

2007 Legislative Review

By Al O'Connor*

[Ed. Note: The REPORT annually presents Staff Attorney Al O'Connor's review of relevant New York State legislation. The first item, *Civil Commitment of Sex Offenders*, was discussed in the last two issues of the REPORT.]

Sex Offenses/Offenders

➤ Chap. 7 (S.3318) (Sex Offender Management and Treatment Act). Effective: April 13, 2007.

See "Actuarial Justice—Representing Sex Offenders Facing Lifetime Civil Confinement" http://www.nysda.org/Hot_Topics/Megan_s_Law/07_ActuarialJustice2007-04-26.pdf

➤ Chap. 373 (S.6277) (Offense Upgrade—Failure to register as a sex offender). Effective: August 17, 2007.

Elevates the crime of failure to register or verify as a sex offender (first offense) from a Class A misdemeanor to a Class E felony. Because the crime is defined in the Correction Law (§ 168-t) and not the Penal Law, the second felony offender law does not apply. Subsequent offenses remain a Class D felony.

➤ Chap. 8 (S.748) (Disseminating indecent material to minors—written descriptions of indecent material). Effective: March 19, 2007.

Amends Penal Law § 235.22 (1) to specifically include written descriptions of indecent material as a type of communication covered by the statute:

Disseminating indecent material to minors in the first degree:

Knowing the character and content of the communication which, in whole or in part, depicts or describes, either in words or images, actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor . . .

The legislation was proposed in response to the Appellate Division decision in *People v. Kozlow*, 31 AD3d 788 (2d Dept 2006), which held the unamended statute did not cover written descriptions and vacated the defendant's conviction. The amendment proved unnecessary because the Court of Appeals reversed and reinstated the conviction in April 2007.

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➤ Chap. 335 (S.5012-a) (Sex Offenses—Prisoners legally incapable of consent to sexual conduct—volunteers and other direct service providers in correctional facilities). Effective: November 1, 2007.

Penal Law § 130.05 (3)(e) deems persons confined to correctional facilities incapable of consent to sexual contact with correctional personnel and certain other professional employees. This bill adds volunteers and others providing direct services to inmates to the list of persons who face criminal charges for otherwise "consensual" sexual contact with prisoners. The new prohibition extends to:

- (iv) A person, including a volunteer, providing direct services to inmates in the state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the state department of correctional services or, in the case of a volunteer, a written agreement with such department, provided that the person received written notice concerning the provisions this paragraph.

➤ VETOED (S.5526-a) (Notice to DCJS regarding homeless sex offenders).

Requires local social service commissioners to give notice to DCJS whenever a sex offender subject to the SORA is placed in temporary housing. (Amends Social Services Law § 136, Correction Law § 168-f).

Criminal Procedure Law

➤ Chap. 571 (S.6357) (Compelled pre-trial HIV testing of defendants in certain sex offense prosecutions). Effective: November 1, 2007.

This legislation authorizes a court to issue a pre-trial order compelling a defendant charged with a sex offense that includes sexual intercourse, or oral or anal sexual conduct as an element to submit to HIV testing. The victim must submit a written application for such testing within six months of the date of the crime and file it prior to, or within 48 hours (subject to a good cause extension), of the filing of the indictment or superior court information. A court is authorized to grant the application when HIV testing of the defendant "would provide medical [or psychological] benefit to the victim." The legislation also authorizes follow-up testing of the defendant if the court finds re-testing "medically appropriate" within timeframes to be issued by the commissioner of health.

The results of such testing "shall not be disclosed to the court," and shall be limited to the victim and, upon request, the defendant. Rediscovery shall be permitted only to the "victim's immediate family, guardian, physicians, attorneys, medical or mental health providers and to his or her past and future contacts to whom there was or is a reasonable risk of HIV transmission and shall not

be permitted to any other person or the court.” [New section—CPL § 210.16]

➤ **Chap. 29 (A.2407) (Audio-Visual court appearances).**
Effective: May 14, 2007.

Amends CPL § 182.20 to add Suffolk County to the list of jurisdictions authorized to participate in the experimental program of audio-visual arraignments and court appearances via two-way closed-circuit television.

