



NEW YORK  
CITY BAR

**COMMITTEE ON  
CRIMINAL JUSTICE OPERATIONS**

---

JAMES M. BRANDEN

**CHAIR**

551 FIFTH AVENUE, SUITE 1922  
NEW YORK, NY 10176  
Phone: (212) 286-0173  
Fax: (212) 286-0495  
jamesmbranden@aol.com

July 20, 2011

Hon. William Colton  
New York State Assembly  
Legislative Office Building 733  
Albany, NY 12248

GERALD E. ROSS

**SECRETARY**

551 FIFTH AVENUE, SUITE 1922  
NEW YORK, NY 10176  
Phone: (212) 286-0099  
Fax: (212) 286-0495  
geraldross@freyerross.com

Hon. Kevin Parker  
New York State Senate  
Legislative Office Building 604  
Albany, NY 12247

**Re: A.2483/S.1096, which would amend the penal law, in relation to creating the crime of criminal luring or enticing of a child on the internet.**

Dear Assembly Member Colton and Senator Parker:

The Committee on Criminal Justice Operations (the "Committee") of the New York City Bar Association is composed of prosecutors and criminal defense attorneys who analyze the legal, social and public policy aspects of criminal justice issues facing New Yorkers today. We are writing in regards to A.2483/S.1096, which would create the crime of luring or enticing a child on the internet. This Committee supports the creation of such a law in concept, but believes that the same goal can be achieved by simply modifying the existing penal law section that makes luring a child a crime.

**Child Internet Luring Laws**

A majority of states, including New Jersey and Connecticut, have laws that specifically prohibit electronic luring or solicitation of minors by computer or other electronic means for the purpose of inducing them to engage in illegal conduct, including sexual offenses. Some prosecutors and legislators believe that the current New York child luring statute may not be sufficiently broad to include luring via the internet. The proposed legislation is designed to remedy that perceived loophole.

## Current New York Child Luring Law

New York Penal Law § 120.70, Luring a Child, provides that a person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any one of several enumerated offenses, including violent felony offenses (P.L. § 70.02), murder in the first or second degree (P.L. §§ 125.25, 125.27), sex offenses (P.L. art. 130), kidnapping in the first degree (P.L. § 135.25), prostitution offenses (P.L. §§ 255.25, 255.26, 255.27), and sexual performance by a child (P.L. §§ 263.05, 263.10, 263.15). P.L. § 120.70(1).

For purposes of the existing child luring statute, a "child" is a person less than seventeen years of age. P.L. § 120.70(1).

Luring a child is a class E felony, provided, however, that if the underlying offense the actor intended to commit against the child constituted a class A or a class B felony, then the offense of luring a child shall be deemed respectively, a class C felony or a class D felony. P.L. § 120.70(2).

Penal Law § 120.70 has been in effect since October 4, 2008.

## The Proposed Statute

Each year since 2007 the Legislature has proposed a statute to create the crime of luring or enticing a child on the internet. The current proposed legislation, A.2483/S.1096, was introduced in January 2011 and referred to the Committee on Codes in both the Senate and Assembly.

The bill would add a new section, 260.09, to the Penal Law. Under the proposed law, a person would be guilty of criminal luring or enticing of a child on the internet when he or she:

- a) intentionally or knowingly engages a child in conversation on the internet or some other electronic device, and
- (b) lures or attempts to lure a child into an area, and
- (c) entices, by misrepresentation of their identity, age, intent or purpose, or attempts to entice such child into an activity by, including but not limited to, falsely requesting help or promising a reward, where such activity or such area is likely to lead to an injury to the physical, mental or moral welfare of such child.

Under the proposed statute, a "child" is someone under the age of eighteen years, and a "person" shall mean someone twenty-one years of age and older, or someone under twenty-one years of age and at least four years older than a child.

The proposed legislation provides that it will not be an affirmative defense to a prosecution for a violation of the law that:

- (a) the child was actually a law enforcement officer posing as a child;

or

- (b) a meeting did not occur.

