

STATE OF NEW YORK

9859--A

IN ASSEMBLY

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Introduced by M. of A. LENTOL, SILVER, HYER-SPENCER, T. GORDON, DELMONTE, CARROZZA, CLARK, CYMBROWITZ, DESTITO, GALEF, GUNTHER, LAVINE, MARKEY, MAYERSOHN, PHEFFER, YOUNG, LUPARDO -- Multi-Sponsored by -- M. of A. BRADLEY, CUSICK, EDDINGTON, HEVESI, JOHN, KOON, LATIMER, MAGNARELLI, RAMOS, REILLY, SPANO, STIRPE, TITONE -- (at request of the Department of Law) -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, the penal law, the executive law and the state finance law, in relation to the protection of people who use internet services from convicted sex offenders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative purpose and findings. The danger of recidivism
2 posed by sex offenders who commit predatory acts against children, and
3 the protection of the public from these offenders, are of paramount
4 concern and interest to the legislature. As a result, the legislature
5 has enacted a series of laws to monitor sex offenders and protect the
6 public from victimization, specifically, a system to: register sex
7 offenders; provide law enforcement agencies, entities with vulnerable
8 populations, and the general public access to information contained in
9 the state's sex offender registry; prohibit high risk sex offenders from
10 entering upon school grounds; and civilly confine dangerous sex offen-
11 ders who would likely re-offend if released. Such laws have enhanced the
12 state's ability to protect the public and prevent further victimization,
13 sexual abuse and exploitation.

14 However, existing law has failed to keep pace with rapid advances in
15 computer technology, particularly the internet. People meet, socialize
16 and exchange ideas through online services such as social networking
17 websites. Such websites are accessible to minors who may easily be
18 presented with obscene or indecent material and be subjected to unlawful
19 sexual advances from adults. Therefore, in the hands of a sexual preda-
20 tor intent on harming minors, social networking websites and other simi-
21 lar services pose a clear and present danger to New Yorkers. Behind a

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

LBD14924-04-8

A. 9859--A

2

1 computer screen, convicted sex offenders are able to hide their identity
2 while attempting to engage children in illicit activity. Additionally,
3 given the secrecy, manipulation and deception that often accompanies sex
4 offending behavior, the internet -- with its promise of anonymity -- can
5 provide an opportunity for convicted sex offenders on probation or
6 parole to circumvent supervision, thereby undermining their treatment
7 and increasing the risk of recidivism.

8 Recent investigations conducted by the attorney general have found
9 that tens of thousands of known sex offenders use social networking
10 websites popular with children. Existing law, however, does not require
11 sex offenders to provide the division of criminal justice services
12 certain key internet identifiers, notwithstanding that such offenders
13 must disclose personal information such as their home address, expected
14 place of domicile and driver's license number. Moreover, while existing
15 law mandates that dangerous sex offenders on probation or parole be
16 prohibited from entering places where children congregate, such as
17 school grounds, there are no such mandatory prohibitions to prevent
18 offenders from victimizing children in cyberspace.

19 As a result of his investigations, the attorney general has worked
20 with various social networking websites and other types of internet
21 service providers to strengthen security of online services and better
22 police them of known predators. For example, in 2007, the attorney
23 general entered into a landmark settlement agreement with a large social
24 networking website that created a new model to enforce safeguards aimed
25 at protecting children and adolescents from sexual predators, obscene
26 content and harassment.

27 While such settlements have greatly enhanced protections for children,
28 existing law limits the ability of law enforcement to prevent a sex
29 offender from using the internet to contact a child in the first place.
30 For example, social networking websites are not currently able to access
31 internet information contained in the state's sex offender registry and
32 are therefore unable to preclude sex offenders from accessing such
33 website's most vulnerable users.

34 The legislature is mindful that more than 200,000,000 American adults
35 use the internet for employment purposes, to access educational opportu-
36 nities, communicate with family and friends, manage finances and pay
37 bills, stay informed of news and current events, and shop. Further,
38 persons on parole and probation currently face many barriers to employ-
39 ment and educational opportunities as a result of having a criminal
40 record. Studies indicate that access to employment and education great-
41 ly reduces the risk of recidivism by ex-offenders. Therefore, any meas-
42 ure that restricts an offender's use of the internet must be tailored to
43 specifically target the types of offenses committed on the internet
44 while not making it impossible for such offenders to successfully rein-
45 tegrate back into society.

