

5253--B

2011-2012 Regular Sessions

I N   S E N A T E

May 3, 2011

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Introduced by Sens. HANNON, ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, the family court act and the penal law, in relation to creating an education reform program for certain individuals charged with certain offenses involving 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

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

1     Section 1. This act shall be known and may be cited as "the cyber-  
2 crime youth rescue act".

3     S 2. Article 6 of the social services law is amended by adding a new  
4 title 11 to read as follows:

5                                   TITLE 11

6                                   EDUCATION REFORM PROGRAM

7 SECTION 458-L. EDUCATION REFORM PROGRAM.

8     S 458-L. EDUCATION REFORM PROGRAM. 1. AS USED IN THIS SECTION:

9     (A) "ELIGIBLE PERSON" MEANS AN INDIVIDUAL WHO IS THE SUBJECT OF A  
10 PENDING PETITION IN FAMILY COURT ALLEGING HE OR SHE HAS COMMITTED AN  
11 ELIGIBLE OFFENSE OR A PERSON WHO HAS BEEN CHARGED, IN CRIMINAL COURT,  
12 WITH AN ELIGIBLE OFFENSE AS THAT TERM IS DEFINED IN PARAGRAPH (B) OF  
13 THIS SUBDIVISION.

14     (B) "ELIGIBLE OFFENSE" MEANS A CRIME OR OFFENSE COMMITTED BY AN ELIGI-  
15 BLE PERSON THAT INVOLVED CYBERBULLYING OR THE SENDING OR RECEIPT OF  
16 OBSCENITY, AS DEFINED IN SUBDIVISION ONE OF SECTION 235.00 OF THE PENAL  
17 LAW, OR NUDITY, AS DEFINED IN SUBDIVISION TWO OF SECTION 235.20 OF THE  
18 PENAL LAW, WHEN THE SENDER AND THE RECEIVER THEREOF WERE BOTH UNDER THE

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

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1 AGE OF TWENTY AT THE TIME OF SUCH COMMUNICATION, BUT NOT MORE THAN FIVE  
2 YEARS APART IN AGE.

3 (C) "PROGRAM" MEANS THE EDUCATION REFORM PROGRAM DEVELOPED PURSUANT TO  
4 SUBDIVISION TWO OF THIS SECTION.

5 2. THE OFFICE OF CHILDREN AND FAMILY SERVICES, HEREINAFTER THE  
6 "OFFICE," SHALL DEVELOP AND IMPLEMENT, IN CONSULTATION WITH THE DIVISION  
7 OF CRIMINAL JUSTICE SERVICES AND THE STATE EDUCATION DEPARTMENT, AN  
8 EDUCATION REFORM PROGRAM FOR ELIGIBLE PERSONS WHO HAVE BEEN REQUIRED TO  
9 COMPLETE SUCH PROGRAM PURSUANT TO ARTICLE THREE OR SEVEN OF THE FAMILY  
10 COURT ACT OR SECTION 60.37 OF THE PENAL LAW.

11 3. THE PROGRAM SHALL BE AVAILABLE IN EVERY JUDICIAL DISTRICT IN THE  
12 STATE; PROVIDED THAT IF THE OFFICE DETERMINES THAT THERE IS NOT A SUFFI-  
13 CIENT NUMBER OF ELIGIBLE OFFENSES IN A JUDICIAL DISTRICT TO MANDATE THE  
14 IMPLEMENTATION OF A PROGRAM, PROVISIONS SHALL BE MADE FOR THE RESIDENTS  
15 OF SUCH JUDICIAL DISTRICT TO PARTICIPATE IN A PROGRAM IN ANOTHER JUDI-  
16 CIAL DISTRICT WHERE A PROGRAM EXISTS IF PRACTICABLE WITH REGARD TO TRAV-  
17 EL AND COST, OR TO COMPLETE THE EDUCATION COURSE ONLINE.