The proposed legislation states that criminal luring or enticing of a child on the internet would be a class C felony.

### Recommendations

Instead of creating a new law, P.L. § 260.09, the Committee recommends that P.L. § 120.70, the existing "Luring a Child" statute, simply be amended to include luring via the internet or other electronic means. Many prosecutors believe that, while the existing law does not specifically mention online communication between an accused predator and a minor, the wording of P.L. § 120.70 is already broad enough to cover situations involving such contact.<sup>1</sup> Nevertheless, amending the existing child luring law to expressly include luring via the internet will eliminate any doubt regarding the state of the law, and add New York to the existing majority of states that specifically prohibit electronic luring of minors by computer or other electronic means. This is preferable for the following reasons:

First, the Committee disfavors any legislation that includes a "misrepresentation" requirement. This requirement is not present in the existing luring of a child statute, and it would impose an additional, unnecessary burden on prosecutors in internet luring cases.

Second, the new bill creates unnecessary conflicts regarding age. The Committee notes that the existing child luring statute, P.L. § 120.70, defines a "child" as a person less than seventeen years of age, P.L. § 120.70(1), while the proposed internet luring statute defines a "child" as someone under the age of eighteen years. The proposed legislation also defines a "person" as someone twenty-one years of age and older, or someone under twenty-one years of age and at least four years older than a child.

Third, the existing child luring statute is tied to the intended commission of certain enumerated offenses (violent felony offenses, murder in the first or second degree, sex offenses, kidnapping in the first degree, prostitution offenses, and sexual performance by a child), while the proposed legislation refers more vaguely to an activity or area that is likely to lead to an injury to the physical, mental or moral welfare of the child. In addition, the Committee notes that statutes in other states, such as New Jersey, provide that internet luring of a child is a crime if it is committed with the purpose to commit any criminal offense with or against the child.<sup>2</sup>

---

<sup>1</sup> In fact, in 2010, the Onondaga County District Attorney's Office successfully prosecuted a twenty-seven year-old man under P.L. § 120.70. In that case, the defendant pleaded guilty to attempted luring of a child, and received a sentence of up to six years in prison, after he contacted a nine year-old girl on MySpace and attempted to meet her on a street corner and engage in sexual contact.

<sup>2</sup> See, e.g., N.J.S.A. 2C:13-6.

Fourth, and finally, the Committee notes that the existing child luring statute provides that luring a child is a class E felony, provided, however, that if the underlying offense the actor intended to commit against the child constituted a class A or a class B felony, then the offense of luring a child shall be deemed respectively, a class C felony or a class D felony, while the proposed legislation states that criminal luring or enticing of a child on the internet would be a class C felony, which would result in inconsistent punishments for essentially the same crime.

### Conclusion

The Committee recommends that a new Penal Law section, 260.09, not be adopted, but that the existing luring of a child statute, P.L. § 120.70, be amended as follows:

#### **§ 120.70 Luring a child**

1. A person is guilty of luring a child when he or she lures a child, by any means, including but not limited to, the internet or any other electronic means, into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 of this chapter; an offense as defined in section 125.25 or 125.27 of this chapter; a felony offense that is a violation of article one hundred thirty of this chapter; an offense as defined in section 135.25 of this chapter; an offense as defined in sections 230.30, 230.33 or 230.34 of this chapter; an offense as defined in sections 255.25, 255.26, or 255.27 of this chapter; or an offense as defined in sections 263.05, 263.10, or 263.15 of this chapter. For purposes of this subdivision "child" means a person less than seventeen years of age. Nothing in this section shall be deemed to preclude, if the evidence warrants, a conviction for the commission or attempted commission of any crime, including but not limited to a crime defined in article one hundred thirty-five of this chapter.

A draft bill text is attached. Thank you for your consideration. Please feel free to contact us if you would like to discuss this issue further.

Very truly yours,



James Branden, Chair  
Criminal Justice Operations Committee

Cc: Hon. Joseph Lentol, Chair, Assembly Codes Committee  
Hon. Stephen Saland, Chair, Senate Codes Committee