Cyberbullying
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The dangers of bullying came into the national conscious following the 1999 Columbine school shooting.¹ There have been dramatic developments in electronic communication since then. For instance more than 500 million people have joined facebook in that time.² These changes have lead to the new phenomenon of cyberbullying.

This presentation provides an overview of cyberbullying. It concentrates on defining cyberbullying and the prosecution of cyberbullying. The presentation also gives a brief overview of potential civil actions against bullies and school’s roles in dealing with this growing problem.

DEFINITION

Before the mid-nineties there was no such thing as cyberbullying because the technology required for it did not exist. Cyberbullying is new, but it can best be understood through the old lens of traditional bullying.

Bullying is aggressive behavior that is intentional and that involves an imbalance of power or strength. Sometimes this imbalance involves differences in physical strength between children, but often it is characterized by differences in social power or status. Because of this imbalance of power or strength, a child who is being bullied has a difficult time defending himself or herself. Typically, bullying odes not occur just once or twice, but is repeated over time.³


³ Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 17 (2008).
There is no single definition for what constitutes cyberbullying. Generally the definitions proposed are broad attempts to include intentional repeated uses of digital communication technologies in inflicting emotional distress. The basic elements of cyberbullying are that it: (1) is willful; (2) is repeated; (3) causes harm perceived by its target; and (4) is perpetrated via computers, cell phones, or other electronic devices.4

That such behavior is willful seems an obvious requirement. Likewise if the harm of a bullying act is not perceived by its target then it fails to cause emotional distress. The requirement that the bullying in question be perpetrated via an electronic device is the main distinguishing feature between traditional bullying and cyberbullying.

**Repetition**

Less obvious is the requirement the behavior in question be repeated. Researchers Hinduja and Patchin explain why bullying requires repetition:

The repetitive nature of bullying creates a dynamic where the victim continuously worries about what the bully will do next. Indeed, the target often alters daily behavior pattern to avoid personal contact with the bully, because it is assumed that something bad will happen if they interact.5

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4 Sameer Hinduja & Justin W. Patchin, Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying 5 (2009)

5 Sameer Hinduja & Justin W. Patchin, Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying 12 (2009). While researchers and academics almost universally require an element of repetition states that have defined bullying generally do not require this element. See ALASKA STAT. § 14.33.250 (defining harassment, intimidation, and bullying together in one definition); COLO REV. STAT. § 22-32-109.1 (allowing bullying to consist of one act, but requiring any punishment to take into account the “pattern and severity of such bullying behavior”); DEL. CODE ANN. tit. 14, § 4112D; GA. CODE ANN. § 20-2-751.4; IDAHO CODE ANN. § 18-917A (defining “harassment intimidation and bullying together”); 105 ILL. COMP. STAT. 5/27-23.7; IOWA CODE § 280.28 (defining bullying and harassment together); KAN. STAT. ANN. § 72-8256 (allowing one “severe” act to constitute bullying, but requiring repetition of lesser acts); LA. REV. STAT. ANN. § 17:416.13 (defining harassment, intimidation, and bullying as one term); MD. CODE ANN. § 7-424 (defining bullying, harassment, and intimidation as one term); NEV. REV. STAT. § 388.122; N.H. REV. STAT. ANN. § 193-F:3; N.C. GEN. STAT. § 115C-407.15 (defining...
Repetition is an easily determined element in cases of traditional bullying. However, cyberbullying creates scenarios where it is difficult to distinguish between single and multiple acts. Robin M. Kowalski explains that a single act of cyberbullying often creates repeated harm:

A single act (e.g., a nasty e-mail or an inflammatory text message) may be forwarded to hundred or thousands of children over a period of time. From a victim’s perspective, he or she may feel repeatedly bullied, to say nothing of the fact that the victim may reread the e-mail or text message himself or herself multiple times, again leading to the feeling of being bullied repeatedly. Even though there may have been only one initial act, it may have been perpetrated through many people and over time.

This creates an open question as to exactly what should count as a repetitive act for deciding if behavior is cyberbullying. Currently there is no concerted effort to address this issue in anyway other than identifying it.

AGE

There may also be an additional element in cyberbullying, age. There is currently no...
consensus among either commentators or legislatures about the age component of cyberbullying. However, almost all definitions require that an adolescent be involved in the interaction.\(^8\)

Traditional bullying normally involves minors. Societal norms do not associate the type of behavior among youth that constitutes bullying to be bullying when engaged in by adults. Those societal norms have not yet taken hold in regards to cyberbullying and thus an additional element may be needed if cyberbullying is to be limited to adolescents.

