

(H. B. 2529)

(No. 65-2020)

(Approved July 13, 2020)

AN ACT

To amend Article 124 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” to classify grooming as an offense within our jurisdiction through the use of more specific language in order to protect and do justice to minors who are approached by individuals who seek to abuse them or engage in sexual acts prohibited by our code of laws; severely punish offenders who harm our minors; and for other related purposes.

STATEMENT OF MOTIVES

The term “grooming,” which in Spanish is usually associated with getting ready or dressed up, in modern times has been adopted to describe the manner in which some people approach children and youths to gain their trust, create emotional bonds with the intent to sexually abuse them. In the worst cases, these persons may also seek to force minors into prostitution and sexual exploitation. Groomers often invest a considerable amount of time during this preparation period in order to build trust with the minor.

Puerto Rico recently witnessed a case in which several women, mostly minors, reported sexual harassment on social media. Their concerning reports attest to the fact that the practice of grooming exists in Puerto Rico. Most of the reports, which were made against several entrepreneurs, included allegations that the entrepreneurs would touch the victims in a way that would make them feel uncomfortable as they tried on clothes and that they would take pictures of the victims without the victim’s consent. On that same day, the Governor of Puerto Rico, the Hon. Wanda Vázquez Garced, ordered law enforcement authorities to investigate

the reports regarding the pattern of sexual harassment by these alleged entrepreneurs. The minors explained that, in many cases, these persons would find their social media profiles, engage in conversation, and eventually present them with a job offer as an excuse to meet in person.

The development of our society worldwide, including the technological advances brought upon by the arrival of the Internet, social media, and electronic means of communication enable individuals to communicate instantly and from anywhere in the world. Technology has played a key role in our daily lives because it is the foundation of everything we do that involves the use of computers, smartphones, smart TVs, and motor vehicles with operating systems that adapt smartphone applications, among others.

Technology has certainly had a positive impact on society. For example, smartphones, tablets, and computers enable us to carry out many tasks, such as taking high resolution pictures, watching videos, accessing information, making purchases, using social media, playing games, monitoring physical activity, preparing school or work documents, and allow us to communicate individually or through video conference calls, among many other things. This has made life easier for many.¹

However, it is clear that technological advancements have also had a negative impact, particularly on children. By using the Internet, minors are easily able to communicate with strangers and exchange a lot of information without parents knowing. It is precisely this population which is the most vulnerable to stalking by sexual predators or ill-intentioned persons who use electronic means of communication to achieve their purposes. Children are also at particular risk as they often do not fully understand the risks associated with the use of digital information

¹ See, <https://www.totalphase.com/blog/2017/05/impact-technology-lives-future-technology/>. Last viewed on May 1, 2020.

and electronic means of communication, or are not sufficiently aware that, once they share their personal information, control over such material is effectively waived.² In that sense, technology facilitates criminal collaboration which poses a significant challenge for law enforcement agencies in the identification of criminals who use technology to harass and stalk minors.

Some of the methods used by criminals to approach minors are known as cyber-enticement, solicitation, and grooming. These terms are regularly used to describe the communications made by adults through the use of technology for the purpose of sexually abusing or exploiting minors. See the study conducted in 2015 by the United Nations Office on Drugs and Crime titled “Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children.”³ In the United States, several states have already adopted legislation related to cyber-enticement that seeks to criminalize attempts at knowingly soliciting a minor to engage in sexual activity by communicating through the Internet.⁴ Within the European Union, “solicitation” refers to the intentional proposal, through information and communication technologies to meet a child who has not reached the age of majority for the purpose of committing sexual abuse or producing child pornography where this proposal has been followed by material acts leading to such a meeting.⁵

Grooming has been defined as conduct that takes place as part of cyber-enticement or prior to solicitation, and which facilitates the latter, with the aim of befriending and establishing an emotional connection with and gaining the trust of a child in order to lower the child’s inhibitions in preparation for sexual activity with

² See, https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf. Last viewed on May 1, 2020.

³ See, *Id.*, pp. ix-x.

⁴ *Id.*, pp. 11-12.