➤ **Chap. 137 (A.8193) (Family Offenses—temporary order of protection in connection with remand order).**
Effective: July 3, 2007.

Amends CPL §§ 530.12 and 530.13 to authorize a criminal court to issue a temporary order of protection in conjunction with the issuance of a securing order.

➤ **Chap. 541 (S.4542-a) (Family Court/Criminal Court concurrent jurisdiction—criminal mischief).** **Effective: November 13, 2007.**

Amends Family Court Act § 812 and CPL § 530.11 to add criminal mischief to the list of offenses for which Family Court and the criminal courts may exercise concurrent jurisdiction over offenses between members of the same family or household.

➤ **Chap. 548 (S.5049) (Vulnerable Witnesses—Two-way closed-circuit televised testimony).** **Effective: August 15, 2007.**

This legislation slightly alters the standard governing “vulnerable child witnesses” eligible to give testimony via two-way closed-circuit television pursuant to CPL Article 65. As originally enacted and upheld by the Court of Appeals [*People v. Cintron*, 75 N.Y.2d 249 (1990)], CPL § 65.10 (1) required a determination that “it is likely, as a result of extraordinary circumstances, that such child witness will suffer *severe* mental or emotional harm if required to testify at a criminal proceeding without the use of live, two-way closed-circuit television and that the use of [such technology] will *help prevent*, or diminish the likelihood or extent of, such harm.” The amendment, which according to the bill memo is intended to “liberalize” the statute, strikes the phrases “as a result of extraordinary circumstance” and “help prevent,” and replaces “severe” with the word “serious.”

➤ **Chap. 377 (S.6352) (Administrative probation violation warrants—Pilot project).** **Effective: July 18, 2007—scheduled to sunset March 31, 2010.**

This legislation directs the director of the Division of Probation and Correctional Alternatives to establish a pilot project in four counties outside the city of New York concerning administrative probation violation warrants, which will authorize detention of alleged violators for up to 48 hours whenever the sentencing court is unavailable.

The pilot project will be limited to so-called “high risk” probationers, ones convicted of sex offenses [Correction Law § 168-a (2), (3)] or “family offenses” [CPL § 530.11].

Penal Law

➤ **Chap. 74 (S.5902) (Sex Trafficking/Labor Trafficking).**
Effective: November 1, 2007.

This legislation enacts crimes relating to “sex trafficking” and “labor trafficking” offenses. Although intended to apply to defendants who exploit vulnerable persons through the business of “human trafficking” for sexual or labor servitude, the statutes are broadly worded and subject to abuse. For example, a person is guilty of sex trafficking (Class B felony) if he advances or profits from prostitution by giving a narcotic drug to a prostitute with the intent to impair her judgment, or inducing a person to engage in prostitution by making a material false statement. These definitions could be inappropriately applied to ordinary “pimps” who share drugs with a prostitute or who make false claims. The legislation also elevates the crime of patronizing a prostitute from a Class B to a Class A misdemeanor, and expands the crime of promoting prostitution in the third degree (Class D felony) to include travel-related services for the purpose of patronizing a prostitute, even if prostitution is legal in the traveler’s destination. It also enacts a new Article 10-D to the Social Services Law pertaining to services for victims of “human trafficking” offenses (including assistance with immigration matters).

Penal Law § 230.25 Promoting Prostitution in the third degree.

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes, or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a prostitute, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction.

Class D felony.

Penal Law § 230.34 Sex trafficking.

A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. unlawfully providing to a person who is patronized, with intent to impair said person’s judgment: (a) a narcotic drug or a narcotic preparation; (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; (c) methadone; or (d) gamma-

hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;

2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;
3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;
5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:
 - (a) cause physical injury, serious physical injury, or death to a person; or
 - (b) cause damage to property, other than the property of the actor; or
 - (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
 - (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
 - (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

- (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.

Class B felony.

Penal Law § 230.36 Sex trafficking; accomplice.

In a prosecution for sex trafficking, a person from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed to be an accomplice.