Renee L. Servance states cyberbullying can only be directed at students.\(^9\) The website www.stopcyberbullying.org’s definition requires a minor be both the perpetrator and victim.\(^10\) Yet other scholars include cases where adolescents are the perpetrators and teachers or school administrators are the victims.\(^11\)

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\(^8\) *But see* NEV. REV. STAT. §§ 388.132; 388.135 (defining cyberbullying in such a way that it must take place in a school environment but can have both an adult perpetrator and victim); *accord* DEL. CODE ANN. tit. 14 § 4112D; UTAH CODE ANN. §53A-11a-201.

\(^9\) Renee L. Servance, *Cyberbullying, Cyber-Harassment, and the Conflict between Schools and the First Amendment*, 2003 Wis. L. Rev. 123, 1219; *see also* FLA. STAT. § 1006.147; N.C. GEN. STAT. § 14-458.1; IOWA CODE § 280.28.

\(^10\) *What is Cyberbullying Exactly,* available at www.stopcyberbullying.org/what_is_cyberbullying_exactly.html; Sameer Hinduja & Justin W. Patchin, *Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying* 19 (2009). *See also* ALA. CODE § 16-28B-3; ARK. CODE ANN. § 6-18-514; N.H. REV. STAT. ANN. §§ 193-F:3.

\(^11\) Brannon P. Denning & Molly C. Taylor, Morse v. Frederick and the Regulation of Student Cyberspeech, 35 Hastings Const. L.Q. 835, 867 (2008); *see also* Kowalski, et al., *Cyber Bullying: Bullying in the Digital Age*, 43-44, 146-47 (2008) (citing Tonya R. Nansel et al., *Bullying Behaviors Among US Youth: Prevalence and Association With Psychosocial Adjustment*, 285 JAMA 2094, 2094 (2001)) (Kowalski actually argues further that cyberbullying can take place between two adults not associated with a school); *see also* ARK. CODE ANN. § 6-18-514; CAL. EDUC. CODE § 48900; KAN. STAT. ANN. § 72-8256; N.C. GEN. STAT. § 115C-407.15.

\(^12\) Other states have statutes in which its unclear exactly how age plays into the definition. *See, e.g.,* MASS. GEN. LAWS ch. 71 § 370. Section 370 defines “bullying” as “the repeated use by one or more students” of certain acts directed at a victim. MASS. GEN. LAWS ch. 71 § 370(a). The plain language here would tend to indicate that adults could be victims of cyberbullying. However, the same statute requires “a strategy for providing counseling . . . for perpetrators and victims and for appropriate family members of said students. *MASS. GEN. LAWS*
Karly Zande makes a strong argument that cyberbullying should be limited to interactions with adolescents as both perpetrator and victim. Zande writes:

Traditional bullying is used to describe incidents occurring between school-age children. The law has developed other terms, such as harassment, abuse, or assault, to describe acts occurring between two adults, or an adult and child. Following that trend, especially given the similarities between cyberbullying and traditional bullying, it is logical to limit the definition of cyberbullying to the acts of school-age children. Victims of incidents involving a child and adult, or two adults, have other legal claims available to proceed under, including defamation, cyberharassment, and cyberstalking. These offenses, often more serious than the acts of a cyberbully, can be more appropriately prosecuted in the criminal system or litigated in civil courts. Comparatively, it would be a waste to utilize court resources in a cyberbullying claim when schools are in a better position to educate the cyberbully as to appropriate online and social behavior, as well as to determine and oversee appropriate punishment. Oftentimes, this decorum lesson from the school may be enough to curb the cyberbully’s behavior.

Giving a concrete age definition to cyberbullying also allows for the formulation of a better test reflecting the differences in maturity between children and adults. Child victims may fear going to school, experience physical symptoms, have low self-esteem, and exhibit decreased performance in school. Adult victims of cyber-crimes are more likely to brush it off, making it unlikely that they will experience the same effects or, if they do, at the same degree of severity as a child victim.