46 This groundbreaking legislation enables New York to combat misuse of
47 the internet by convicted sex offenders by requiring sex offenders to
48 register their internet identifiers with law enforcement, permitting
49 social networking websites to access the internet identifiers of
50 convicted sexual predators in order to prescreen or remove them from
51 services used by children and notify law enforcement of potential
52 violations of law, and prohibiting certain high risk sex offenders from
53 using the internet to victimize children.

54 In balancing offenders' rights, and the interests of public security,
55 the legislature finds that releasing information about sex offenders to
56 appropriate and responsible parties will further the primary government

A. 9859--A

3

1 interest of protecting vulnerable populations and the public from poten-
2 tial harm.

3 Likewise, the law mandates that the court and the parole board prohib-
4 it certain dangerous convicted sex offenders from using the internet to
5 access inappropriate material, access a commercial social networking
6 website, communicate with others for the purpose of promoting sexual
7 relations with minors, or, in certain circumstances, communicate with
8 minors and further authorizes sentencing courts to impose as a condition
9 of probation reasonable limitations on a sex offender's internet use as
10 it determines to be necessary or appropriate.

11 § 2. Short title. This act shall be known and may be cited as the
12 "electronic security and targeting of online predators act".

13 § 3. Section 168-a of the correction law is amended by adding three
14 new subdivisions 16, 17 and 18 to read as follows:

15 16. "Authorized internet entity" means any business, organization or
16 other entity providing or offering a service over the internet which
17 permits persons under eighteen years of age to access, meet, congregate
18 or communicate with other users for the purpose of social networking.
19 This definition shall not include general e-mail services.

20 17. "Internet access provider" means any business, organization or
21 other entity engaged in the business of providing a computer and commu-
22 nications facility through which a customer may obtain access to the
23 internet, but does not include a business, organization or other entity
24 to the extent that it provides only telecommunications services.

25 18. "Internet identifiers" means electronic mail addresses and desig-
26 nations used for the purposes of chat, instant messaging, social
27 networking or other similar internet communication.

28 § 4. Paragraph (a) of subdivision 1 of section 168-b of the correction
29 law, as amended by chapter 11 of the laws of 2002, is amended to read as
30 follows:

31 (a) The sex offender's name, all aliases used, date of birth, sex,
32 race, height, weight, eye color, driver's license number, home address
33 and/or expected place of domicile, any internet accounts with internet
34 access providers belonging to such offender and [~~any~~] internet [~~screen~~
35 ~~names used by~~] identifiers that such offender uses.

36 § 5. Subdivision 10 of section 168-b of the correction law is renum-
37 bered subdivision 11 and a new subdivision 10 is added to read as
38 follows:

39 10. The division shall, upon the request of any authorized internet
40 entity, release to such entity internet identifiers that would enable
41 such entity to prescreen or remove sex offenders from its services or,
42 in conformity with state and federal law, advise law enforcement and/or
43 other governmental entities of potential violations of law and/or
44 threats to public safety. Before releasing any information the division
45 shall require an authorized internet entity that requests information
46 from the registry to submit to the division the name, address and tele-
47 phone number of such entity and the specific legal nature and corporate
48 status of such entity. Except for the purposes specified in this subdi-
49 vision, an authorized internet entity shall not publish or in any way
50 disclose or redisclose any information provided to it by the division
51 pursuant to this subdivision. The division may charge an authorized
52 internet entity a fee for access to registered internet identifiers
53 requested by such entity pursuant to this subdivision. The division
54 shall promulgate rules and regulations relating to procedures for the
55 release of information in the registry, including but not limited to,

A. 9859--A

4

1 the disclosure and redisclosure of such information, and the imposition
2 of any fees.