18 4. THE PROGRAM SHALL INVOLVE UP TO EIGHT HOURS OF INSTRUCTION AND  
19 SHALL PROVIDE, AT A MINIMUM, INFORMATION CONCERNING:

20 (A) THE LEGAL CONSEQUENCES OF AND POTENTIAL PENALTIES FOR SHARING  
21 SEXUALLY SUGGESTIVE MATERIALS, EXPLICIT MATERIALS OR ABUSIVE MATERIALS,  
22 INCLUDING SANCTIONS IMPOSED UNDER APPLICABLE FEDERAL AND STATE STATUTES;

23 (B) THE NON-LEGAL CONSEQUENCES OF SHARING SEXUALLY SUGGESTIVE MATERI-  
24 ALS, EXPLICIT MATERIALS OR ABUSIVE MATERIALS, INCLUDING, BUT NOT LIMITED  
25 TO, THE POSSIBLE EFFECT ON RELATIONSHIPS, LOSS OF EDUCATIONAL AND  
26 EMPLOYMENT OPPORTUNITIES, AND THE POTENTIAL FOR BEING BARRED OR REMOVED  
27 FROM SCHOOL PROGRAMS AND EXTRACURRICULAR ACTIVITIES;

28 (C) HOW THE UNIQUE CHARACTERISTICS OF CYBERSPACE AND THE INTERNET,  
29 INCLUDING THE POTENTIAL ABILITY OF AN INFINITE AUDIENCE TO UTILIZE THE  
30 INTERNET TO SEARCH FOR AND REPLICATE MATERIALS, CAN PRODUCE LONG-TERM  
31 AND UNFORESEEN CONSEQUENCES FOR SHARING SEXUALLY SUGGESTIVE MATERIALS,  
32 EXPLICIT MATERIALS OR ABUSIVE MATERIALS; AND

33 (D) THE POTENTIAL CONNECTION BETWEEN BULLYING AND CYBER-BULLYING AND  
34 JUVENILES SHARING SEXUALLY SUGGESTIVE MATERIALS, EXPLICIT MATERIALS OR  
35 ABUSIVE MATERIALS.

36 5. UPON RECEIPT OF THE COURT ORDER, PURSUANT TO THE FAMILY COURT ACT  
37 OR SECTION 60.37 OF THE PENAL LAW, DIRECTING AN ELIGIBLE PERSON TO  
38 ATTEND THE PROGRAM, THE OFFICE, AFTER CONSULTATION WITH THE ELIGIBLE  
39 PERSON AND THE ATTORNEY FOR SUCH PERSON, SHALL SCHEDULE THE ELIGIBLE  
40 PERSON TO ATTEND THE NEXT AVAILABLE SESSION OF THE PROGRAM AND SHALL  
41 SEND WRITTEN NOTICE OF THE SCHEDULING, ALONG WITH THE DATE, TIME AND  
42 LOCATION OF THE SESSION OR SESSIONS, TO THE ELIGIBLE PERSON, THE ATTOR-  
43 NEY FOR SUCH PERSON AND THE CLERK OF THE REFERRING COURT.

44 6. WITHIN TWENTY DAYS OF THE DATE UPON WHICH THE ELIGIBLE PERSON  
45 COMPLETES THE PROGRAM, THE OFFICE SHALL PROVIDE SUCH PERSON WITH A  
46 CERTIFICATION THAT HE OR SHE HAS SUCCESSFULLY COMPLETED THE PROGRAM.

47 S 3. Subdivision 1 of section 315.3 of the family court act, as  
48 amended by chapter 237 of the laws of 1991, is amended to read as  
49 follows:

50 1. Except where the petition alleges that the respondent has committed  
51 a designated felony act, the court may at any time prior to the entering  
52 of a finding under section 352.1 and with the consent of the respondent  
53 order that the proceeding be "adjourned in contemplation of dismissal".  
54 An adjournment in contemplation of dismissal is an adjournment of the  
55 proceeding, for a period not to exceed six months, with a view to ulti-  
56 mate dismissal of the petition in furtherance of justice. Upon issuing