Penal Law § 135.35 Labor trafficking.

A person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally:

1. unlawfully providing a controlled substance to such person with intent to impair said person's judgment;
2. requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person;
3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document, of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
4. using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:
 - (a) cause physical injury, serious physical injury, or death to a person; or

- (b) cause damage to property, other than the property of the actor; or
- (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
- (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
- (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Class D felony.

Penal Law § 135.36 Labor trafficking; accomplice.

In a prosecution for labor trafficking, a person who has been compelled or induced or recruited, enticed, harbored or transported to engage in labor shall not be deemed to be an accomplice.

Patronizing a Prostitute—Amendments

Penal Law § 230.03—REPEALED.

Penal Law § 230.04 Patronizing a prostitute in the third degree.

A person is guilty of patronizing a prostitute in the third degree when [~~being over twenty one years of age,~~] he or she patronizes a prostitute [~~and the person patronized is less than seventeen years of age~~].

Class A misdemeanor.

Penal Law § 230.07 Patronizing a prostitute; defense.

In any prosecution for patronizing a prostitute in the first [7] or second [~~or third~~] degrees, it is a defense that the defendant did not have reasonable grounds to believe that the person was less than the age specified.

➤ **Chap. 582 (A.5036) (New offenses relating to “service animals”). Effective: November 1, 2007.**

Establishes new crimes relating to the harming of guide dogs and other “service animals.” The Governor’s approval message notes flaws in the statute relating to a defendant’s intent and knowledge, and urges the Legislature to amend the statutes. (New Penal Law Article 242).

Penal Law § 242.05 Interference, harassment or intimidation of a service animal.

A person is guilty of interference, harassment or intimidation of a service animal when he or she commits an act with intent to and which does make it impractical, dangerous or impossible for a service animal to perform its assigned responsibilities of assisting a person with a disability.

Class B misdemeanor.

Penal Law § 242.10 Harming a service animal in the second degree.

A person is guilty of harming a service animal in the second degree when, with the intent to do so, he or she causes physical injury, or causes such injury that results in the death, of a service animal.

Class A misdemeanor.

Penal Law § 242.15 Harming a service animal in the first degree.

A person is guilty of harming a service animal in the first degree when, he or she commits the crime of harming a service animal in the second degree, and has been convicted of harming a service animal in the first or second degree within the prior five years.

Class E felony.

➤ **Chap. 570 (S.6241) (Eavesdropping warrants—Designated offenses). Effective: November 1, 2007.**

Adds Penal Law § 275.40 (Failure to disclose the origin of a recording in the first degree) to the list of offenses that can be the subject of an eavesdropping warrant pursuant to CPL § 700.05.

➤ **Chap. 519 (S.1869) (Restitution—Placing a false bomb or hazardous substance). Effective: August 15, 2007.**

Adds Placing a False Bomb or Hazardous Substance (Penal Law §§ 240.62, 240.63) to the list of offenses that can support a restitution award to a school, municipality, fire department, ambulance company, or emergency service provider pursuant to Penal Law § 60.27.

➤ **Chap. 291 (S.2589) (Unlawful surveillance—cell phones). Effective: November 1, 2007.**

Adds cell phones to the definition of “imaging device”

for purposes of unlawful surveillance offenses (Penal Law § 250.40).

➤ **Chap. 310 (S.3844-a) (Non-support of a child in the first degree—predicate offense). Effective: November 1, 2007.**

Technical amendment to non-support of a child in the first degree (Penal Law § 260.06), which specifies that a prior conviction for either the second degree or *first degree offense* within the preceding five years upgrades the crime to a Class E felony.

➤ **Chap. 353 (S.5791-a) (Cemetery Desecration—Theft of Property). Effective: July 18, 2007.**

Amends laws relating to cemetery desecration in order to criminalize theft of property from a cemetery plot, a misdemeanor offense (Penal Law § 145.22), and a Class E felony when the value of the property exceeds \$250 (Penal Law § 145.23).

➤ **Chap. 376 (S.6332) (Aggravated Cemetery Desecration). Effective: November 11, 2007.**

Establishes two new felonies relating to cemetery desecration—aggravated cemetery desecration in the first and second degrees.

