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

6872

2013-2014 Regular Sessions

I N A S S E M B L Y

April 23, 2013

Introduced by M. of A. ROSA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to creating the crimes of electronic stalking, and adding electronic stalking to designated offenses for eavesdropping warrants and to amend the correction law, in relation to including a conviction of electronic stalking under the requirements of the sex offender registration act

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

Section 1. Section 120.40 of the penal law is amended by adding two new subdivisions 6 and 7 to read as follows:

6. "ELECTRONIC COMMUNICATION" SHALL MEAN ANY TRANSFER OF SIGNS, SIGNALS, WRITINGS, IMAGES, SOUNDS, DATA, OR INTELLIGENCE OF ANY NATURE TRANSMITTED IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC, PHOTO-ELECTRONIC, OR PHOTO-OPTICAL SYSTEM. ELECTRONIC COMMUNICATION INCLUDES, BUT IS NOT LIMITED TO, THE TRANSFER OF THAT COMMUNICATION THROUGH THE INTERNET.

7. "PERSONAL IDENTIFYING INFORMATION" SHALL MEAN A PERSON'S NAME, ADDRESS, TELEPHONE NUMBER, DATE OF BIRTH, DRIVER'S LICENSE NUMBER, MOTOR VEHICLE LICENSE PLATE NUMBER, SOCIAL SECURITY NUMBER, PLACE OF EMPLOYMENT, SCHOOL, MOTHER'S MAIDEN NAME, IMAGE, OR SCHEDULE OF DAILY ACTIVITIES.

S 2. Subdivision 4 of section 120.55 of the penal law, as amended by chapter 598 of the laws of 2003, is amended to read as follows:

4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury [or], death, OR BECOM-

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

LBD10397-01-3

ING THE VICTIM OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE; or

S 3. The penal law is amended by adding three new sections 120.61, 120.62 and 120.63 to read as follows:

S 120.61 ELECTRONIC STALKING IN THE THIRD DEGREE.

A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE THIRD DEGREE WHEN HE OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNICATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH, SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRISONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMINAL TRESPASS OR BURGLARY.

ELECTRONIC STALKING IN THE THIRD DEGREE IS A CLASS E FELONY.

S 120.62 ELECTRONIC STALKING IN THE SECOND DEGREE.

A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE SECOND DEGREE WHEN HE OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNICATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH, SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRISONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMINAL TRESPASS OR BURGLARY, AND:

1. SUCH COMMUNICATION FACILITATES THE COMMISSION OR ATTEMPTED COMMISSION OF A CRIME OTHER THAN A CLASS A, B OR C FELONY AND SUCH CRIME OR ATTEMPTED CRIME ACTUALLY OCCURS; OR

2. SUCH COMMUNICATION INVOLVES THE DISSEMINATION OF PERSONAL IDENTIFYING INFORMATION CONCERNING A PERSON UNDER THE AGE OF EIGHTEEN AND THE ACTOR IS EIGHTEEN YEARS OLD OR MORE; OR

3. SUCH COMMUNICATION INVOLVES THE DISSEMINATION OF PERSONAL IDENTIFYING INFORMATION CONCERNING A PERSON WHO IS A PUBLIC SERVANT AS DEFINED IN SUBDIVISION FIFTEEN OF SECTION 10.00 OF THIS CHAPTER AND THE INFORMATION IS COMMUNICATED BECAUSE OF THE PERSON'S POSITION AS A PUBLIC SERVANT; OR

4. HE OR SHE DOES SO BY KNOWINGLY ASSUMING THE IDENTITY OF SUCH SPECIFIC PERSON BY PRESENTING HIMSELF OR HERSELF AS THAT SPECIFIC PERSON, OR BY ACTING AS THAT SPECIFIC PERSON, OR BY USING PERSONAL IDENTIFYING INFORMATION OF THAT SPECIFIC PERSON.

ELECTRONIC STALKING IN THE SECOND DEGREE IS A CLASS D FELONY.