⁵ *Id.*, p. 12. [sic]

the child.⁶ The term has also been defined as any actions taken to undermine a person morally and psychologically with the goal of emotionally controlling them, and which usually take place in chat or instant messaging services, in order to obtain erotic material and extort the victim thereby making it difficult for the victim to leave or protect themselves.⁷ In that sense, grooming has been classified under sexual abuse in which an adult solicits a minor, through any electronic means, to send sexually explicit images or recordings of themselves.⁸ There are common elements to both takes, of which it is worth noting that there is a series of steps or processes, and that there is an approach which leads to the development of a relationship of trust that could be conducive to an in-person meeting or to the obtaining of images of the child which are of a sexual nature.⁹

Several countries around the world have adopted legislation to address the grooming issue in some way. In the case of Chile, its Penal Code was amended in 2011 to criminalize any act where a person seeks their own sexual arousal or the sexual arousal of another by soliciting a child younger than fourteen (14) to engage in acts of a sexual nature in front of him or in front of another, or to send, deliver or show images or recordings of themselves or of another child younger than fourteen (14) which are of a sexual nature. The applicable punishment shall be increased if the offender lies about his identity or age when committing the offense.¹⁰ Argentina amended its Penal Code in 2013 to classify as an offense any act where a person contacts a minor via electronic means of communication, telecommunications, or

⁶ *Id.* See, also, D. Pollack, Understanding Sexual Grooming in Child Abuse Cases, published by the American Bar Association. Available at https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/november-2015/understanding-sexual-grooming-in-child-abuse-cases/. Last viewed on May 1, 2020.

⁷ See, P.F. Abarca Arévalo y D.S Conde Abeliuk, Child Grooming y la Ley N° 20.526 que crea el Delito de Grooming en la Legislación Chilena, p. 6 (2019). Available at <http://repositorio.uft.cl/bitstream/handle/20.500.12254/1720/Abarca-Conde%202019.pdf?sequence=1&isAllowed=y>. Last viewed on May 1, 2020.

⁸ *Id.*, p. 7.

⁹ *Id.*, pp. 8-11.

any other data transmission technology for the purpose of committing any offense against the sexual integrity of the minor.¹¹

In 2015, the United Kingdom classified sexual communication with a child as an offense. It provided that any person aged eighteen (18) or over who, for the purposes of obtaining sexual gratification, engages in communication with a child under the age of sixteen (16) and said communication is of a sexual nature or is intended to incite the child to communicate in a sexual manner with said person or another. In such cases, the offense will be committed whether or not the child engages in communication with the adult.¹²

In Spain, the 2010 and 2015 Penal Code reforms classified as an offense the use of the internet, telephone, or any other information and communication technology with the intent to attempt to meet a minor under the age of sixteen (16) for sexual purposes. Any material act to attempt to meet in person shall constitute commission of the offense, even if such meeting does not take place, and shall be punishable by imprisonment for a maximum term of three (3) years. The Spanish Penal Code establishes two main modalities: 1) it classifies as an offense the act of approaching a minor to propose a meeting in order to engage in the prohibited sexual activity (sexual assault and abuse against minors under the age of 16); and 2) establishing contact with a minor and taking actions to trick such minor into providing child pornography materials or images of themselves or featuring another minor.¹³

¹¹ See Art. 131 del Argentinian Penal Code, available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/220000-224999/223586/norma.htm>. Last visited on May 1, 2020.

¹² See Section 15 of the Sexual Offences Act 2003, as amended in 2015 by the Serious Crime Act. See also https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604931/circular-commencement-s67-serious-crime-act-2015.pdf. Last visited on May 1, 2020.

¹³ See Art. 183 bis of the Spanish Criminal Code. See also, <https://elderecho.com/el-acceso-a-menores-con-fines-sexuales-a-traves-de-las-tic-delito-online-child-grooming-y-embaucamiento-de-menores-tras-la-reforma-del-cp-por-la-lo-12015>. Last visited on May 1, 2020.

