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

4895

2011-2012 Regular Sessions

I N A S S E M B L Y

February 9, 2011

Introduced by M. of A. LAVINE, THIELE, LINARES, SCHIMEL, GUNTHER, McENENY, GIGLIO, MOLINARO, RAIA, CALHOUN, GABRYSZAK -- Multi-Sponsored by -- M. of A. ABBATE, CERETTO, CROUCH, DUPREY -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the offenses of cyber assault in the first degree, cyber assault in the second degree, cyber impersonation in the first degree and cyber impersonation in the second degree

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 two new sections 120.27 and 120.28 to read as follows:

S 120.27 CYBER ASSAULT IN THE FIRST DEGREE.

A PERSON IS GUILTY OF CYBER ASSAULT IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF CYBER ASSAULT IN THE SECOND DEGREE AS DEFINED BY SECTION 120.28 OF THIS ARTICLE AND SUCH PERSON:

1. IS OVER NINETEEN YEARS OF AGE; OR

2. HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING SECTION 120.28 OF THIS ARTICLE.

CYBER ASSAULT IN THE FIRST DEGREE IS A CLASS D FELONY.

S 120.28 CYBER ASSAULT IN THE SECOND DEGREE.

1. A PERSON IS GUILTY OF CYBER ASSAULT IN THE SECOND DEGREE WHEN HE OR SHE TRANSMITS ANY COMMUNICATION, WITH THE INTENT TO COERCE, INTIMIDATE, HARASS, ANNOY, ALARM OR CAUSE EMOTIONAL DISTRESS, TO ANOTHER USING ELECTRONIC MEANS TO SUPPORT SEVERE, REPEATED AND HOSTILE BEHAVIOR, AND SUCH PERSON IS UNDER NINETEEN YEARS OF AGE.

2. FOR THE PURPOSES OF THIS SECTION, THE TERM

A. "COMMUNICATION" SHALL MEAN THE ELECTRONIC TRANSMISSION, BETWEEN OR AMONG POINTS SPECIFIED BY THE USER, OR INFORMATION OF THE USER'S CHOOSING, WITHOUT CHANGE IN THE FORM OR CONTENT OF THE INFORMATION AS SENT AND RECEIVED; AND

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

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B. "ELECTRONIC MEANS" SHALL MEAN ANY EQUIPMENT DEPENDENT ON ELECTRONIC POWER TO ACCESS AN INFORMATION SERVICE, INCLUDING, BUT NOT LIMITED TO E-MAIL, INSTANT MESSAGING, BLOGS, WEBSITES, TELEPHONES AND TEXT MESSAGES.

CYBER ASSAULT IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 2. The penal law is amended by adding two new sections 190.28 and 190.29 to read as follows:

S 190.28 CYBER IMPERSONATION IN THE FIRST DEGREE.

A PERSON IS GUILTY OF CYBER IMPERSONATION IN THE FIRST DEGREE WHEN HE OR SHE:

1. IS OVER NINETEEN YEARS OF AGE, AND

2. KNOWINGLY AND WITH INTENT TO DEFRAUD ASSUMES THE IDENTITY OF ANOTHER PERSON, AND

3. COMMITS THE CRIME OF CYBER ASSAULT AS DEFINED IN SECTIONS 120.27 OR 120.28 OF THIS PART OR COMMITS OR ATTEMPTS TO COMMIT A FELONY OR ACTS AS AN ACCESSORY TO THE COMMISSION OF A FELONY.

CYBER IMPERSONATION IN THE SECOND DEGREE IS A CLASS D FELONY.

S 190.29 CYBER IMPERSONATION IN THE SECOND DEGREE.

A PERSON IS GUILTY OF CYBER IMPERSONATION IN THE SECOND DEGREE WHEN HE OR SHE:

1. IS UNDER NINETEEN YEARS OF AGE, AND

2. KNOWINGLY AND WITH INTENT TO DEFRAUD ASSUMES THE IDENTITY OF ANOTHER PERSON, AND

3. COMMITS THE CRIME OF CYBER ASSAULT AS DEFINED IN SECTIONS 120.27 OR 120.28 OF THIS PART OR COMMITS OR ATTEMPTS TO COMMIT A FELONY OR ACTS AS AN ACCESSORY TO THE COMMISSION OF A FELONY.

CYBER IMPERSONATION IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.