This limitation will also allow for the courts to develop a clearer, narrower test for dealing with instances of cyberbullying consistent with other student speech cases. Further, it will give added protection to the free-speech rights of student cyberbullies themselves, taking into consideration the maturity level and ages of their targeted victims. Such a definition would allow punishment of the cyberbully for comments which although seemingly silly, are hurtful and damaging to child victims. However, if a student targets an adult victim, he or she would be allowed a greater range of speech before it could be constitutionally censored. This reflects the different maturity levels of the student and adult.

ch. 71 § 37O(d)(x). This language would seem to indicate that both perpetrators and victims must be students.
involved.\textsuperscript{13}

There is also a strong argument that cyberbullying should require a student perpetrator and a victim that is in any way associated with that student’s school. Both traditional and cyber bullying are largely about the exploitation of differences in power. In traditional settings the power exploited is generally physical strength or social status. However, in the context of cyberbullying physical strength is no longer important. Instead the power of cyberbullying is in the ability to use digital technology. In almost no case would a traditional bully be able to use physical strength to bully a teacher or administrator. A student would likely be too physically immature to overpower a teacher or if a student was physically mature enough such a use of force would be a crime. Further, the adult in this situation would have significantly more ability to use available resources to ensure there was no repeat of this behavior. However, cyberbullying changes that dynamic. A young student may be able to successfully manipulate digital technology in a way that is harmful to an adult and yet is not clearly criminal.

Further in a traditional setting students do not have the ability to attack adults by effecting their social status. Certainly a student might mock a teacher or start a rumor about them in school. However, this behavior would likely reach only other students and the veracity of these attacks would be suspect because of their source. In the digital world students have the ability to reach teachers and administrators in their peer group. By posting information on the internet students are able to effect the reputation of a school official not just in the classroom, but throughout the community and beyond. Additionally, because the internet allows information to

\textsuperscript{13} Karly Zande, When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying, 13 Barry L. Rev. 103, 127-28 (2009) (internal citations omitted).

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be posted anonymously or under false pretenses, it may be unclear that the information comes from a source that lacks credibility. These two changes in the power dynamic between student and teacher counsel for creating policies that protect adults and not just children.

These definitional issues will continue to evolve as we gain more experience in dealing with cyberbullying. No matter which construction becomes the definition of cyberbullying, it is clearly a broad term.

**FORMS OF CYBERBULLYING**

Cyberbullying can take on a variety of forms including: harassment, flaming, denigration, impersonation, outing and trickery, and exclusion/ostracism.¹⁴ These categories can be broken down into three types of behavior: directly confronting someone with hurtful statements; spreading embarrassing information both true and untrue; and social exclusion. There is a broad range of behavior within each of these categories which could constitute cyberbullying.

Direct bullying is most like traditional bullying. Largely it has taken schoolyard name calling and turned it high tech. In these scenarios insults can be delivered via text message, instant messaging, or e-mail.

Electronic Communication has also spawned a tremendous amount of indirect bullying. Indirect bullying involves the dissemination of information about a victim. The primary examples of this can be seen on blogs and social networking sites. Here an individual can post information virtually without check. When someone is denigrated on a social network that

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information may be available to a select group of people or it may be available to anyone with an internet connection. This is schoolhouse gossip taken worldwide.

Ostracism is the final form of bullying. Virtually all online communities allow individuals to limit who can access certain information. This creates an easy opportunity to exclude someone from a group. There is no legal remedy to ostracism. In fact it seems difficult to even think of such behavior as a bad act. However, ostracism can have real consequences. The emotional consequences of ostracism have cause some to feel as though they have experienced a “social death.”

**EFFECTS OF CYBERBULLYING**

Bullying among children obviously covers a broad range of behaviors and degrees. The harshness of some bullying often surprises adults.

[C]ommunities have been shocked by media coverage of the cruelty and ugliness of middle-school students who post profanity-laced messages about their peers on secret ‘slam’ sites. The racist, homophobic messages eviscerating fellow middle school students on one slam site also included posts threatening to kill other students, wanting on young girl to be raped and shot, and a claim that one young boy had been raped by his mother. Less shocking, but indicative of the insidious kind of personal attacks routinely posted on these student created Web sites, several Massachusetts girls posted lists of students who were hated or anorexic, criticizing one girl for her “frizzy hair and irregular boobs.”


Studies show that being subject to such bullying is a widespread phenomenon. Different studies have shown that eight, fifteen to twenty, and seventy-six percent of middle and high school age students have been the victims of bullying. Experts have concluded that somewhere between eight and thirty percent of all adolescents in the United States are the victims of bullying.

The first national study of bullying in the United States found seventeen percent of students were bullied during one single school term, nineteen percent of students had bullied other students, and six percent had been both the bully and the victim during that single term. A more recent study suggests that in the United States 13.7 million students are physically bullied and 15.7 million are emotionally bullied every year.

A Pew Internet & American Life Project study found that approximately one third of

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teenage internet users report they have experience online behaviors that might be classified as cyberbullying. A Harvard study found the greatest threat to minors both on- and off-line was not sexual predators, but was instead cyberbullying usually by their own peers.

