

3212--A

2015-2016 Regular Sessions

I N   S E N A T E

February 3, 2015

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Introduced by Sens. YOUNG, AVELLA, BONACIC, DeFRANCISCO, FUNKE, GALLIVAN, GOLDEN, LANZA, LARKIN, O'MARA, ORTT, RANZENHOFER, RITCHIE -- 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, 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 368 of the laws of  
3     2015 and paragraph (b) as amended by chapter 1 of the laws of 2013, are  
4     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, sex trafficking as defined in paragraphs (a) and (b) of  
21    subdivision five of section 230.34, incest in the first degree as

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

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1 defined in section 255.27, criminal possession of a weapon in the first  
2 degree as defined in section 265.04, criminal use of a firearm in the  
3 first degree as defined in section 265.09, criminal sale of a firearm in  
4 the first degree as defined in section 265.13, aggravated assault upon a  
5 police officer or a peace officer as defined in section 120.11, gang  
6 assault in the first degree as defined in section 120.07, intimidating a  
7 victim or witness in the first degree as defined in section 215.17,  
8 hindering prosecution of terrorism in the first degree as defined in  
9 section 490.35, criminal possession of a chemical weapon or biological  
10 weapon in the second degree as defined in section 490.40, and criminal  
11 use of a chemical weapon or biological weapon in the third degree as  
12 defined in section 490.47.

13 (b) Class C violent felony offenses: an attempt to commit any of the  
14 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
15 vated criminally negligent homicide as defined in section 125.11, aggra-  
16 vated manslaughter in the second degree as defined in section 125.21,  
17 aggravated sexual abuse in the second degree as defined in section  
18 130.67, assault on a peace officer, police officer, fireman or emergency  
19 medical services professional as defined in section 120.08, assault on a  
20 judge as defined in section 120.09, gang assault in the second degree as  
21 defined in section 120.06, strangulation in the first degree as defined  
22 in section 121.13, burglary in the second degree as defined in section  
23 140.25, robbery in the second degree as defined in section 160.10,  
24 POSSESSING A SEX OFFENSE AGAINST A CHILD AS DEFINED IN SECTION 263.40,  
25 criminal possession of a weapon in the second degree as defined in  
26 section 265.03, criminal use of a firearm in the second degree as  
27 defined in section 265.08, criminal sale of a firearm in the second  
28 degree as defined in section 265.12, criminal sale of a firearm with the  
29 aid of a minor as defined in section 265.14, aggravated criminal  
30 possession of a weapon as defined in section 265.19, soliciting or  
31 providing support for an act of terrorism in the first degree as defined  
32 in section 490.15, hindering prosecution of terrorism in the second  
33 degree as defined in section 490.30, and criminal possession of a chemi-  
34 cal weapon or biological weapon in the third degree as defined in  
35 section 490.37.

36 S 2. Section 263.00 of the penal law is amended by adding a new subdi-  
37 vision 10 to read as follows:

38 10. "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWARE OR WIRE-  
39 LESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE TERMINALS, OR A  
40 COMPLEX CONSISTING OF TWO OR MORE INTERCONNECTED COMPUTERS.

41 S 3. The penal law is amended by adding two new sections 263.35 and  
42 263.40 to read as follows:

43 S 263.35 PROMOTING A SEX OFFENSE AGAINST A CHILD.

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

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

51 S 263.40 POSSESSING A SEX OFFENSE AGAINST A CHILD.

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

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

2 S 4. This act shall take effect on the first of November next succeed-  
3 ing the date on which it shall have become a law, provided that if chap-  
4 ter 368 of the laws of 2015 shall not have taken effect prior to such  
5 effective date, then the amendments to paragraph (a) of subdivision 1 of  
6 section 70.02, made by section one of this act, shall take effect on the  
7 same date and in the same manner as chapter 368 of the laws of 2015  
8 takes effect.