

5560--A

2015-2016 Regular Sessions

I N   S E N A T E

May 14, 2015

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Introduced by Sen. 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, the correction law, the criminal procedure law, the civil rights law, the mental hygiene law and the vehicle and traffic law, in relation to creating the crime of sexual exploitation of a child

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 section 130.98 to  
2     read as follows:  
3     S 130.98 SEXUAL EXPLOITATION OF A CHILD.  
4     A PERSON IS GUILTY OF SEXUAL EXPLOITATION OF A CHILD WHEN:  
5     1. BEING EIGHTEEN YEARS OF AGE OR MORE HE OR SHE EMPLOYS, USES,  
6     PERSUADES, INDUCES, ENTICES, OR COERCES ANY MINOR TO ENGAGE IN, OR WHO  
7     HAS A MINOR ASSIST ANY OTHER PERSON TO ENGAGE IN, OR WHO TRANSPORTS ANY  
8     MINOR WITHIN THE STATE, WITH THE INTENT THAT SUCH MINOR ENGAGE IN, ANY  
9     SEXUALLY EXPLICIT CONDUCT FOR THE PURPOSE OF PRODUCING ANY VISUAL  
10    DEPICTION OF SUCH CONDUCT OR FOR THE PURPOSE OF TRANSMITTING A LIVE  
11    VISUAL DEPICTION OF SUCH CONDUCT.  
12    2. BEING EIGHTEEN YEARS OF AGE OR MORE HE OR SHE KNOWINGLY MAKES,  
13    PRINTS, OR PUBLISHES, OR CAUSES TO BE MADE, PRINTED, OR PUBLISHED, ANY  
14    NOTICE OR ADVERTISEMENT SEEKING OR OFFERING:  
15    A. TO RECEIVE, EXCHANGE, BUY, PRODUCE, DISPLAY, DISTRIBUTE, OR  
16    REPRODUCE, ANY VISUAL DEPICTION, IF THE PRODUCTION OF SUCH VISUAL  
17    DEPICTION INVOLVES THE USE OF A MINOR ENGAGING IN SEXUALLY EXPLICIT  
18    CONDUCT AND SUCH VISUAL DEPICTION IS OF SUCH CONDUCT; OR

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

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1 B. PARTICIPATION IN ANY ACT OF SEXUALLY EXPLICIT CONDUCT BY OR WITH  
2 ANY MINOR FOR THE PURPOSE OF PRODUCING A VISUAL DEPICTION OF SUCH  
3 CONDUCT.

4 SEXUAL EXPLOITATION OF A CHILD IS A CLASS B FELONY.

5 S 2. Section 60.13 of the penal law, as amended by chapter 368 of the  
6 laws of 2015, is amended to read as follows:

7 S 60.13 Authorized dispositions; felony sex offenses.

8 When a person is to be sentenced upon a conviction for any felony  
9 defined in article one hundred thirty of this chapter, including a sexu-  
10 ally motivated felony, or patronizing a person for prostitution in the  
11 first degree as defined in section 230.06 of this chapter, aggravated  
12 patronizing a minor for prostitution in the third degree as defined in  
13 section 230.11 of this chapter, aggravated patronizing a minor for pros-  
14 titution in the second degree as defined in section 230.12 of this chap-  
15 ter, aggravated patronizing a minor for prostitution in the first degree  
16 as defined in section 230.13 of this chapter, SEXUAL EXPLOITATION OF A  
17 CHILD AS DEFINED IN SECTION 130.98 OF THIS CHAPTER, incest in the second  
18 degree as defined in section 255.26 of this chapter, or incest in the  
19 first degree as defined in section 255.27 of this chapter, or a felony  
20 attempt or conspiracy to commit any of these crimes, the court must  
21 sentence the defendant in accordance with the provisions of section  
22 70.80 of this title.

23 S 3. Paragraph (a) of subdivision 1 of section 70.80 of the penal law,  
24 as amended by chapter 368 of the laws of 2015, is amended to read as  
25 follows:

26 (a) For the purposes of this section, a "felony sex offense" means a  
27 conviction of any felony defined in article one hundred thirty of this  
28 chapter, including a sexually motivated felony, or patronizing a person  
29 for prostitution in the first degree as defined in section 230.06 of  
30 this chapter, patronizing a person for prostitution in the second degree  
31 as defined in section 230.05 of this chapter, aggravated patronizing a  
32 minor for prostitution in the third degree as defined in section 230.11  
33 of this chapter, aggravated patronizing a minor for prostitution in the  
34 second degree as defined in section 230.12 of this chapter, aggravated  
35 patronizing a minor for prostitution in the first degree as defined in  
36 section 230.13 of this chapter, SEXUAL EXPLOITATION OF A CHILD AS  
37 DEFINED IN SECTION 130.98 OF THIS CHAPTER, incest in the second degree  
38 as defined in section 255.26 of this chapter, or incest in the first  
39 degree as defined in section 255.27 of this chapter, or a felony attempt  
40 or conspiracy to commit any of the above.

