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

714--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to computer sex crimes against children

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 title Y-2 to read as follows:

TITLE Y-2
COMPUTER SEX CRIMES AGAINST CHILDREN
ARTICLE 495
COMPUTER SEX CRIMES AGAINST CHILDREN

SECTION 495.00 COMPUTER SEX CRIMES.
495.05 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.

S 495.00 COMPUTER SEX CRIMES.

1. A PERSON COMMITS A COMPUTER SEX CRIME WHEN HE OR SHE COMMITS A SEX CRIME AGAINST A CHILD AND FACILITATED THE COMMISSION OF SUCH OFFENSE BY USING OR CAUSING TO BE USED A COMPUTER OR COMPUTER SERVICE TO COMMUNICATE WITH THE CHILD AGAINST WHOM SUCH OFFENSE IS COMMITTED.

2. A "SEX CRIME AGAINST A CHILD" MEANS A FELONY OFFENSE (A) THE ESSENTIAL ELEMENTS OF WHICH INCLUDE THE COMMISSION OR ATTEMPTED COMMISSION OF SEXUAL CONDUCT, AS DEFINED IN SUBDIVISION TEN OF SECTION 130.00 OF THIS CHAPTER, OR THE USE OR PROMOTION OF A SEXUAL OR OBSCENE SEXUAL PERFORMANCE, AS DEFINED IN SECTION 263.00 OF THIS CHAPTER, (B) COMMITTED OR ATTEMPTED TO BE COMMITTED AGAINST A CHILD LESS THAN SEVENTEEN YEARS OLD.

S 495.05 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.

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

LBD01996-02-2

1. WHEN A PERSON IS CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 495.00 OF THIS ARTICLE, AND THE UNDERLYING CRIME AGAINST A CHILD IS A VIOLENT FELONY OFFENSE, AS DEFINED IN SECTION 70.02 OF THIS CHAPTER, THE COMPUTER SEX CRIME SHALL BE DEEMED A VIOLENT FELONY OFFENSE.

2. WHEN A PERSON IS CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 495.00 OF THIS ARTICLE, AND THE UNDERLYING SEX CRIME AGAINST A CHILD IS A CLASS C, D OR E FELONY, THE COMPUTER SEX CRIME SHALL BE DEEMED TO BE ONE CATEGORY HIGHER THAN THE SEX CRIME AGAINST A CHILD THE DEFENDANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL APPLICABLE TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A SEX CRIME AGAINST A CHILD, WHICHEVER IS APPLICABLE.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 495.00 OF THIS ARTICLE AND THE UNDERLYING SEX CRIME AGAINST A CHILD IS A CLASS B FELONY:

(A) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

(B) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER; AND

(C) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF THIS CHAPTER.

S 2. Subdivisions 4 and 7 of section 200.50 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, are amended to read as follows:

4. A statement in each count that the grand jury, or, where the accusatory instrument is a superior court information, the district attorney, accuses the defendant or defendants of a designated offense, provided that in any prosecution under article four hundred eighty-five of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 485.05 of the penal law, followed by the phrase "as a hate crime", and provided further that in any prosecution under section 490.25 of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 490.05 of the penal law, followed by the phrase "as a crime of terrorism"; and provided further that in any prosecution under section 130.91 of the penal law, the designated offense shall be the specified offense, as defined in subdivision two of section 130.91 of the penal law, followed by the phrase "as a sexually motivated felony", AND PROVIDED FURTHER THAT IN ANY PROSECUTION UNDER SECTION 495.00 OF THE PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE UNDERLYING SEX CRIME AGAINST A CHILD, AS DEFINED IN SUBDIVISION TWO OF SECTION 495.00 OF THE PENAL LAW, FOLLOWED BY THE PHRASE "AS A COMPUTER SEX CRIME"; and

7. A plain and concise factual statement in each count which, without allegations of an evidentiary nature,

(a) asserts facts supporting every element of the offense charged and the defendant's or defendants' commission thereof with sufficient precision to clearly apprise the defendant or defendants of the conduct which is the subject of the accusation; and

(b) in the case of any armed felony, as defined in subdivision forty-one of section 1.20, states that such offense is an armed felony and specifies the particular implement the defendant or defendants possessed, were armed with, used or displayed or, in the case of an implement displayed, specifies what the implement appeared to be; and

(c) in the case of any hate crime, as defined in section 485.05 of the penal law, specifies, as applicable, that the defendant or defendants intentionally selected the person against whom the offense was committed or intended to be committed; or intentionally committed the act or acts constituting the offense, in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person; and

(d) in the case of a crime of terrorism, as defined in section 490.25 of the penal law, specifies, as applicable, that the defendant or defendants acted with intent to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination or kidnapping; and

(e) in the case of a sexually motivated felony, as defined in section 130.91 of the penal law, asserts facts supporting the allegation that the offense was sexually motivated; and

(F) IN THE CASE OF A COMPUTER SEX CRIME, AS DEFINED IN SUBDIVISION ONE OF SECTION 495.00 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE, THAT THE DEFENDANT OR DEFENDANTS FACILITATED THE COMMISSION OF A SEX CRIME AGAINST A CHILD, AS DEFINED IN SUBDIVISION TWO OF SUCH SECTION 495.00, BY USING OR CAUSING TO BE USED A COMPUTER OR COMPUTER SERVICE TO COMMUNICATE WITH THE CHILD AGAINST WHOM SUCH OFFENSE IS COMMITTED; AND

S 3. Subdivision 8 of section 700.05 of the criminal procedure law is amended by adding two new paragraphs (u) and (v) to read as follows:

(U) COMPUTER SEX CRIMES AS DEFINED IN SECTION 495.00 OF THE PENAL LAW, COMPUTER TRESPASS AS DEFINED IN SECTION 156.10 OF THE PENAL LAW, COMPUTER TAMPERING IN THE THIRD DEGREE AS DEFINED IN SECTION 156.25 OF THE PENAL LAW, COMPUTER TAMPERING IN THE SECOND DEGREE AS DEFINED IN SECTION 156.26 OF THE PENAL LAW, COMPUTER TAMPERING IN THE FIRST DEGREE AS DEFINED IN SECTION 156.27 OF THE PENAL LAW, UNLAWFUL DUPLICATION OF COMPUTER RELATED MATERIAL AS DEFINED IN SECTION 156.30 OF THE PENAL LAW, CRIMINAL POSSESSION OF COMPUTER RELATED MATERIAL AS DEFINED IN SECTION 156.35 OF THE PENAL LAW AND DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE AS DEFINED IN SECTION 235.22 OF THE PENAL LAW.

(V) USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.10 OF THE PENAL LAW, POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.11 OF THE PENAL LAW, PROMOTING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.15 OF THE PENAL LAW, POSSESSING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.16 OF THE PENAL LAW.

S 4. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections

165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud[,]; sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.05, 263.10 [and], 263.11, 263.15 AND 263.16 relating to [promoting] a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; [and] sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering AND SECTION 495.00 RELATING TO COMPUTER SEX CRIMES; or

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.