Penal Law § 145.26 Aggravated cemetery desecration in the second degree.

A person is guilty of aggravated cemetery desecration in the second degree when, having no right to do so nor any reasonable ground to believe that he or she has such right, he or she opens a casket, crypt, or similar vessel containing a human body or human remains which has been buried or otherwise interred in a cemetery and unlawfully removes therefrom a body, bodily part, any human remains or any object contained in such casket, crypt or similar vessel for the purpose of obtaining unlawful possession of such body, bodily part, human remains or object for such person or a third person.

Class E felony.

Aggravated cemetery desecration in the first degree (Penal Law § 145.27) applies when a person commits the second degree offense and has been previously convicted within the past five years of a cemetery desecration offense.

Class D felony.

➤ **Chap. 568 (S.6230) (Enterprise corruption—trademark counterfeiting). Effective: November 1, 2007.**

Adds Trademark Counterfeiting in the first and second degrees (Penal Law §§ 165.72, 165.73) to the list of crimes that may form the basis of an enterprise corruption prosecution (Penal Law § 460.10).

➤ **Chap. 191 (S.3886) (Intrastate probation transfers). Effective: September 1, 2007.**

This bill streamlines the procedure for intrastate transfers of probation. It provides for non-discretionary transfers when the defendant resides in another jurisdiction within New York State at the time of sentence. In all other situations, the bill provides sentencing courts with discretionary authority to transfer probation to another jurisdiction. The bill eliminates statutory authority for bifurcated transfers—where a sentencing court could formally retain authority to resentence the defendant in the event of a violation. From now on, an appropriate court within the transfer jurisdiction will assume complete authority over the probationer, including resentencing authority (Amends CPL § 410.80).

DWI and Related Offenses

➤ **Chap. 345 (S.5517-a) (New Crimes—Aggravated vehicular homicide/Aggravated vehicular assault). Effective: November 1, 2007.**

This legislation, spurred on by a high profile drunk driving murder case on Long Island, creates two new crimes, aggravated vehicular homicide (Penal Law § 125.14), a Class B felony, and aggravated vehicular assault (Penal Law § 120.04-a), a Class C felony. The crimes are defined by coupling the element of reckless driving with the underlying offenses of vehicular manslaughter (or assault) with enumerated aggravating circumstances (i.e., BAC level of .18 or higher, suspended license, prior convictions within the preceding 10 years, death or injury to more than one person). The legislation also includes numerous conforming amendments, adding these two new crimes to various provisions of the Vehicle and Traffic Law.

Penal Law § 125.14 Aggravated vehicular homicide

A person is guilty of aggravated vehicular homicide when he or she engages in reckless driving as defined by section twelve hundred twelve of the vehicle and traffic law, and commits the crime of vehicular manslaughter in the second degree as defined in section 125.12 of this article, and either:

- (1) commits such crimes while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;
- (2) commits such crimes while knowing or having reason to know that:
 - (a) his or her license or his or her privilege of operating a motor vehicle in another state or his or

her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or (b) his or her license or his or her privilege of operating a motor vehicle in this state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

- (3) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law;
- (4) causes the death of more than one other person;
- (5) causes the death of one person and the serious physical injury of at least one other person; or
- (6) has previously been convicted of violating any provision of this article or article one hundred twenty of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty of this title.

If it is established that the person operating such motor vehicle caused such death or deaths while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in a manner that caused such death or deaths, as required by this section and section 125.12 of this article.

Class B felony.

Penal Law § 120.04-a Aggravated vehicular assault.

A person is guilty of aggravated vehicular assault when he or she engages in reckless driving as defined by section twelve hundred twelve of the vehicle and traffic law, and commits the crime of vehicular assault in the second degree as defined in section 120.03 of this article, and either:

commits such crimes while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

commits such crimes while knowing or having reason to know that:

- (a) his or her license or his or her privilege of operating a motor vehicle in another state or his or her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense, which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or
 - (b) his or her license or his or her privilege of operating a motor vehicle in this state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;
- (3) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense, which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law;
 - (4) causes serious physical injury to more than one other person; or
 - (5) has previously been convicted of violating any provision of this article or article one hundred twenty-five of this title involving the operation of a motor vehicle, or was convicted in any other state or juris-

diction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty-five of this title.