41 S 4. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
42 168-a of the correction law, as amended by chapter 368 of the laws of  
43 2015, is amended to read as follows:

44 (i) a conviction of or a conviction for an attempt to commit any of  
45 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,  
46 130.45, 130.60, 130.98, 230.34, 250.50, 255.25, 255.26 and 255.27 or  
47 article two hundred sixty-three of the penal law, or section 135.05,  
48 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses,  
49 provided the victim of such kidnapping or related offense is less than  
50 seventeen years old and the offender is not the parent of the victim, or  
51 section 230.04, where the person patronized is in fact less than seven-  
52 teen years of age, 230.05, 230.06, 230.11, 230.12, 230.13, subdivision  
53 two of section 230.30, section 230.32, 230.33, or 230.34 of the penal  
54 law, or section 230.25 of the penal law where the person prostituted is  
55 in fact less than seventeen years old, or

1 S 5. Subdivision 6 of section 380.50 of the criminal procedure law, as  
2 separately amended by chapters 368 and 394 of the laws of 2015, is  
3 amended to read as follows:

4 6. Regardless of whether the victim requests to make a statement with  
5 regard to the defendant's sentence, where the defendant is sentenced for  
6 a violent felony offense as defined in section 70.02 of the penal law or  
7 a felony defined in article one hundred twenty-five of such law or any  
8 of the following provisions of such law sections 130.25, 130.98, 130.30,  
9 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three,  
10 135.10, 135.25, 230.05, 230.06, 230.11, 230.12, 230.13, subdivision two  
11 of section 230.30 or 230.32, the prosecutor shall, within sixty days of  
12 the imposition of sentence, provide the victim with a form, prepared and  
13 distributed by the commissioner of the division of criminal justice  
14 services, in consultation with the director of the office of victim  
15 services, on which the victim may indicate a demand to be informed of  
16 any petition to change the name of such defendant. Such forms shall be  
17 maintained by such prosecutor. Upon receipt of a notice of a petition to  
18 change the name of any such defendant, pursuant to subdivision two of  
19 section sixty-two of the civil rights law, the prosecutor shall promptly  
20 notify the victim at the most current address or telephone number  
21 provided by such victim in the most reasonable and expedient possible  
22 manner of the time and place such petition will be presented to the  
23 court.

24 S 6. Subdivision 2 of section 61 of the civil rights law, as amended  
25 by section 54 of subpart B of part C of chapter 62 of the laws of 2011,  
26 is amended to read as follows:

27 2. If the petitioner stands convicted of a violent felony offense as  
28 defined in section 70.02 of the penal law or a felony defined in article  
29 one hundred twenty-five of such law or any of the following provisions  
30 of such law sections 130.25, 130.30, 130.40, 130.45, 130.98, 255.25,  
31 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05,  
32 230.06, subdivision two of section 230.30 or 230.32, and is currently  
33 confined as an inmate in any correctional facility or currently under  
34 the supervision of the department of corrections and community super-  
35 vision or a county probation department as a result of such conviction,  
36 the petition shall for each such conviction specify such felony  
37 conviction, the date of such conviction or convictions, and the court in  
38 which such conviction or convictions were entered.

39 S 7. Subdivision 2 of section 62 of the civil rights law, as amended  
40 by section 55 of subpart B of part C of chapter 62 of the laws of 2011,  
41 is amended to read as follows:

42 2. If the petition be to change the name of a person currently  
43 confined as an inmate in any correctional facility or currently under  
44 the supervision of the department of corrections and community super-  
45 vision or a county probation department as a result of a conviction for  
46 a violent felony offense as defined in section 70.02 of the penal law or  
47 a felony defined in article one hundred twenty-five of such law or any  
48 of the following provisions of such law sections 130.25, 130.30, 130.40,  
49 130.45, 130.98, 255.25, 255.26, 255.27, article two hundred sixty-three,  
50 135.10, 135.25, 230.05, 230.06, subdivision two of section 230.30 or  
51 230.32, notice of the time and place when and where the petition will be  
52 presented shall be served, in like manner as a notice of a motion upon  
53 an attorney in an action, upon the district attorney of every county in  
54 which such person has been convicted of such felony and upon the court  
55 or courts in which the sentence for such felony was entered. Unless a  
56 shorter period of time is ordered by the court, said notice shall be

1 served upon each such district attorney and court or courts not less  
2 than sixty days prior to the date on which such petition is noticed to  
3 be heard.