Bullying of all types has negative impacts on its victims. Bullying affects both the mental and physical health of children. The Office of Juvenile Justice and Delinquency Prevention found victims of bullying “often felt lonely, humiliated, insecure, and fearful of going to school; experienced poor relationships and had difficulty making friends; and struggled with emotional and social adjustments.” Children that have been bullied are more likely to be anxious, depressed, and to suffer from low self-esteem. An Australian study showed children frequently

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26 Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 26 (2008).

27 Sameer Hinduja & Justin W. Patchin, Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying 14 (2009) (citing N. Ericson, Addressing the Problem of Juvenile Bullying, Office of Juvenile Justice and Delinquency Prevention Fact Sheet #27 (United States Department of Justice 2001)).

bullied were twice as likely to consider suicide or wish they were dead.29 Bullied children also are much more likely to have headaches, trouble sleeping, and stomach pains.30 These victims are more likely to feel listless and tense, wet their beds, be tired, and have poor appetites.31 Bullying can also lead to eating disorders.32

While there are no definitive studies available, the available research has shown a correlation between being a victim of bullying and disliking school, having a high absenteeism rate, and poor academic performance.33

29 Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 26 (2008) (citing K. RIGBY, BULLYING IN SCHOOLS: AND WHAT TO DO ABOUT IT (Jessica Kingsley Publishers 1996)). The Georgia legislature has made a finding that bullying can lead to suicide. GA. CODE ANN. § 37-1-27. Interestingly suicidal urges (as well as depression) were stronger in children that suffered from indirect bullying instead of direct bullying. Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 26 (2008) (citing M.F. Van der Wal, et al, Psycosocial Health Among Young Victims and Offenders of Direct and Indirect Bullying 111 Pediatrics 1312-17 (2003)).


Bullies also suffer from their actions. Bullying may increase one’s tendency to act violently and have substance abuse problems.\textsuperscript{34} The Illinois Legislature found that bullying leads to anti-social behaviors including “vandalism, shop lifting, skipping and dropping out of school, fighting, using drugs and alcohol, sexual harassment, and sexual violence.”\textsuperscript{35}

In fact bullying is a group phenomenon and each member of the group suffers because of bullying. Researchers have created eight categories in reference to children’s roles in bullying:

1. The child who initiates the bullying.
2. Followers or henchmen, who actively take part in the bullying but do not initiate it.
3. Supporters, who openly support the bullying (e.g., they laugh or otherwise call attention to the bullying) but do not take an active role.
4. Passive supporters, who enjoy the bullying but do not openly support it.
5. Disengaged onlookers, who neither get involved nor feel responsible for stepping in to stop the bullying.
6. Possible defenders, who dislike the bullying and think they should do something to help, but do not.
7. Defenders, who dislike the bullying and try to help those who are bullied.
8. The student who is bullied.\textsuperscript{36}

\begin{itemize}
  \item Buhs, et al., Peer Exclusion and Victimization: Processes that Mediate the Relation Between Peer Group Rejection and Children’s Classroom Engagement and Achievement? 98 Journal of Educational Psychology 1-13 (2006)).
  \item Sameer Hinduja & Justin W. Patchin, Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying 65 (2009) (citing Sammer Hinduja & Justin W. Patchin, Off-line Consequences of Online Victimization: School Violence and Delinquency 6 Journal of School Violence 89-112 (2007)).
  \item 105 ILL. COMP. STAT. 5/27-23.7; see also OKLA. STAT. § 24-100.3 (finding bullying leads to “vandalism, shoplifting, skipping and dropping out of school, fighting, and the use of drugs and alcohol”).
  \item Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 32-33 (2008).
\end{itemize}

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The effects of bullying on individuals in all these categories may have a long life span. A study of young adults showed boys bullied in junior high suffered from lower self-esteem and greater levels of depression than their peers even a decade after the bullying stopped. The Oklahoma legislature found “sixty percent (60%) of males who were bullies in grades six through nine were convicted of at least one crime as adults, and thirty-five percent (35%) to forty percent (40%) of these former bullies had three or more convictions by twenty-four (24) years of age.” Children that simply observe bullying “may feel afraid, powerless to change the situation, and guilty for their inaction.” Over time these children feel less empathy for their peers which effects long-term socialization.

The effects of cyberbullying are generally the same as those that come from traditional bullying. However, those effects may be magnified by the nature of digital communication.