If it is established that the person operating such motor vehicle caused such serious physical injury or injuries while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in a manner that caused such serious physical injury or injuries, as required by this section and section 120.03 of this article.

Class C felony.

➤ **Chap. 311 (S.3950) (Snowmobiling while intoxicated—prohibited areas). Effective: November 1, 2007.**

The Parks, Recreation and Historic Preservation Law § 25.24 prohibits snowmobiling while intoxicated on streets, highways and public trails and lands. This legislation extends the area covered by the section to “bodies of water, or private property of another.”

➤ **Chap. 669 (S.5780-a) (Ignition interlock program). Effective: October 27, 2007.**

Amends Penal Law § 65.10 (k)(1) to require that an ignition interlock device required as a condition of sentence be installed in any vehicle owned or operated by the defendant. (Formerly, the device was required in any vehicle owned or operated on a *regular basis* by the defendant.)

Non-Penal Law Offenses

➤ **Chap. 61 (A.7526) (Ticket scalping—maximum resale price repealed). Effective: May 31, 2007. [See also Chap. 374 (S.6321)—chapter amendments]**

Amends the Arts and Cultural Affairs Law Article 25 to eliminate all restrictions on the maximum resale price of tickets. The law retains no scalping buffer zones for unlicensed and licensed ticket dealers of 1500 feet for venues with a capacity in excess of 5000 persons, and 500 feet for venues with a capacity of 5000 or fewer persons. However, it adds a new section that criminalizes the selling, or offering of tickets anywhere on the street in any city or in the County of Nassau.

Arts & Cultural Affairs Law § 25.05 Ticket speculators.

Any person who:

1. Conducts on or in any street in a city or in the county of Nassau the business of selling or offering for

sale any ticket of admission or any other evidence of the right of entry to any performance or exhibition in or about the premises of any theatre or concert hall, place of public amusement, circus or common show; or

2. Solicits on or in any street in a city or in the county of Nassau by words, signs, circulars or other means any person to purchase any such ticket or other evidence of the right of entry; or
3. In or from any building, store, shop, booth, yard, garden or in or from any opening, window, door, hallway, corridor or in or from any place of ingress or egress to or from any building, place of business, store, shop, booth, yard or garden in a city or in the county of Nassau indicates, holds out or offers for sale to any person or persons on or in the street by word of mouth, crying, calling, shouting or other means that such ticket or other evidence of the right of entry may be purchased in such building, store, shop, booth, yard, garden or any other place; or
4. In or from any such place or places in a city or in the county of Nassau solicits by word of mouth, crying, calling, shouting or other means any person on or in the street to purchase any such ticket or other evidence of the right of entry, is guilty of a misdemeanor.

Unclassified misdemeanor.

➤ **Chap. 418 (S.53) (Littering—increased fines). Effective: November 1, 2007.**

Amends VTL § 1220 (c) to increase fines for littering on highways—first offense: up to \$350 fine and/or 10 hours community service (from \$250 and 8 hours); second and subsequent offenses: up to \$700 fine and/or 15 hours community service (from \$500 and 8 hours).

➤ **VETOED (A.735) (Illegal Hunting—increase fines and penalties).**

Amends Environmental Conservation Law § 71-0921 to increase fines and penalties for illegal taking of big game, or illegal spotlighting of big game or deer: first offense—up to 1 year imprisonment and a fine of \$500—\$3000 (up from \$250—\$2000), subsequent offenses fine of \$1000—\$5000. In addition, the bill provides for new mandatory firearm license suspensions: first offense—2 years; subsequent offense—5 years. (Governor Pataki vetoed this bill in 2006.)

