STATE OF NEW YORK

991

2019-2020 Regular Sessions

IN SENATE

January 9, 2019

Introduced by Sens. YOUNG, FUNKE, GALLIVAN, LANZA, O'MARA, ORTT, RANZENHOFER, RITCHIE, SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

Section 1. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 189 of the laws of 2018 and paragraph (b) as amended by chapter 476 of the laws of 2018, are amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, sex trafficking as defined in paragraphs (a) and (b) of subdivision five of section 230.34, sex trafficking of a child as defined in section 230.34-a, incest in the first degree as defined in section 255.27, **promoting a sex offense against a child as defined in section 263.35,** criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in

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

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the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(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, firefighter 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, 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, **possessing a sex offense against a child as defined in section 263.40,** 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.

§ 2. Section 263.00 of the penal law is amended by adding a new subdivision 10 to read as follows:

10. "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

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

§ 263.35 Promoting a sex offense against a child.

A person is guilty of promoting a sex offense against a child when, knowing the character and content thereof, he or she produces, directs or promotes any visual or audio representation of the commission of any offense defined in article one hundred thirty of this part against a child less than sixteen years of age, including the dissemination of any such representation through a computer network.

Promoting a sex offense against a child is a class B felony.

§ 263.40 Possessing a sex offense against a child.

A person is guilty of possessing a sex offense against a child when, knowing the character and content thereof, he or she knowingly has in his or her possession or control any visual or audio representation of the commission of any offense defined in article one hundred thirty of this part against a child less than sixteen years of age.

Possessing a sex offense against a child is a class C felony.

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