The Federal Government has also enacted legislation on this matter; Section 2422 of Title 18 of the United States Code provides the following:

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

As can be observed, the punishment for this type of offense at the federal level is quite severe and may entail a life sentence in some cases.

In Germany, any person who exerts influence on a child by presenting pornographic illustrations or images, audio recording media with pornographic content or pornographic speech shall be punished by imprisonment for a period of up to five (5) years.¹⁴ In Australia, the use of carriage services, which employ electromagnetic energy, to procure that a person engage, entice, encourage, induce, or recruit persons under sixteen (16) years of age to engage in sexual activity is punished by imprisonment for a term of up to fifteen (15) years.¹⁵

Puerto Rico is not completely devoid of legislation that addresses the issue of grooming. Article 124 of the Penal Code provides that any person who knowingly uses any telematics system to entice or persuade a minor to meet with the intent to engage in prohibited sexual conduct shall be guilty of an offense and punished by

¹⁴ See, P.F. Abarca Arévalo y D.S Conde Abeliuk, *op. cit.*, p. 79.

¹⁵ *Id.*, pp. 79-80.

imprisonment for a fixed term of eight (8) years. However, it is necessary to provide our law enforcement officials with better tools to combat this crime, which is becoming a more common method of approaching minors with the intent to sexually abuse them.

After analyzing comparative legislation on this subject, this legislative measure amends Article 124 of the Puerto Rico Penal Code in order to broaden its scope and classify as an offense the mere act of any person contacting, enticing, persuading, inducing, luring, tempting, manipulating, coercing, or convincing a minor, through any means of communication (telematic systems, internet, telephones or social media), to provide child pornography material or child pornography images of themselves or featuring another minor, or to meet with the intent to engage in prohibited sexual conduct under our code of laws. It is important to clarify in this amendment that the offenses included in Article 124 are deemed committed even if the meeting between the aggressor and the minor does not occur or the minor does not provide or show pornographic material. Proof of the intentional act of contacting, enticing, persuading, inducing, luring, tempting, manipulating, coercing, or convincing a minor through any means of communication to achieve said purpose shall be sufficient to commit the offense. The new modality included shall also entail punishment by imprisonment for a term of eight (8) years as prescribed in Article 124 of the Penal Code. Moreover, using Chilean penal legislation on grooming as a model, it is hereby established that the term of imprisonment shall be increased to twelve (12) years if the offender lies about his identity or age.

It is the public policy of this Administration to condemn any kind of behavior that could endanger our minors. We shall continue to look for alternative ways to protect our children and teenagers from the claws of sexual predators or persons with malicious intentions. With this measure, we take another step on the right path

towards protecting our future generations while firmly and decisively holding accountable those persons who dare to even attempt to sexually abuse our minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Article 124 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 124.- Enticing, Persuading, Luring, and Coercing a Minor Through the Internet or Electronic Communication.

Any person who knowingly uses any electronic means of communication, including telematic systems, social media, telephones and/or the internet to contact, entice, persuade, induce, lure, tempt, manipulate, coerce, or convince a minor to meet with the intent to engage in prohibited sexual conduct under this Penal Code or other penal laws shall be punished by imprisonment for a fixed term of eight (8) years.

Any person who knowingly uses any means of communication, including telematic systems, social media, telephones and/or the internet to contact, entice, persuade, induce, lure, tempt, manipulate, coerce, or convince a minor to provide child pornography material or child pornography images featuring themselves or another minor shall be punished by imprisonment for a fixed term of eight (8) years. If the person lies to the minor about his or her identity or age in the commission of any of the offenses described in this Article, such person shall be punished by imprisonment for a fixed term of twelve (12) years.

The offenses described in this Article shall not qualify for alternatives to imprisonment.

Section 2.- Effectiveness.

This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 65-2020 (H. B. 2529)** of the **7th Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT amend Article 124 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” to classify grooming as an offense within our jurisdiction through the use of more specific language in order to protect and do justice to minors who are approached by individuals who seek to abuse them or engage in sexual acts prohibited by our code of laws; severely punish offenders who harm our minors; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 7th day of December, 2023.

Mónica Freire-Florit, Esq.
Director