3 § 6. Subdivision 4 of section 168-f of the correction law, as amended
4 by section 5 of part F of chapter 62 of the laws of 2003, is amended to
5 read as follows:

6 4. Any sex offender shall register with the division no later than ten
7 calendar days after any change of address, internet accounts with inter-
8 net access providers belonging to such offender, internet identifiers
9 that such offender uses, or [~~any change of~~] his or her status of enroll-
10 ment, attendance, employment or residence at any institution of higher
11 education. A fee of ten dollars, as authorized by subdivision eight of
12 section one hundred sixty-eight-b of this article, shall be submitted by
13 the sex offender each time such offender registers any change of address
14 or any change of his or her status of enrollment, attendance, employment
15 or residence at any institution of higher education. Any failure or
16 omission to submit the required fee shall not affect the acceptance by
17 the division of the change of address or change of status.

18 § 7. Subdivision 4-a of section 65.10 of the penal law, as amended by
19 chapter 320 of the laws of 2006, is amended to read as follows:

20 4-a. Mandatory [~~condition~~] conditions for sex offenders. (a) When
21 imposing a sentence of probation or conditional discharge upon a person
22 convicted of an offense defined in article one hundred thirty, two
23 hundred thirty-five or two hundred sixty-three of this chapter, or
24 section 255.25, 255.26 or 255.27 of this chapter, and the victim of such
25 offense was under the age of eighteen at the time of such offense or
26 such person has been designated a level three sex offender pursuant to
27 subdivision six of section 168-1 of the correction law, the court shall
28 require, as a mandatory condition of such sentence, that such sentenced
29 offender shall refrain from knowingly entering into or upon any school
30 grounds, as that term is defined in subdivision fourteen of section
31 220.00 of this chapter, or any other facility or institution primarily
32 used for the care or treatment of persons under the age of eighteen
33 while one or more of such persons under the age of eighteen are present,
34 provided however, that when such sentenced offender is a registered
35 student or participant or an employee of such facility or institution or
36 entity contracting therewith or has a family member enrolled in such
37 facility or institution, such sentenced offender may, with the written
38 authorization of his or her probation officer or the court and the
39 superintendent or chief administrator of such facility, institution or
40 grounds, enter such facility, institution or upon such grounds for the
41 limited purposes authorized by the probation officer or the court and
42 superintendent or chief officer. Nothing in this subdivision shall be
43 construed as restricting any lawful condition of supervision that may be
44 imposed on such sentenced offender.

45 (b) When imposing a sentence of probation or conditional discharge
46 upon a person convicted of an offense for which registration as a sex
47 offender is required pursuant to subdivision two or three of section one
48 hundred sixty-eight-a of the correction law, and the victim of such
49 offense was under the age of eighteen at the time of such offense or
50 such person has been designated a level three sex offender pursuant to
51 subdivision six of section one hundred sixty-eight-1 of the correction
52 law or the internet was used to facilitate the commission of the crime,
53 the court shall require, as mandatory conditions of such sentence, that
54 such sentenced offender be prohibited from using the internet to access
55 pornographic material, access a commercial social networking website,
56 communicate with other individuals or groups for the purpose of promot-

A. 9859--A

5

1 ing sexual relations with persons under the age of eighteen, and commu-
2 nicate with a person under the age of eighteen when such offender is
3 over the age of eighteen, provided that the court may permit an offender
4 to use the internet to communicate with a person under the age of eigh-
5 teen when such offender is the parent of a minor child and is not other-
6 wise prohibited from communicating with such child. Nothing in this
7 subdivision shall be construed as restricting any other lawful condition
8 of supervision that may be imposed on such sentenced offender. As used
9 in this subdivision, a "commercial social networking website" shall mean
10 any business, organization or other entity operating a website that
11 permits persons under eighteen years of age to be registered users for
12 the purpose of establishing personal relationships with other users,
13 where such persons under eighteen years of age may: (i) create web pages
14 or profiles that provide information about themselves where such web
15 pages or profiles are available to the public or to other users; (ii)
16 engage in direct or real time communication with other users, such as a
17 chat room or instant messenger; and (iii) communicate with persons over
18 eighteen years of age; provided, however, that, for purposes of this
19 subdivision, a commercial social networking website shall not include a
20 website that permits users to engage in such other activities as are not
21 enumerated herein.

