

LEGISLATIVE PRIORITIES

New York State Law Enforcement Council

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One Hogan Place
New York, NY 10013
212.335.8927
212.335.3808 f
www.nyslec.org

*New York State District
Attorneys Association*

*Attorney General of the
State of New York*

*Criminal Justice Coordinator
of the City of New York*

*New York State Association
of Chiefs of Police*

*New York State Sheriffs'
Association*

*Citizens Crime Commission
of New York City*



PREFACE

The New York State Law Enforcement Council was formed in 1982 as a legislative advocate for New York's law enforcement community. The Council's members represent the leading law enforcement professionals throughout the State, including the Attorney General of the State of New York, the New York State District Attorneys Association, the New York State Association of Chiefs of Police, the New York State Sheriffs' Association, the New York City Criminal Justice Coordinator, and the Citizens Crime Commission of New York City. Since its inception, the Council has been an active voice and participant in improving the quality of justice and in the continuing effort to provide for a safer New York.

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Citizens Crime Commission of New York City

Richard Aborn
President

Counsel

Robert M. Morgenthau
District Attorney
New York County

Coordinator

Leroy Frazer, Jr.
Office of the District Attorney
New York County



CREATE A NEW CRIME OF ELECTRONIC STALKING

In the eight years since New York State passed its first anti-stalking laws, the Internet has emerged as a virtual marketplace, reference desk, and town square where goods, information, and communications are exchanged in unprecedented ways. Unfortunately, stalkers can and do take advantage of this resource to humiliate, frighten, and potentially injure their victims in ways that are not anticipated in the stalking statutes. The New York State Law Enforcement Council supports creating felony-level crimes for stalkers who post personal information about their victims on the Internet when doing so causes their targets to fear that they will become victims of certain serious or violent offenses.

CYBERSTALKERS USE THE INTERNET AS A WEAPON

Cyberstalkers take advantage of the anonymity offered by electronic communications technologies to encourage third parties to harass and threaten their victims. In addition to offering anonymity, the Internet also allows defendants to spread information faster and farther than conventional means of communication. For example, a defendant may pose on Internet sex sites as an ex-girlfriend, disseminating her daily schedule and address and asking strangers to visit her home for sexual “games” where the victim will “pretend” not to consent. The victim, unaware that her

personal information has been disseminated, is suddenly bombarded with lewd e-mails and strange, potentially dangerous visitors. Once the information has been posted, she has no way of controlling its further dissemination, and may find it difficult to even locate the original posting.

By enlisting a practically unlimited audience of unknown persons to harass, frighten, and attack the victim, cyberstalkers augment the victim's fear and sense of vulnerability. Whereas victims of conventional stalking can at least identify and try to avoid their harassers, cyberstalking victims face a world in which every stranger appears as a potential instrument of the original stalker.

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Accused "Fake Firefighter Rapist" Previously Cyberstalked Ex-Girlfriend for Over a Year: After Peter Braunstein was arrested in 2005 for sexually assaulting a former co-worker, the *New York Daily News* asked why the writer was free to commit the Halloween night attack "despite having been sentenced just seven weeks before for subjecting an ex-girlfriend to a prolonged campaign of terror."¹ In addition to calling her repeatedly at home and work, sending offensive e-mails to her colleagues, and threatening her family, Braunstein posted fake profiles in his ex-girlfriend's name on sex sites like *amateurmatch2.com*, *shooshtime.com*, and *adultfriendfinder.com*. These profiles included the victim's full name, phone number or e-mail address, and employment information, as well as nude or semi-nude photographs of the victim and invitations for sexual encounters. The victim received over ninety e-mails, many of them lewd, in response to the ads. Prosecutors could charge nothing

more serious than Menacing in the Second Degree and Aggravated Harassment in the Second Degree, both A misdemeanors. As a result, Braunstein received three years' probation. Less than two months after his sentencing, he was on the run from allegations of assault, kidnapping, arson, and sexual abuse. *People v. Braunstein, New York County*

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CURRENT STATUTES ARE INSUFFICIENT

The crime of stalking often cannot be charged in electronic stalking cases because the stalking statute requires the defendant to engage in a course of conduct. Where electronic communications are concerned, a course of conduct is not required for great harm to occur. A single communication, if disseminated widely enough, could cause the victim to legitimately fear for her safety and expose her to actual risk of injury, kidnapping, or rape.

Some other existing New York laws can be applied to a defendant who uses the Internet to harass or frighten his victim. The stalker who impersonates his girlfriend on sex sites can be charged with misdemeanor-level criminal impersonation and aggravated harassment. However, these charges do not sufficiently capture the seriousness of such electronic stalking cases. Electronic stalking exposes the victim to actual danger from third parties that is not present in a situation of aggravated harassment.

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Defendant Creates Fake Internet Profiles Encouraging Strangers to Rape His Ex-Girlfriend and Kidnap Her Son: In 2003 Clifford Wares created a Yahoo! member profile under

¹ Michael Daly, *Fix the Law So Guys Like This Can't Run Free*, N.Y. DAILY NEWS, Dec. 18, 2005, at 6.

his ex-girlfriend's name. The profile, which included the victim's photograph, full name, and home and work addresses under the nickname "bar slut," encouraged readers, "I love to be suprised [sic] raped at my home with handcuffs and gagged. It helps if you bring a knife or gun." The defendant also created a profile for the victim's seven-year-old son inviting readers to "come see me in hopes of adopting me" at the boy's elementary school. The profile even listed the name of the child's first-grade teacher so that strangers could find him more easily. Although the defendant provided all the information a rapist or kidnapper would need to perpetuate horrible, violent felonies against two unsuspecting victims, the district attorney was appalled to find that he could only charge Wares with misdemeanor offenses. In 2004, the defendant pleaded guilty to multiple counts of Aggravated Harassment in the Second Degree, and was sentenced to three years of probation. *People v. Wares, Orange County*

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CREATE A CRIME OF ELECTRONIC STALKING

The Law Enforcement Council recommends that the crime of electronic stalking consist of three levels. The third-degree offense would penalize the electronic dissemination of personal identifying information, where the defendant knows that his or her actions will cause the victim to reasonably fear becoming the victim of a serious violent offense. The higher-level offenses would penalize behavior that is more likely to, or which actually does, result in harm to the victim. The second-degree offense would penalize defendants who commit electronic stalking against children or public servants,

who commit electronic stalking by impersonating their victims, or whose stalking behavior results in the commission or attempted commission of an actual offense, other than a class A, B, or C felony, against the victim by the defendant or a third party. The first-degree offense would penalize a defendant who commits the crime of electronic stalking, and whose actions result in the commission or attempted commission of a class A, B, or C felony against the victim by the defendant or a third party.

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Queens Man Posts Names, Addresses, and Family Members of Undercover Officers on Website:

In 2004 the *New York Post* reported that Alan Munn, a disbarred lawyer from Queens, had created websites posting names, addresses, phone numbers, family information, photographs, and favorite hangout spots for top government officials and New York City police officers, including undercover officers. Munn had been convicted of misdemeanor aggravated harassment five years earlier for posting a message on an Internet discussion board stating "Please kill [a named NYPD lieutenant], all other NYPD cops, and all of their adult relatives and friends." Despite endangering the careers of the undercover officers and the lives of all the public servants, Munn could not be held criminally responsible for his websites in 2004 because they did not contain such explicit threats.

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