4 S 8. The closing paragraph of section 64 of the civil rights law, as  
5 separately amended by chapters 258, 320 and 481 of the laws of 2006, is  
6 amended to read as follows:

7 Upon compliance with the order and the filing of the affidavit of the  
8 publication, as provided in this section, the clerk of the court in  
9 which the order has been entered shall certify that the order has been  
10 complied with; and, if the petition states that the petitioner stands  
11 convicted of a violent felony offense as defined in section 70.02 of the  
12 penal law or a felony defined in article one hundred twenty-five of such  
13 law or any of the following provisions of such law sections 130.25,  
14 130.30, 130.40, 130.45, 130.98, 255.25, 255.26, 255.27, article two  
15 hundred sixty-three, 135.10, 135.25, 230.05, 230.06, subdivision two of  
16 section 230.30 or 230.32, such clerk (1) shall deliver, by first class  
17 mail, a copy of such certified order to the division of criminal justice  
18 services at its office in the county of Albany and (2) upon the clerk of  
19 the court reviewing the petitioner's application for name change and  
20 subsequent in-court inquiry, may, in the clerk's discretion, deliver, by  
21 first class mail, the petitioner's new name with such certified order to  
22 the court of competent jurisdiction which imposed the orders of support.  
23 Such certification shall appear on the original order and on any certi-  
24 fied copy thereof and shall be entered in the clerk's minutes of the  
25 proceeding.

26 S 9. Subdivision (p) of section 10.03 of the mental hygiene law, as  
27 amended by chapter 368 of the laws of 2015, is amended to read as  
28 follows:

29 (p) "Sex offense" means an act or acts constituting: (1) any felony  
30 defined in article one hundred thirty of the penal law, including a  
31 sexually motivated felony; (2) patronizing a person for prostitution in  
32 the first degree as defined in section 230.06 of the penal law, aggra-  
33 vated patronizing a minor for prostitution in the first degree as  
34 defined in section 230.13 of the penal law, aggravated patronizing a  
35 minor for prostitution in the second degree as defined in section 230.12  
36 of the penal law, aggravated patronizing a minor for prostitution in the  
37 third degree as defined in section 230.11 of the penal law, incest in  
38 the second degree as defined in section 255.26 of the penal law, SEXUAL  
39 EXPLOITATION OF A CHILD AS DEFINED IN SECTION 130.98 OF THE PENAL LAW,  
40 or incest in the first degree as defined in section 255.27 of the penal  
41 law; (3) a felony attempt or conspiracy to commit any of the foregoing  
42 offenses set forth in this subdivision; or (4) a designated felony, as  
43 defined in subdivision (f) of this section, if sexually motivated and  
44 committed prior to the effective date of this article.

45 S 10. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle  
46 and traffic law, as amended by chapter 368 of the laws of 2015, is  
47 amended to read as follows:

48 (c) The offenses referred to in subparagraph (i) of paragraph (b) of  
49 subdivision one and subparagraph (i) of paragraph (c) of subdivision two  
50 of this section that result in disqualification for a period of five  
51 years shall include a conviction under sections 100.10, 105.13, 115.05,  
52 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,  
53 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 130.98, 135.10, 135.55,  
54 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06,  
55 220.09, 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55,  
56 230.00, 230.05, 230.06, 230.11, 230.12, 230.13, 230.19, 230.20, 235.05,

1 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of  
2 section 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09,  
3 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of  
4 the aforesaid offenses under section 110.00 of the penal law, or any  
5 similar offenses committed under a former section of the penal law, or  
6 any offenses committed under a former section of the penal law which  
7 would constitute violations of the aforesaid sections of the penal law,  
8 or any offenses committed outside this state which would constitute  
9 violations of the aforesaid sections of the penal law.  
10 S 11. This act shall take effect on the ninetieth day after it shall  
11 have become a law.