38 OKLA. STAT. § 24-100.3.

39 Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 33 (2008)

40 Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 33 (2008)


Digital communication makes acts of bullying more public and less easily escapable.\textsuperscript{43} Further technology gives perpetrators constant access to their victims and at times allows them to act anonymously.\textsuperscript{44} Anonymity and the ability to avoid face-to-face confrontation disinhibits perpetrators allowing them to act more cruelly.\textsuperscript{45} Further, the digital world is often less supervised than the schoolyard.\textsuperscript{46}

\textbf{CYBERBULLYING PROSECUTIONS}

Prosecutors and legislatures have attempted to punish bullies particularly in extreme cases which have garnered a lot of media attention. North Carolina and Nevada have actually criminalized ‘cyberbullying.’\textsuperscript{47} In some cases cyberbullying crosses into conduct that is punishable under regular criminal statutes. In a few cases prosecutors have attempted to develop novel approaches to prosecuting cyberbullying.

North Carolina’s law criminalizing cyberbullying uses the term in a very narrow way. The first two parts of the statute are an obvious reaction to the Lori Drew case discussed below. These sections prohibit creating a fake internet profile or website or posing as a minor in order to

\textsuperscript{43} Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 85 (2008); see also Sameer Hinduja & Justin W. Patchin, Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying 24-25 (2009).

\textsuperscript{44} Karly Zande, When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying, 13 Barry L. Rev. 103, 105 (2009) (citing Frontline: Growing Up Online (PBS television broadcast Jan. 22, 2008); see also Sameer Hinduja & Justin W. Patchin, Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying 20-21 (2009)).

\textsuperscript{45} Sameer Hinduja & Justin W. Patchin, Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying 21-22 (2009).

\textsuperscript{46} Sameer Hinduja & Justin W. Patchin, Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying 22-23 (2009).

\textsuperscript{47} N.C. GEN. STAT. § 14-458.1; NEV. REV. STAT. § 392.915

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intimidate or torment a minor.\textsuperscript{48} The statute also prohibits, with the intent to intimidate or torment a minor, following a minor online or into a chat room or posting or encouraging others to post private, personal, or sexual information about a minor.\textsuperscript{49}

The next part of the statute also requires an intent to intimidate or torment, but allow for that intent to be directed at a minor or a minor’s parent or guardian.\textsuperscript{50} This section makes it unlawful, with that intent, to post a real or doctored image of a minor on the internet; access, alter or erase a computer network, computer data, a computer program, or computer software; or, use a computer for repeated, continuing, or sustained electronic communications to a minor.\textsuperscript{51} The statute goes on to make it a crime to, with that intent, plant any statement to tending to provoke or that actually provokes another to stalk a minor; copy and disseminate or cause to be made any data pertaining to a minor; sign up a minor for a pornographic website; or, without authorization sign a minor up for an electronic mailing or instant message list.\textsuperscript{52}

The statute distinguishes between minor and adult perpetrators by making violation of the statute a Class 1 misdemeanor for those over eighteen and a Class 2 misdemeanor for those under eighteen.\textsuperscript{53} The statute also includes a safety valve for minors who plead or are found

\begin{footnotes}
\item[48] N.C. GEN. STAT. § 14-458.1(a)(1)(a); (a)(1)(b).
\item[49] N.C. GEN. STAT. § 14-458.1(a)(1)(c); (a)(1)(d).
\item[50] N.C. GEN. STAT. § 14-458.1(a)(2).
\item[51] N.C. GEN. STAT. § 14-458.1(a)(2).
\item[52] N.C. GEN. STAT. § 14-458.1(a)(3); (a)(4); (a)(5); (a)(6).
\item[53] N.C. GEN. STAT. § 14-458.1(b).
\end{footnotes}
guilty before turning eighteen by giving courts the right to sentence the offender to a period of probation without entering a judgment of guilt.\textsuperscript{54}

Nevada’s statute punishes behavior which includes some cyberbullying, but also some behavior that would not fit the definition of cyberbullying.\textsuperscript{55} The law makes it a crime to use oral, written, or electronic communication to “knowingly threaten to cause bodily harm or death to a pupil or employee of a school district or charter school with the intent to: (a) intimidate, harass, frighten, alarm, or distress;” (b) create panic or civil unrest; or (c) “interfere with the operation of a public school.”\textsuperscript{56}

**HARASSMENT AND STALKING PROSECUTIONS**

Generally, when cyberbullying is prosecuted it falls under harassment or stalking statutes.\textsuperscript{57} The first harassment laws prohibited “vulgar, profane, obscene or indecent” language used over telephone lines.\textsuperscript{58} These statutes were expanded to criminalize “anonymous or repeated telephone calls . . . intended to harass or annoy.”\textsuperscript{59} Delaware’s law is typical of harassment statutes. It reads:

\textsuperscript{54} N.C. GEN. STAT. § 14-458.1(c).