1 such an order, providing such terms and conditions as the court deems  
2 appropriate, the court must release the respondent. The court may, as a  
3 condition of an adjournment in contemplation of dismissal order, in  
4 cases where the record indicates that the consumption of alcohol may  
5 have been a contributing factor, require the respondent to attend and  
6 complete an alcohol awareness program established pursuant to [paragraph  
7 six-a] of subdivision (a) of section 19.07 of the mental hygiene law.  
8 THE COURT MAY, AS A CONDITION OF AN ADJOURNMENT IN CONTEMPLATION OF  
9 DISMISSAL ORDER, IN CASES WHERE THE RECORD INDICATES THAT THE RESPONDENT  
10 IS AN ELIGIBLE PERSON AS DEFINED IN SECTION FOUR HUNDRED FIFTY-EIGHT-L  
11 OF THE SOCIAL SERVICES LAW AND HAS ALLEGEDLY COMMITTED AN ELIGIBLE  
12 OFFENSE AS DEFINED IN SUCH SECTION, DIRECT THE RESPONDENT TO ATTEND AND  
13 COMPLETE AN EDUCATION REFORM PROGRAM ESTABLISHED PURSUANT TO SECTION  
14 FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW. Upon ex parte  
15 motion by the presentment agency, or upon the court's own motion, made  
16 at the time the order is issued or at any time during its duration, the  
17 court may restore the matter to the calendar. If the proceeding is not  
18 restored, the petition is, at the expiration of the order, deemed to  
19 have been dismissed by the court in furtherance of justice.

20 S 4. Subdivision 1 of section 353.1 of the family court act, as added  
21 by chapter 920 of the laws of 1982, is amended to read as follows:

22 1. The court may conditionally discharge the respondent if the court,  
23 having regard for the nature and circumstances of the crime and for the  
24 history, character and condition of the respondent, is of the opinion  
25 that consistent with subdivision two of section 352.2, neither the  
26 public interest nor the ends of justice would be served by a placement  
27 and that probation supervision is not appropriate. THE COURT MAY, AS A  
28 CONDITION OF A CONDITIONAL DISCHARGE, IN CASES WHERE THE RECORD INDI-  
29 CATES THE RESPONDENT QUALIFIES AS AN ELIGIBLE PERSON AND HAS BEEN ADJU-  
30 DICATED FOR AN ELIGIBLE OFFENSE AS DEFINED IN SECTION FOUR HUNDRED  
31 FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW, REQUIRE THE RESPONDENT TO  
32 ATTEND AND COMPLETE AN EDUCATION REFORM PROGRAM ESTABLISHED PURSUANT TO  
33 SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW.

34 S 5. Paragraph (i) of subdivision (d) of section 735 of the family  
35 court act, as added by section 7 of part E of chapter 57 of the laws of  
36 2005, is amended to read as follows:

37 (i) providing, at the first contact, information on the availability  
38 of or a referral to services in the geographic area where the youth and  
39 his or her family are located that may be of benefit in avoiding the  
40 need to file a petition under this article; including the availability,  
41 for up to twenty-one days, of a residential respite program, if the  
42 youth and his or her parent or other person legally responsible for his  
43 or her care agree, and the availability of other non-residential crisis  
44 intervention programs such as family crisis counseling or alternative  
45 dispute resolution programs OR AN EDUCATIONAL PROGRAM AS DEFINED IN  
46 SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW.

47 S 6. The penal law is amended by adding a new section 60.37 to read as  
48 follows:

49 S 60.37 AUTHORIZED DISPOSITION; CERTAIN OFFENSES.

50 WHEN A PERSON HAS BEEN CHARGED WITH AN OFFENSE AND THE ELEMENTS OF  
51 SUCH OFFENSE MEET THE CRITERIA OF AN "ELIGIBLE OFFENSE" AND SUCH PERSON  
52 QUALIFIES AS AN "ELIGIBLE PERSON" AS SUCH TERMS ARE DEFINED IN SECTION  
53 FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES LAW, THE COURT MAY, AS  
54 A CONDITION OF PROBATION OR A CONDITIONAL DISCHARGE, DIRECT THAT THE  
55 DEFENDANT PARTICIPATE IN AN EDUCATION REFORM PROGRAM PURSUANT TO SUBDI-

1 VISION TWO OF SECTION FOUR HUNDRED FIFTY-EIGHT-L OF THE SOCIAL SERVICES  
2 LAW.

3 S 7. This act shall take effect on the one hundred eightieth day after  
4 it shall have become a law; provided that, effective immediately, the  
5 commissioner of the office of children and family services shall promul-  
6 gate any rules and regulations and take all other actions necessary to  
7 implement the provisions of this act on or before such effective date.