Prisons/Prisoners

➤ **Chap. 239 (A.3286) (Early conditional parole for deportation purposes only available on determinate sentences for drug offenses). Effective: July 18, 2007.**

Following enactment of the 2004 Drug Law Reform Act, the Board of Parole announced that it would not consider inmates serving determinate sentences for drug offenses for early parole release for deportation purposes only [Executive Law § 259-i (d)(i)]. This bill makes clear that such inmates are eligible for early conditional release notwithstanding service of a determinate term of imprisonment. (This bill was vetoed by Governor Pataki in 2006.)

➤ **Chap. 240 (A.3397-b) (Telephone service—state correctional facilities). Effective: April 1, 2008.**

Requires the Department of Correctional Services to make available a collect call system or prepaid telephone system with emphasis on “the lowest possible cost to the telephone user.” The bill also provides that DOCS “shall not accept or receive revenue in excess of its reasonable operating cost for establishing and administering such telephone system services.” (Correction Law § 623.)

➤ **Chap. 355 (S.5875-a) (Medicaid eligibility following release from prison or jail). Effective: April 1, 2008.**

This legislation amends Social Services Law § 366 in order to facilitate a person’s immediate resumption of Medicaid coverage following release from prison or jail. In lieu of dropping inmates from the Medicaid rolls after commitment to a prison or jail, this legislation suspends coverage by providing that Medicaid recipients shall remain technically eligible following commitment to a state or local correctional facility, “except that no medical assistance shall be furnished . . . for any care, services, or supplies provided during such time as the person is an inmate.” However, the legislation does provide that “nothing herein shall be deemed as preventing the provision of medical assistance for inpatient hospital services furnished to an inmate at a hospital outside of the premises of such correctional facility, to the extent that federal financial participation is available for the costs of such services.”

➤ **Chap. 336 (S.5143) (Seneca County correctional facility—Persons held for arraignment). Effective: July 18, 2007.**

Amends Correction Law §§ 500-a and 500-c to authorize use of the Seneca County Correctional Facility for detention of persons under arrest and being held for arraignment in the county.

Collateral Consequences

➤ **Chap. 639 (S.3092) (Employment discrimination— inquiries about youthful offender adjudications and sealed violations prohibited). Effective: November 1, 2007.**

Amends Executive Law § 296 (16) to make it an

“unlawful discriminatory practice” for an employer to inquire about youthful offender adjudications or violations sealed pursuant to CPL § 160.55, or to take adverse action against an individual because of such matters. (Governor Pataki vetoed a similar bill in 2006.)

➤ **Chap. 284 (S.1602-a) (Employment discrimination— current employees). Effective: July 18, 2007.**

Correction Law Article 23-a prohibits discrimination in certain employment and licensing decisions involving persons with criminal convictions, unless there is a direct relationship between the offense and the specific license or employment sought. This bill extends the qualified protections of Article 23-a to persons who are already employed or licensed and prohibits unwarranted adverse action because of previous criminal convictions. The bill provides that it shall not “affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.” (A similar bill was vetoed by Governor Pataki in 2006.)

➤ **Chap. 235 (A.463) (Certificate of relief from civil disabilities/good conduct inapplicable to certain firearms ownership). Effective: October 16, 2007.**

Amends Penal Law § 265.20 (5) to provide that a certificate of good conduct shall not authorize a person convicted of a Class A-I felony or a violent felony to possess a rifle or shotgun. Amends Correction Law § 701 (2) to provide that a certificate of relief from civil disabilities shall not provide relief from automatic forfeiture of a firearm permit issued pursuant to Penal Law § 400.00 when a person was convicted of a Class A-I felony or a violent felony, and amends Correction Law § 703-a (2) to provide a firearms permit disability for a person convicted of such offenses.

➤ **VETOED (S.820) (Employment—barbering license).**

Amends General Business Law §§ 434 and 438 to provide that in determining good moral character for purposes of issuing a barbering license the secretary of state “shall not automatically disqualify an applicant on the basis of a criminal conviction.” (A similar bill was vetoed by Governor Pataki in 2006.)

Courts

➤ **Chap. 205 (S.4212) (Increased penalty for disobeying judicial subpoena). Effective: January 1, 2008.**

Amends CPLR § 2308 to raise the maximum penalty for failure to obey a judicial subpoena from \$50 to \$150.