\textsuperscript{55} NEV. REV. STAT. § 392.915(1).

\textsuperscript{56} NEV. REV. STAT. § 392.915(1).

\textsuperscript{57} Virtually all jurisdictions have harassment and stalking statutes. Eight states have statutes which specifically address cyberstalking. CAL. PENAL CODE § 653.2; FLA. STAT. § 784.048; 720 ILL. COMP. STAT. 5/12-7.5; LA. REV. STAT. ANN. § 14:40.3; MISS. CODE ANN. §§ 97-45-15; 97-45-17; N.C. GEN. STAT. § 14-196.3; R.I. GEN. LAWS § 11-52-4.2; WASH. REV. CODE § 9.61.260.


(a) A person is guilty of harassment when, with intent to harass, annoy or alarm another person:

(1) That person insults, taunts or challenges another person or engages in any other course of alarming or distressing conduct which serves no legitimate purpose and is in a manner which the person knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress;

(2) Communicates with a person by telephone, telegraph, mail or any other form of written or electronic communication in a manner which the person knows is likely to cause annoyance or alarm including, but not limited to, intrastate telephone calls initiated by vendors for the purpose of selling goods or services;

(3) Knowingly permits any telephone under that person’s control to be used for a purpose prohibited by this section;

(4) In the course of a telephone call that person uses obscene language or language suggesting that the recipient of the call engage with that person or another person in sexual relations of any sort, knowing that the person is thereby likely to cause annoyance or alarm to the recipient of the call; or

(5) Makes repeated or anonymous telephone calls to another person whether or not conversation ensues, knowing that person is thereby likely to cause annoyance or alarm.60

California enacted the nation’s first stalking law and states initially followed its model in adopting their own laws.61 California’s law makes it a crime to:

willfully, maliciously, and repeatedly follow[] or willfully and maliciously harass[] another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her

60 DEL. CODE ANN. tit. 11 § 1311(a).

immediate family.\textsuperscript{62}

The newer model of stalking statutes are based on Florida’s statute which criminalizes stalking through a tiered system.\textsuperscript{63} This statute makes it a first degree misdemeanor to “willfully, maliciously, and repeatedly follow[, harass[, or cyberstalk[]]”\textsuperscript{64} If that behavior includes “a credible threat with the intent to place [a] person in reasonable fear of death or bodily injury” it becomes a third degree felony.\textsuperscript{65} It also makes third degree felonies out of general stalking if an injunction for protection is in place or if the victim is under sixteen years of age.\textsuperscript{66}

Florida’s model criminalizes behavior that includes credible threats, but it also reaches acts that would cause a reasonable person emotional distress making such behavior a misdemeanor. In many ways stalking laws based on this construction are aggravated harassment statutes. This is the path taken by the federal stalking law.\textsuperscript{67}

Other federal laws operate similarly. Title 47, section 223 prohibits a number of acts that

\textsuperscript{62} CAL. PENAL CODE § 646.9(a).

\textsuperscript{63} FLA. STAT. § 784.048.

\textsuperscript{64} FLA. STAT. § 784.048(2). The statute defines ‘harass’ as “engag[ing] in a course of conduct directed at a specific person that causes substantial emotional distress . . . and serves no legitimate purpose.” FLA. STAT. § 784.048(1)(a). It defines ‘cyberstalk’ as “engag[ing] in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.” FLA. STAT. § 784.048(1)(d).

\textsuperscript{65} FLA. STAT. § 784.048(3).

\textsuperscript{66} FLA. STAT. § 784.048(4); (5).

\textsuperscript{67} 18 U.S.C. § 2261A.

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would fall under the cyberbullying umbrella. Section 223(a)(1)(A) makes it a crime to transmit any obscenity with the intent to annoy, abuse, threaten, or harass another person. Section 223(a)(1)(C) makes it a crime to make an anonymous phone call with the intent to annoy, abuse, threaten, or harass another.

These statutes reach some cyberbullying. Direct cyberbullying fits into both the harassment and stalking regimes currently available. As applied to cyberbullying the lowest level harassment and stalking statutes have four elements: (1) an intentional (2) series of acts; (3) directed at an individual; (4) with the purpose of inflicting emotional distress.

As discussed above cyberbullying requires a series of acts which is usually electronic speech. When cyberbullying is conducted through messages such as e-mails and texts directed at an individual or through flaming an individual in a chat room those acts are clearly directed at an individual.

