

6719--A

2013-2014 Regular Sessions

I N A S S E M B L Y

April 17, 2013

Introduced by M. of A. CRESPO, ROSA, COOK, MOSLEY, GUNTHER, SIMANOWITZ, SEPULVEDA, GRAF, DUPREY, BORELLI, McDONOUGH, McLAUGHLIN, DiPIETRO, ROBINSON, ROBERTS, FINCH, PALMESANO, SCHIMEL, MONTESANO -- Multi-Sponsored by -- M. of A. ARROYO, CROUCH, HOOPER, KEARNS, McKEVITT, MOYA, PERRY, RA, SCARBOROUGH -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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:

1 Section 1. The penal law is amended by adding a new title Y-2 to read  
2 as follows:

3 TITLE Y-2

4 COMPUTER SEX CRIMES AGAINST CHILDREN

5 ARTICLE 495

6 COMPUTER SEX CRIMES AGAINST CHILDREN

7 SECTION 495.00 COMPUTER SEX CRIMES.

8 495.05 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.

9 S 495.00 COMPUTER SEX CRIMES.

10 1. A PERSON COMMITS A COMPUTER SEX CRIME WHEN HE OR SHE COMMITS A SEX  
11 CRIME AGAINST A CHILD AND FACILITATED THE COMMISSION OF SUCH OFFENSE BY  
12 USING OR CAUSING TO BE USED A COMPUTER, COMPUTER SERVICE, CELL PHONE,  
13 TEXT MESSAGE, INSTANT MESSAGE, OR SOCIAL MEDIA PLATFORM TO COMMUNICATE  
14 WITH THE CHILD AGAINST WHOM SUCH OFFENSE IS COMMITTED.

15 2. A "SEX CRIME AGAINST A CHILD" MEANS A FELONY OFFENSE (A) THE ESSEN-  
16 TIAL ELEMENTS OF WHICH INCLUDE THE COMMISSION OR ATTEMPTED COMMISSION OF  
17 SEXUAL CONDUCT, AS DEFINED IN SUBDIVISION TEN OF SECTION 130.00 OF THIS  
18 CHAPTER, OR THE USE OR PROMOTION OF A SEXUAL OR OBSCENE SEXUAL PERFORM-

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

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1 ANCE, AS DEFINED IN SECTION 263.00 OF THIS CHAPTER, (B) COMMITTED OR  
2 ATTEMPTED TO BE COMMITTED AGAINST A CHILD LESS THAN SEVENTEEN YEARS OLD.  
3 S 495.05 SENTENCE OF IMPRISONMENT FOR COMPUTER SEX CRIMES.

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

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

15 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS  
16 CONVICTED OF A COMPUTER SEX CRIME PURSUANT TO SECTION 495.00 OF THIS  
17 ARTICLE AND THE UNDERLYING SEX CRIME AGAINST A CHILD IS A CLASS B FELO-  
18 NY:

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

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

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

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

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

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

50 (a) asserts facts supporting every element of the offense charged and  
51 the defendant's or defendants' commission thereof with sufficient preci-  
52 sion to clearly apprise the defendant or defendants of the conduct which  
53 is the subject of the accusation; and

54 (b) in the case of any armed felony, as defined in subdivision forty-  
55 one of section 1.20, states that such offense is an armed felony and  
56 specifies the particular implement the defendant or defendants

1 possessed, were armed with, used or displayed or, in the case of an  
2 implement displayed, specifies what the implement appeared to be; and

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

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

17 (e) in the case of a sexually motivated felony, as defined in section  
18 130.91 of the penal law, asserts facts supporting the allegation that  
19 the offense was sexually motivated; and

20 (F) IN THE CASE OF A COMPUTER SEX CRIME, AS DEFINED IN SUBDIVISION ONE  
21 OF SECTION 495.00 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE, THAT THE  
22 DEFENDANT OR DEFENDANTS FACILITATED THE COMMISSION OF A SEX CRIME  
23 AGAINST A CHILD, AS DEFINED IN SUBDIVISION TWO OF SUCH SECTION 495.00,  
24 BY USING OR CAUSING TO BE USED A COMPUTER, COMPUTER SERVICE, CELL PHONE,  
25 TEXT MESSAGE, INSTANT MESSAGE, OR SOCIAL MEDIA PLATFORM TO COMMUNICATE  
26 WITH THE CHILD AGAINST WHOM SUCH OFFENSE IS COMMITTED; AND

