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

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I N A S S E M B L Y

June 2, 2011

Introduced by M. of A. THIELE, MAISEL, McDONOUGH, MURRAY, RAIA, REILLY, P. RIVERA, SCARBOROUGH, SPANO, TITONE -- Multi-Sponsored by -- M. of A. ABBATE, CERETTO, CONTE, DUPREY, LOSQUADRO, SWEENEY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to establishing a juvenile sexting and cyberbullying education demonstration program; and providing for the repeal of certain provisions upon the expiration thereof

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

Section 1. The executive law is amended by adding a new section 75 to read as follows:

S 75. SEXTING AND CYBERBULLYING EDUCATION DEMONSTRATION PROGRAM. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "SEXTING" MEANS THE CREATION, EXHIBITION OR DISTRIBUTION OF A PHOTOGRAPH DEPICTING NUDITY THROUGH THE USE OF AN ELECTRONIC COMMUNICATION DEVICE, AN INTERACTIVE WIRELESS COMMUNICATIONS DEVICE OR A COMPUTER, WHEN THE CREATOR THEREOF AND THE SUBJECT OF THE PHOTOGRAPH ARE BOTH UNDER THE AGE OF SIXTEEN YEARS OR WERE BOTH UNDER SUCH AGE AT THE TIME OF ITS MAKING.

(B) "CYBERBULLYING" MEANS COMMUNICATION WITH INTENT TO COERCE, INTIMIDATE, HARASS OR CAUSE SUBSTANTIAL EMOTIONAL DISTRESS TO A PERSON, USING ELECTRONIC MEANS TO SUPPORT SEVERE, REPEATED AND HOSTILE BEHAVIOR.

(C) "COMMUNICATION" MEANS THE ELECTRONIC TRANSMISSION BETWEEN OR AMONG POINTS SPECIFIED BY A USER OF INFORMATION OF SUCH USER'S CHOOSING, WITHOUT CHANGE IN THE FORM OR CONTENT OF THE INFORMATION AS SENT AND RECEIVED.

(D) "ELECTRONIC MEANS" MEANS ANY EQUIPMENT DEPENDENT ON ELECTRICAL POWER TO ACCESS AN INFORMATION SERVICE, INCLUDING EMAIL, INSTANT MESSAGING, BLOGS, WEBSITES, TELEPHONES AND TEXT MESSAGES.

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

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2. THE ATTORNEY GENERAL SHALL, IN CONSULTATION AND COOPERATION WITH THE OFFICE OF COURT ADMINISTRATION, ESTABLISH AND IMPLEMENT SEXTING AND CYBERBULLYING EDUCATION DEMONSTRATION PROGRAMS IN NOT LESS THAN THREE COUNTIES THROUGHOUT THE STATE. THE PURPOSE OF SUCH PROGRAMS SHALL PROVIDE AN ALTERNATIVE TO JUVENILE DELINQUENCY PROCEEDINGS PURSUANT TO ARTICLE THREE OF THE FAMILY COURT ACT AND CRIMINAL PROCEEDINGS AGAINST ANY PERSON UNDER THE AGE OF SIXTEEN YEARS OF AGE FOR COMMISSION OF ANY ACTS WHICH CONSTITUTE CYBERBULLYING OR SEXTING. SUCH PROGRAMS MAY ALSO PROVIDE IMMUNITY FROM DISCIPLINE PURSUANT TO THE CODE OF CONDUCT OF ANY AUTHORIZING SCHOOL DISTRICT RELATING TO SUCH ACTS.

3. IN THE ESTABLISHMENT OF THE SEXTING AND CYBERBULLYING EDUCATION DEMONSTRATION PROGRAM, THE ATTORNEY GENERAL SHALL CONSULT WITH LAW ENFORCEMENT AGENCIES, SOCIAL SERVICES AGENCIES AND NOT-FOR-PROFIT ENTITIES.

(A) THE ATTORNEY GENERAL, IN CONSULTATION WITH THE OFFICE OF COURT ADMINISTRATION, MAY ESTABLISH THROUGH RULES AND REGULATIONS THE APPROPRIATE HEARING AUTHORITY INCLUDING, BUT NOT LIMITED TO, HEARING OFFICERS OR COURT OFFICERS, ENSURING ALL APPROPRIATE DUE PROCESS RIGHTS FOR JUVENILES PARTICIPATING IN THE PROGRAM. THE ATTORNEY GENERAL MAY RESERVE THE DEPARTMENT OF LAW AS THE SOLE AGENCY RESPONSIBLE FOR DETERMINATION OF JUVENILES ELIGIBLE FOR ADMITTANCE IN THE PROGRAM.

