S T A T E O F N E W Y O R K

9467

I N A S S E M B L Y

May 1, 2014

Introduced by M. of A. MALLIOTAKIS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to luring a child

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 120.70 of the penal law, as added by chapter 405 of the laws of 2008, is amended to read as follows:

S 120.70 Luring a child.

1. A person is guilty of luring a child when [he]:

(A) 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 of the following offenses:

[an] (1) A VIOLENT FELONY offense as defined in section 70.02 of this chapter;

[an] (2) AN offense as defined in section 125.25 or 125.27 of this chapter;

[a] (3) A felony offense that is a violation of article one hundred thirty of this chapter;

[an] (4) AN offense as defined in section 135.25 of this chapter;

[an] (5) AN offense as defined in sections 230.19, 230.25, 230.30, 230.32, 230.33 or 230.34 of this chapter;

[an] (6) AN offense as defined in sections 255.25, 255.26, or 255.27 of this chapter; or

[an] (7) 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.

2.]; OR

(B) BEING EIGHTEEN YEARS OLD OR MORE AND WITH INTENT TO LURE, ENTICE, PERSUADE, CONVINCE, HARASS, ANNOY, THREATEN OR ALARM A CHILD, HE OR SHE,

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

LBD07399-03-3

BY MEANS OF A COMPUTER, COMMUNICATES OR CAUSES A COMMUNICATION TO BE INITIATED PURPORTING TO SOLICIT:

(1) SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT OR SEXUAL CONTACT WITH A CHILD WHOM HE OR SHE KNOWS OR REASONABLY SHOULD KNOW IS LESS THAN SEVENTEEN YEARS OLD; OR

(2) A SEXUAL PERFORMANCE BY A CHILD WHOM HE OR SHE KNOWS OR REASONABLY SHOULD KNOW IS LESS THAN SEVENTEEN YEARS OLD; OR

(3) ANY IN-PERSON CONTACT WITH A CHILD THAT RESULTS IN THE COMMISSION OR ATTEMPTED COMMISSION OF ANY OF THE FOLLOWING OFFENSES AGAINST THE CHILD:

(I) A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THIS CHAPTER;

(II) AN OFFENSE AS DEFINED IN SECTION 125.25 OR 125.27 OF THIS CHAPTER;

(III) A FELONY OFFENSE THAT IS A VIOLATION OF ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER;

(IV) AN OFFENSE AS DEFINED IN SECTION 135.25 OF THIS CHAPTER;

(V) AN OFFENSE AS DEFINED IN SECTION 230.19, 230.25, 230.30, 230.32, 230.33 OR 230.34 OF THIS CHAPTER;

(VI) AN OFFENSE AS DEFINED IN SECTION 255.25, 255.26, OR 255.27 OF THIS CHAPTER; OR

(VII) AN OFFENSE AS DEFINED IN SECTION 263.05, 263.10, OR 263.15 OF THIS CHAPTER.

2. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ANAL SEXUAL CONDUCT" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION 130.00 OF THIS CHAPTER.

(B) "BUILDING" IN ADDITION TO ITS ORDINARY MEANING, INCLUDES ANY STRUCTURE, VEHICLE, AIRCRAFT OR WATERCRAFT USED FOR OVERNIGHT LODGING OF PERSONS, OR USED BY PERSONS FOR CARRYING ON BUSINESS THEREIN, OR AN ENCLOSED MOTOR TRUCK, OR AN ENCLOSED MOTOR TRUCK TRAILER.

(C) "CHILD" MEANS A PERSON LESS THAN SEVENTEEN YEARS OF AGE.

(D) "COMMUNICATE" SHALL, IN ADDITION TO ITS ORDINARY MEANING, INCLUDE ORAL AND VISUAL COMMUNICATION. VISUAL COMMUNICATION INCLUDES, BUT IS NOT LIMITED TO, ELECTRONIC TEXT MESSAGES, ELECTRONIC MAIL MESSAGES, PICTURES, ILLUSTRATIONS OR GRAPHICS.

(E) "COMPUTER" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED BY SECTION 156.00 OF THIS CHAPTER.

(F) "COMPUTER PROGRAM" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED BY SECTION 156.00 OF THIS CHAPTER.

(G) "ORAL SEXUAL CONDUCT" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 130.00 OF THIS CHAPTER.

(H) "SEXUAL CONTACT" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH TERM BY SUBDIVISION THREE OF SECTION 130.00 OF THIS CHAPTER.

(I) "SEXUAL INTERCOURSE" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 130.00 OF THIS CHAPTER.

(J) "SEXUAL PERFORMANCE" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN SECTION 263.00 OF THIS CHAPTER.

3. NOTHING IN THIS SECTION SHALL BE DEEMED TO PRECLUDE, IF THE EVIDENCE SO WARRANTS, AN INDICTMENT AND CONVICTION FOR ATTEMPTED KIDNAPPING UNDER THE PROVISIONS OF SECTIONS 110.00 AND 135.00 OF THIS CHAPTER.

4. Luring a child is a class [E] D felony, provided, however, that if the underlying offense the actor intended to commit against such child constituted a class A or a class B felony, then the offense of luring a

child in violation of this section shall be deemed respectively, a class [C] B felony or class [D] C felony.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.