These crimes are generally specific-intent crimes requiring proof that the conduct

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70 Some states require “substantial emotional distress.” See 18 U.S.C. § 2261A(2). Others require only conduct that harasses or annoys. DEL. CODE ANN. tit. 11 § 1311(a)(2) (requiring only annoyance). The Supreme Court has struck down statutes that prohibit behavior that annoys, without further limitations, because the term is too vague and covers too broad a spectrum of potential conduct to be constitutional. See Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971); see also Kramer v. Price, 712 F.2d 174, 178 (5th Cir. 1983) (finding the Texas’ harassment statute void-for-vagueness because of its use of the terms “annoy” and “alarm.”), vacated by 723 F.2d 1164 (5th Cir. 1984) (en banc) (finding the Texas legislature had repealed the statute in front of the panel and affirming the district court’s original finding the statute unconstitutionally vague); but see Galloway v. State, 781 A.2d 851, 870 (Md. 2001) (finding the use of “annoy” and “alarm” in a harassment statute constitutional where the statute required “reasonable warning or [a] request to desist” before prosecution).

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was designed to inflict emotional distress. That element can normally inferred from the requirement that the *actus reus* be a series of acts. That is the causal nexus between the acts and the intention behind those acts can be seen by persistent behavior. Persistent behavior shows a calculation on the part of the perpetrator to cause emotional distress while single bad act lacks the proof of calculation present in normal stalking or harassment crimes.71

A large portion of cyberbullying, however, is not done directly. Instead information is posted on social networks or blogs where it can be seen either by the public at large or some group of authorized viewers. This type of behavior raises serious questions about the alleged perpetrator’s intent. Two cases illustrate the difficulty in proving intent and proving the bullying acts were directed at the victim.

In *State v. Ellison*, Ohio prosecutors brought harassment charges against a teenager who posted disparaging information about another teen on her MySpace page.72 The teenagers, Ellison and Gerhard, had been friends until they reached seventh grade.73 At that time Ellison’s little brother accused Gerhard of molesting him.74 The county department of family services investigated determining it did not have enough evidence


72 900 N.E.2d 228, 229 (Ohio Ct. App. 2008).

73 *Id.*

74 *Id.*
to proceed.\textsuperscript{75} During the summer of 2007 Ellison posted a picture of Gerhard on her MySpace page captioned “Molested a little boy.”\textsuperscript{76} She also stated on her profile that she hated Gerhard.\textsuperscript{77} This information was viewable by the general public.\textsuperscript{78}

Gerhard learned about the posting and went to Ellison’s page to view it for herself.\textsuperscript{79} Gerhard complained to school authorities who contacted Ellison.\textsuperscript{80} Ellison then voluntarily removed the posting.\textsuperscript{81} Ellison was subsequently charged with violating Ohio’s Telecommunications Act.\textsuperscript{82}

At trial Gerhard testified Ellison never communicated with her on the internet and that she had taken steps on her own to seek out the postings.\textsuperscript{83} Ellison testified she believed her brother’s statements against Gerhard stating “I think that other people need to know how she is. And she denies everything, but a lot of people believe that she did it.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{75} Id.
\item \textsuperscript{76} Id.
\item \textsuperscript{77} Id.
\item \textsuperscript{78} Id.
\item \textsuperscript{79} Id.
\item \textsuperscript{80} Id.
\item \textsuperscript{81} Id.
\item \textsuperscript{82} Id. (citing Ohio Rev. Code Ann. § 2917.21(B)). The statute “provides that ‘[n]o person shall make or cause to be made a telecommunication, or permit a telecommunication to be made from a telecommunications device under the person’s control, with purpose to abuse, threaten, or harass another person.’” Id. at 230.
\item \textsuperscript{83} Id. at 229.
\end{itemize}
\end{footnotesize}
And I was told that she did it. And so I think that other people have a right to know. **84
Ellison was convicted of violating the statute.85

On appeal the court found the statute could be violated without direct communication.86 However, the court found the state had failed to provide that Ellison acted with the intent to harass.87 The court’s finding is two pronged, first that Ellison could have a legitimate purpose in posting the information and second her failure to direct the comments towards Gerhard showed a lack of desire to cause emotional distress.88 The court offered little else in the way of analysis. However, the problems in the proof under these circumstances is clear.

Since Ellison never contacted Gerhard about the posting or anything else on the internet it is nonsensical to believe her intent in posting the picture was to harass Gerhard. At a minimum there is a strong argument that in order to harass Gerhard, Ellison would have needed to communicate her message to Gerhard. When coupled with the fact that the message, though harassing, also has a legitimate purpose it is difficult to determine what Ellison’s intent was. Further this statute does not reach communications which have a legitimate purpose and even if the statute was so broad that type of

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84 Id.
85 Id.
86 Id. at 230.
87 Id.
88 Id. at 231.

