

746--A

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sens. YOUNG, BONACIC, DeFRANCISCO, LARKIN, MAZIARZ, NOZZO-LIO, O'MARA, RANZENHOFER, SALAND, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing the offenses of promoting and possessing a sex offense against a child

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

1     Section 1. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of  
2     the penal law, paragraph (a) as amended by chapter 320 of the laws of  
3     2006 and paragraph (b) as amended by chapter 405 of the laws of 2010,  
4     are amended to read as follows:  
5     (a) Class B violent felony offenses: an attempt to commit the class  
6     A-I felonies of murder in the second degree as defined in section  
7     125.25, kidnapping in the first degree as defined in section 135.25, and  
8     arson in the first degree as defined in section 150.20; manslaughter in  
9     the first degree as defined in section 125.20, aggravated manslaughter  
10    in the first degree as defined in section 125.22, rape in the first  
11    degree as defined in section 130.35, criminal sexual act in the first  
12    degree as defined in section 130.50, aggravated sexual abuse in the  
13    first degree as defined in section 130.70, course of sexual conduct  
14    against a child in the first degree as defined in section 130.75;  
15    assault in the first degree as defined in section 120.10, kidnapping in  
16    the second degree as defined in section 135.20, burglary in the first  
17    degree as defined in section 140.30, arson in the second degree as  
18    defined in section 150.15, robbery in the first degree as defined in  
19    section 160.15, PROMOTING A SEX OFFENSE AGAINST A CHILD AS DEFINED IN  
20    SECTION 263.35, incest in the first degree as defined in section 255.27,  
21    criminal possession of a weapon in the first degree as defined in

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

LBD02704-02-1

1 section 265.04, criminal use of a firearm in the first degree as defined  
2 in section 265.09, criminal sale of a firearm in the first degree as  
3 defined in section 265.13, aggravated assault upon a police officer or a  
4 peace officer as defined in section 120.11, gang assault in the first  
5 degree as defined in section 120.07, intimidating a victim or witness in  
6 the first degree as defined in section 215.17, hindering prosecution of  
7 terrorism in the first degree as defined in section 490.35, criminal  
8 possession of a chemical weapon or biological weapon in the second  
9 degree as defined in section 490.40, and criminal use of a chemical  
10 weapon or biological weapon in the third degree as defined in section  
11 490.47.

12 (b) Class C violent felony offenses: an attempt to commit any of the  
13 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
14 vated criminally negligent homicide as defined in section 125.11, aggra-  
15 vated manslaughter in the second degree as defined in section 125.21,  
16 aggravated sexual abuse in the second degree as defined in section  
17 130.67, assault on a peace officer, police officer, fireman or emergency  
18 medical services professional as defined in section 120.08, gang assault  
19 in the second degree as defined in section 120.06, strangulation in the  
20 first degree as defined in section 121.13, burglary in the second degree  
21 as defined in section 140.25, robbery in the second degree as defined in  
22 section 160.10, POSSESSING A SEX OFFENSE AGAINST A CHILD AS DEFINED IN  
23 SECTION 263.40, criminal possession of a weapon in the second degree as  
24 defined in section 265.03, criminal use of a firearm in the second  
25 degree as defined in section 265.08, criminal sale of a firearm in the  
26 second degree as defined in section 265.12, criminal sale of a firearm  
27 with the aid of a minor as defined in section 265.14, soliciting or  
28 providing support for an act of terrorism in the first degree as defined  
29 in section 490.15, hindering prosecution of terrorism in the second  
30 degree as defined in section 490.30, and criminal possession of a chemi-  
31 cal weapon or biological weapon in the third degree as defined in  
32 section 490.37.

33 S 2. Section 263.00 of the penal law is amended by adding a new subdi-  
34 vision 9 to read as follows:

35 9. "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWARE OR WIRE-  
36 LESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE TERMINALS, OR A  
37 COMPLEX CONSISTING OF TWO OR MORE INTERCONNECTED COMPUTERS.

38 S 3. The penal law is amended by adding two new sections 263.35 and  
39 263.40 to read as follows:

40 S 263.35 PROMOTING A SEX OFFENSE AGAINST A CHILD.

41 A PERSON IS GUILTY OF PROMOTING A SEX OFFENSE AGAINST A CHILD WHEN,  
42 KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE PRODUCES, DIRECTS  
43 OR PROMOTES ANY VISUAL OR AUDIO REPRESENTATION OF THE COMMISSION OF ANY  
44 OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS PART AGAINST A  
45 CHILD LESS THAN SIXTEEN YEARS OF AGE, INCLUDING THE DISSEMINATION OF ANY  
46 SUCH REPRESENTATION THROUGH A COMPUTER NETWORK.

47 PROMOTING A SEX OFFENSE AGAINST A CHILD IS A CLASS B FELONY.

48 S 263.40 POSSESSING A SEX OFFENSE AGAINST A CHILD.

49 A PERSON IS GUILTY OF POSSESSING A SEX OFFENSE AGAINST A CHILD WHEN,  
50 KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR SHE KNOWINGLY HAS IN  
51 HIS OR HER POSSESSION OR CONTROL ANY VISUAL OR AUDIO REPRESENTATION OF  
52 THE COMMISSION OF ANY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF  
53 THIS PART AGAINST A CHILD LESS THAN SIXTEEN YEARS OF AGE.

54 POSSESSING A SEX OFFENSE AGAINST A CHILD IS A CLASS C FELONY.

55 S 4. This act shall take effect on the first of November next succeed-  
56 ing the date on which it shall have become a law.