22 § 8. Section 65.10 of the penal law is amended by adding a new subdi-
23 vision 5-a to read as follows:

24 5-a. Other conditions for sex offenders. When imposing a sentence of
25 probation upon a person convicted of an offense for which registration
26 as a sex offender is required pursuant to subdivision two or three of
27 section one hundred sixty-eight-a of the correction law, in addition to
28 any conditions required under subdivisions two, three, four, four-a and
29 five of this section, the court may require that the defendant comply
30 with a reasonable limitation on his or her use of the internet that the
31 court determines to be necessary or appropriate to ameliorate the
32 conduct which gave rise to the offense or to protect public safety,
33 provided that the court shall not prohibit such sentenced offender from
34 using the internet in connection with education, lawful employment or
35 search for lawful employment.

36 § 9. Subdivisions 15 and 16 of section 259-c of the executive law are
37 renumbered subdivisions 16 and 17 and a new subdivision 15 is added to
38 read as follows:

39 15. Notwithstanding any other provision of law to the contrary, where
40 a person is serving a sentence for an offense for which registration as
41 a sex offender is required pursuant to subdivision two or three of
42 section one hundred sixty-eight-a of the correction law, and the victim
43 of such offense was under the age of eighteen at the time of such
44 offense or such person has been designated a level three sex offender
45 pursuant to subdivision six of section one hundred sixty-eight-1 of the
46 correction law or the internet was used to facilitate the commission of
47 the crime, is released on parole or conditionally released pursuant to
48 subdivision one or two of this section, the board shall require, as
49 mandatory conditions of such release, that such sentenced offender shall
50 be prohibited from using the internet to access pornographic material,
51 access a commercial social networking website, communicate with other
52 individuals or groups for the purpose of promoting sexual relations with
53 persons under the age of eighteen, and communicate with a person under
54 the age of eighteen when such offender is over the age of eighteen,
55 provided that the board may permit an offender to use the internet to
56 communicate with a person under the age of eighteen when such offender

A. 9859--A

6

1 is the parent of a minor child and is not otherwise prohibited from
2 communicating with such child. Nothing in this subdivision shall be
3 construed as restricting any other lawful condition of supervision that
4 may be imposed on such sentenced offender. As used in this subdivision,
5 a "commercial social networking website" shall mean any business, organ-
6 ization or other entity operating a website that permits persons under
7 eighteen years of age to be registered users for the purpose of estab-
8 lishing personal relationships with other users, where such persons
9 under eighteen years of age may: (i) create web pages or profiles that
10 provide information about themselves where such web pages or profiles
11 are available to the public or to other users; (ii) engage in direct or
12 real time communication with other users, such as a chat room or instant
13 messenger; and (iii) communicate with persons over eighteen years of
14 age; provided, however, that, for purposes of this subdivision, a
15 commercial social networking website shall not include a website that
16 permits users to engage in such other activities as are not enumerated
17 herein.

18 § 10. Subdivision 2 of section 97-bb of the state finance law, as
19 added by chapter 309 of the laws of 1996, is amended to read as follows:

20 2. The criminal justice improvement account shall consist of monies
21 received by the state pursuant to section 60.35 of the penal law and
22 monies received by the state pursuant to section eighteen hundred nine
23 of the vehicle and traffic law from any court of the unified court
24 system other than town or village courts and all other fees, fines,
25 grants, bequests or other monies credited, appropriated or transferred
26 thereto from any other fund or source. Such account shall also consist
27 of all monies received by the division of criminal justice services
28 pursuant to subdivision ten of section one hundred sixty-eight-b of the
29 correction law.

30 § 11. This act shall take effect immediately; provided, however, that
31 subdivisions 16, 17 and 18 of section 168-a of the correction law, as
32 added by section three of this act, paragraph (a) of subdivision 1 of
33 section 168-b of the correction law, as amended by section four of this
34 act, subdivision 10 of section 168-b of the correction law, as added by
35 section five of this act and subdivision 4 of section 168-f of the
36 correction law, as amended by section six of this act, shall apply to
37 all sex offenders registered or required to register prior to, or on or
38 after the effective date of this act.