(B) THE ATTORNEY GENERAL MAY ALSO ESTABLISH BY REGULATION PUNITIVE COMPONENTS OF THE PROGRAM INCLUDING, BUT NOT LIMITED TO, COMMUNITY SERVICE REQUIREMENTS AND RESTRICTIONS OF DRIVING PRIVILEGES. NONE OF THESE COMPONENTS SHALL BE INCLUDED IN A PERMANENT CRIMINAL OR DELINQUENT RECORD OF AN ELIGIBLE JUVENILE FOR THE PROGRAM.

4. ADMISSION TO THE PROGRAM WOULD BE LIMITED TO CASES WHERE:

(A) THE JUVENILE HAS BEEN FOUND TO HAVE COMMITTED AN ACT OF CYBERBULLYING OR SEXTING;

(B) THE JUVENILE HAS NOT PREVIOUSLY BEEN ADJUDICATED DELINQUENT FOR OR CONVICTED OF A CRIME OR OFFENSE DEEMED RELEVANT BY THE ATTORNEY GENERAL;

(C) THE JUVENILE WAS NOT AWARE THAT HIS OR HER ACTIONS COULD CONSTITUTE, AND DID NOT HAVE THE INTENT TO COMMIT, A CRIMINAL OFFENSE;

(D) THERE IS A LIKELIHOOD THAT THE JUVENILE'S OFFENSE IS RELATED TO A CONDITION OR SITUATION THAT WOULD BE CONDUCIVE TO CHANGE THROUGH HIS OR HER PARTICIPATION IN THE EDUCATIONAL PROGRAM; AND

(E) THE BENEFITS TO SOCIETY IN ADMITTING THE JUVENILE INTO THIS EDUCATIONAL PROGRAM OUTWEIGH THE HARM DONE TO SOCIETY BY ABANDONING CRIMINAL PROSECUTION OR ANY OTHER PUNITIVE MEASURES.

5. THE PROGRAM SHALL PROVIDE INSTRUCTION TO PARTICIPATING JUVENILES ON, BUT NOT LIMITED TO THE FOLLOWING:

(A) THE LEGAL CONSEQUENCES OF AND PENALTIES FOR SHARING SEXUALLY SUGGESTIVE OR EXPLICIT MATERIALS, AND USING ELECTRONIC DEVICES TO HARASS OR MENACE ANOTHER INDIVIDUAL, INCLUDING APPLICABLE FEDERAL AND STATE STATUTES;

(B) THE NON-LEGAL CONSEQUENCES OF SHARING SEXUALLY SUGGESTIVE OR EXPLICIT MATERIALS AND CYBERBULLYING INCLUDING, BUT NOT LIMITED TO, THE EFFECT ON RELATIONSHIPS, LOSS OF EDUCATIONAL AND EMPLOYMENT OPPORTUNITIES, AND BEING BARRED OR REMOVED FROM SCHOOL PROGRAMS AND EXTRACURRICULAR ACTIVITIES;

(C) HOW THE UNIQUE CHARACTERISTICS OF CYBERSPACE AND THE INTERNET, INCLUDING SEARCHABILITY, REPLICABILITY AND AN INFINITE AUDIENCE, CAN PRODUCE LONG-TERM AND UNFORESEEN CONSEQUENCES FOR SHARING SEXUALLY SUGGESTIVE, EXPLICIT OR ABUSIVE MATERIALS; AND

(D) THE POSSIBLE CONNECTION BETWEEN BULLYING AND CYBERBULLYING AND JUVENILES SHARING SEXUALLY SUGGESTIVE OR EXPLICIT MATERIALS.

6. THE ATTORNEY GENERAL SHALL DESIGNATE APPROPRIATE AVENUES OF REFERRALS TO THE PROGRAM, INCLUDING REPORTING BY INDIVIDUALS SUCH AS EMPLOYEES OF SCHOOL DISTRICTS, PARENTS, POLICE OFFICERS, SOCIAL WORKERS, MENTAL HEALTH PROFESSIONALS, COACHES, AND JUVENILES.

7. THE PROVISIONS OF THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE COMMENCEMENT OF ANY PROCEEDING AUTHORIZED BY LAW OR ANY OTHER DISCIPLINARY PROCESS AGAINST ANY JUVENILE DENIED ADMISSION TO THE PROGRAM ESTABLISHED PURSUANT TO THIS SECTION.

S 2. On or before February 1, 2014, the attorney general shall submit a report to the governor and the legislature on the implementation of the provisions of section 75 of the executive law, as added by section one of this act, the various programs developed and operated pursuant thereto, the effects of such programs on recidivism, prevention and community awareness, and recommendations on possible implementation of such programs on a statewide basis.

S 3. This act shall take effect January 1, 2012 and section one of this act shall expire and be deemed repealed January 1, 2014. Provided, that, effective immediately, any actions necessary to implement the provisions of section 75 of the executive law, as added by section one of this act, on its effective date are authorized and directed to be completed on or before such date.