHILD.

S 4. Section 120.50 of the penal law, as added by chapter 635 of the laws of 1999, is amended to read as follows:

S 120.50 Stalking in the third degree.

A person is guilty of stalking in the third degree when he or she:

1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or

2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or

3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or

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.

Stalking in the third degree is a class A misdemeanor. STALKING IN THE THIRD DEGREE IS A CLASS D FELONY WHEN COMMITTED BY AN ADULT AGAINST A CHILD.

S 5. Section 120.45 of the penal law, as added by chapter 635 of the laws of 1999, is amended to read as follows:

S 120.45 Stalking in the fourth degree.

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or

2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or

3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Stalking in the fourth degree is a class B misdemeanor. STALKING IN THE FOURTH DEGREE IS A CLASS E FELONY WHEN COMMITTED BY AN ADULT AGAINST A CHILD.

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