S 120.63 ELECTRONIC STALKING IN THE FIRST DEGREE.

A PERSON IS GUILTY OF ELECTRONIC STALKING IN THE FIRST DEGREE WHEN HE OR SHE, INTENTIONALLY AND FOR NO LEGITIMATE PURPOSE, MAKES AN ELECTRONIC COMMUNICATION THAT INCLUDES PERSONAL IDENTIFYING INFORMATION CONCERNING A SPECIFIC PERSON AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNICATION IS LIKELY TO CAUSE SUCH PERSON TO REASONABLY FEAR THE DEATH, SERIOUS PHYSICAL INJURY, PHYSICAL INJURY, KIDNAPPING, OR UNLAWFUL IMPRISONMENT OF SUCH PERSON OR ANOTHER PERSON; THE COMMISSION OF A SEX OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE AGAINST SUCH PERSON OR ANOTHER PERSON; OR THE COMMISSION OF THE CRIMES OF CRIMINAL TRESPASS OR BURGLARY; AND SUCH COMMUNICATION FACILITATES THE COMMISSION OR ATTEMPTED COMMISSION OF A CLASS A, B OR C FELONY AND SUCH CRIME OR ATTEMPTED CRIME ACTUALLY OCCURS.

ELECTRONIC STALKING IN THE FIRST DEGREE IS A CLASS C FELONY.

S 4. Paragraph (p) of subdivision 8 of section 700.05 of the criminal procedure law, as added by chapter 635 of the laws of 1999, is amended to read as follows:

(p) Stalking in the second degree as defined in section 120.55 of the penal law, [and] stalking in the first degree as defined in section 120.60 of the penal law, ELECTRONIC STALKING IN THE THIRD DEGREE AS DEFINED IN SECTION 120.61 OF THE PENAL LAW, ELECTRONIC STALKING IN THE SECOND DEGREE AS DEFINED IN SECTION 120.62 OF THE PENAL LAW, AND ELECTRONIC STALKING IN THE FIRST DEGREE AS DEFINED IN SECTION 120.63 OF THE PENAL LAW.

S 5. Subdivision 8 of section 700.05 of the criminal procedure law is amended by adding a new paragraph (u) to read as follows:

(U) DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE AS DEFINED IN SECTION 235.22 OF THE PENAL LAW, 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, AND POSSESSING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.16 OF THE PENAL LAW.

S 6. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 1 of the laws of 2013, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, ELECTRONIC STALKING IN THE FIRST DEGREE AS DEFINED IN SECTION 120.63, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, ELECTRONIC STALKING IN THE FIRST DEGREE AS DEFINED IN SECTION 120.63, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section

130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

S 7. Subparagraph (iii) of paragraph (d) and paragraph (e) of subdivision 2 of section 168-a of the correction law, subparagraph (iii) of paragraph (d) as amended by chapter 232 of the laws of 2008 and paragraph (e) as amended by chapter 513 of the laws of 2011, are amended and a new paragraph (f) is added to read as follows:

(iii) any of the provisions of 18 U.S.C. 2251, 18 U.S.C. 2251A, 18 U.S.C. 2252, 18 U.S.C. 2252A, 18 U.S.C. 2260, 18 U.S.C. 2422(b), 18 U.S.C. 2423, or 18 U.S.C. 2425, provided that the elements of such crime of conviction are substantially the same as those which are a part of such offense as of the date on which this subparagraph takes effect[.]; OR

(e) a conviction of or a conviction for an attempt to commit any of the provisions of subdivision two, three or four of section 250.45 of the penal law, unless upon motion by the defendant, the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that registration would be unduly harsh and inappropriate[.]; OR

(F) A CONVICTION FOR ANY OF THE PROVISIONS DEFINED IN SECTIONS 120.61, 120.62, OR 120.63 OF THE PENAL LAW, UNLESS UPON MOTION BY THE DEFENDANT, THE TRIAL COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT REGISTRATION WOULD BE UNDULY HARSH AND INAPPROPRIATE.

S 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.