➤ **Chap. 321 (S.4257) (Reassignment of judges to town and village courts). Effective: July 18, 2007.**

Amends the Uniform Justice Court Act and Judiciary Law to give the Chief Administrative Judge authority to temporarily assign a town or village justice, or city court judge, to a town or village court within the county of such judge's residence, or any adjoining one. The legislation is part of OCA's Town and Village Court Action Plan.

➤ **Chap. 638 (S.2709) (Justice courts—felony convictions). Effective: August 28, 2007.**

Bars felons from holding the office of town or village justice. (Amends Town Law § 31, Village Law § 3-301)

➤ **Chap. 40 (A.7373) (Habeas Corpus—Family Court matters). Effective: May 29, 2007.**

Amends CPLR § 7009 to provide that the Attorney General shall represent the court in all habeas corpus proceedings arising out of Family Court matters (in lieu of the New York City Corporation Counsel and county attorneys).

➤ **Chap. 210 (S.4631) (Court of Claims—Priority to certain claims of unjust conviction and imprisonment). Effective: July 3, 2007.**

Amends Court of Claims Act § 8-b to give docket priority to claims of unjust conviction and imprisonment that are based on claims of innocence supported by DNA evidence. (Known as "Anthony's Law"—after Anthony Capozzi, a Buffalo man who served over 20 years in prison for rape before he was exonerated by DNA in 2007.)

Miscellaneous

➤ **VETOED (S.3445) (Authorizes state troopers to plea bargain traffic tickets).**

Countermands the State Police regulation that prohibits troopers from plea bargaining traffic tickets.

Executive Law § 231—Prosecution of certain violations of the vehicle and traffic law.

The division of state police shall make no rule or regulation nor shall otherwise limit a member of the state police's ability to modify or recommend the modification of a charge before a court relating to a petty violation of the vehicle and traffic law. In addition, a member who has issued a citation or uniform traffic ticket (hereafter referred to as the "issuing member") to a person for committing a petty violation of the vehicle and traffic law shall be authorized to appear before the court if authorized by the local district attorney where such violation is returnable on behalf of the people of the state of New York, at a date designated by the court, and recommend to the court the modification of the original charge or charges.

This section is not intended to affect any plea bargain limitations otherwise provided for in this chapter or other law of this state, including, but not limited to, those limi-

tations set forth for the alleged commission of a violation of article thirty-one of the vehicle and traffic law.

➤ **Chap. 346 (S.5541-a) (Identity theft crimes—police reports). Effective: July 18, 2007.**

Authorizes an identity theft victim to file a complaint in a county "[1] in which any part of the offense took place regardless of whether the defendant was actually present in such county, or [2] in the county in which the person who suffered financial loss resided at the time of the commission of the offense, or [3] in the county where the person whose personal identification information was used in the commission of the offense resided at the time of the commission of the offense. " The bill also provides such victims a right to a free copy of the police report. (Amends Executive Law § 646, CPL § 20.40 [4][1]).

Peace/Police Officer Bills

Note: Governor Spitzer has expressed disapproval of piecemeal legislation designating certain employees as peace officers on an ad hoc basis, and has called for comprehensive legislation on the subject. Therefore, he vetoed all but one of the following "peace officer" bills:

A.6065—(Vetoed)—Uniformed members of the fire marshall's office in the Village of Southampton

S.916—(Vetoed)—Dog control officers in the city of Syracuse

S.4323—(Vetoed)—Security officers for the Town Court of Alden

Chap. 550 (S.5159)—Adds United States Department of Interior park rangers to the list of Federal law enforcement officers included in CPL § 2.15

S.5805—(Vetoed)—Dog control officers of the city of Utica

S.6195—(Vetoed)—Uniform members of the bureau of fire prevention of the Town of Islip

S.6204—(Vetoed)—Persons employed by Paul Smith's College as members of the campus safety department

S.6263—(Vetoed)—Employees of the Village of Lake George serving as peace officers pursuant to local law ☺

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