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

29 (U) COMPUTER SEX CRIMES AS DEFINED IN SECTION 495.00 OF THE PENAL LAW,  
30 COMPUTER TRESPASS AS DEFINED IN SECTION 156.10 OF THE PENAL LAW, COMPUT-  
31 ER TAMPERING IN THE THIRD DEGREE AS DEFINED IN SECTION 156.25 OF THE  
32 PENAL LAW, COMPUTER TAMPERING IN THE SECOND DEGREE AS DEFINED IN SECTION  
33 156.26 OF THE PENAL LAW, COMPUTER TAMPERING IN THE FIRST DEGREE AS  
34 DEFINED IN SECTION 156.27 OF THE PENAL LAW, UNLAWFUL DUPLICATION OF  
35 COMPUTER RELATED MATERIAL AS DEFINED IN SECTION 156.30 OF THE PENAL LAW,  
36 CRIMINAL POSSESSION OF COMPUTER RELATED MATERIAL AS DEFINED IN SECTION  
37 156.35 OF THE PENAL LAW AND DISSEMINATING INDECENT MATERIAL TO MINORS IN  
38 THE FIRST DEGREE AS DEFINED IN SECTION 235.22 OF THE PENAL LAW.

39 (V) USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION  
40 263.05 OF THE PENAL LAW, PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A  
41 CHILD AS DEFINED IN SECTION 263.10 OF THE PENAL LAW, POSSESSING AN  
42 OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.11 OF  
43 THE PENAL LAW, PROMOTING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN  
44 SECTION 263.15 OF THE PENAL LAW, POSSESSING A SEXUAL PERFORMANCE BY A  
45 CHILD AS DEFINED IN SECTION 263.16 OF THE PENAL LAW.

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

49 (a) Any of the felonies set forth in this chapter: sections 120.05,  
50 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-  
51 ing to strangulation; sections 125.10 to 125.27 relating to homicide;  
52 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and  
53 135.25 relating to kidnapping; section 135.35 relating to labor traf-  
54 ficking; section 135.65 relating to coercion; sections 140.20, 140.25  
55 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12  
56 relating to criminal mischief; article one hundred fifty relating to

1 arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand  
2 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health  
3 care fraud; article one hundred sixty relating to robbery; sections  
4 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of  
5 stolen property; sections 165.72 and 165.73 relating to trademark coun-  
6 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and  
7 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and  
8 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and  
9 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating  
10 to criminal diversion of prescription medications and prescriptions;  
11 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,  
12 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00,  
13 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20  
14 and 187.25 relating to residential mortgage fraud[,] sections 190.40  
15 and 190.42 relating to criminal usury; section 190.65 relating to  
16 schemes to defraud; sections 205.60 and 205.65 relating to hindering  
17 prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and  
18 contempt; section 215.40 relating to tampering with physical evidence;  
19 sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39,  
20 220.41, 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled  
21 substances; sections 225.10 and 225.20 relating to gambling; sections  
22 230.25, 230.30, and 230.32 relating to promoting prostitution; section  
23 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and  
24 235.22 relating to obscenity; sections 263.05, 263.10 [and], 263.11,  
25 263.15 AND 263.16 relating to [promoting] a sexual performance by a  
26 child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the  
27 provisions of section 265.10 which constitute a felony relating to  
28 firearms and other dangerous weapons; and sections 265.14 and 265.16  
29 relating to criminal sale of a firearm; and section 275.10, 275.20,  
30 275.30, or 275.40 relating to unauthorized recordings; [and] sections  
31 470.05, 470.10, 470.15 and 470.20 relating to money laundering AND  
32 SECTION 495.00 RELATING TO COMPUTER SEX CRIMES; or

33 S 5. This act shall take effect on the first of November next succeed-  
34 ing the date on which it shall have become a law.