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communication is likely protected by the First Amendment.

The Indiana Supreme Court dealt with a similiar issue in, A.B. v. State. That case began when A.B. was found to be a delinquent child for a posting on MySpace that would have constituted criminal harassment had she been prosecuted as an adult. A.B. posted a “vulgar tirade” on MySpace complaining about her school principal’s enforcement of school policies.

The principal investigated the tirade. He found a fake profile had been created which claimed to be his own. That profile was created by another student, R.B., and could be accessed by twenty-six of R.B.’s friends. It was on this profile that A.B. first posted her rant. A.B. also created her own group page and made her tirade available to the general public there.

Following her hearing and adjudication as delinquent A.B. appealed to the

89 885 N.E.2d 1223 (Ind. 2008).
90 Id. at 1223. Indiana’s harassment statute prohibits a person from communicating with the “intent to harass, annoy, or alarm another person with no intent of legitimate communication.” Id. at 1225-26 (citing IND. CODE § 35-45-2-2(a).
91 Id. at 1224.
92 Id.
93 Id.
94 Id.
95 Id.
96 Id.

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Indiana Court of Appeals.\textsuperscript{97} That court found her speech to be protected by the First Amendment.\textsuperscript{98} The Indiana Supreme Court vacated that opinion.\textsuperscript{99}

The Indiana Supreme Court did, however, find that A.B. ’s conduct was not criminal. In dealing with the postings to the private MySpace account the court held that A.B. did not have an expectation this language would come to the attention of her principal.\textsuperscript{100} Based on this finding the court found that A.B. could not be guilty because she did not have a subjective belief her comments would harass the principal.\textsuperscript{101}

The court’s analysis of the information posted publically turned on whether the content was posted with a legitimate intent.\textsuperscript{102} There was evidence that A.B. posted the material with the legitimate intention of criticizing an official’s use of disciplinary procedures.\textsuperscript{103} Prosecutors did not rebut this evidence and the court found “it impossible for the State to have carried its burden to prove ‘no intent of legitimate communication.’”\textsuperscript{104}

These two cases show the difficulty in proving indirect cyberbullying is either

\textsuperscript{97} \textit{Id.}

\textsuperscript{98} \textit{Id.}

\textsuperscript{99} \textit{Id.} at 1224 n.2.

\textsuperscript{100} \textit{Id.} at 1227.

\textsuperscript{101} \textit{Id.}

\textsuperscript{102} \textit{Id.}

\textsuperscript{103} \textit{Id.}

\textsuperscript{104} \textit{Id.} (citing IND. CODE § 35-45-2-2(a)) (emphasis in original).

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harassment or stalking. Harassment and stalking statutes were not designed to deal with
the world of blogs and social networking. Some cyberbullying will fall within their
confines, but much of it is permissible under these statutes.

**CRIMINAL DEFAMATION**

About half of the states have criminal defamation laws which can be used to
prosecute cyberbullying. Criminal defamation is a common law crime which went
largely unused in Nineteenth and Twentieth Century America.

These statutes generally fall into one of two categories: those that criminalize
communications which are likely to cause a breach of the peace; and those that
criminalize speech tending to impeach one’s reputation. Generally, both types of
statutes have three elements: (1) publication of information; (2) that is false; and, (3) has
the tendency either to cause a breach of the peace or harm an individuals reputation.

Many cases of cyberbullying will fit in this framework. However, there are open
constitutional questions relating to these types of statutes. In *New York Times v. Sullivan,*

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107 See, e.g. *ALA. CODE § 13A-11-160; VA. CODE ANN. § 18.2-417* (also includes a provision which criminalizes false information regarding the chastity of a female); *see also GA. CODE ANN. § 16-11-40* (found unconstitutionally vague by *Williamson v. State*, 295 S.E.2d 305, 306 (Ga. 1982)).

108 See, e.g. *IDAHO CODE § 18-4801; LA. REV. STAT. ANN. § 14:47; UTAH CODE ANN. § 76-9-404.*

the Supreme Court found “actual malice” was required for public figures to bring civil defamation cases.\textsuperscript{110} Lower courts have struggled in determining exactly who is a public figure. This problem is further complicated the rise of blogs and social networking and their interplay with how individual’s privacy is viewed.

The problem of who is a public figure is illustrated by the difficulty in determining a principal’s place in society. At least some cyberbullying is directed at principals who serve as one of the main authority figures in the lives of children. In \textit{Beeching v. Levee}, the Indiana Court of Appeals offered an overview of the split among states as to whether a principal, as a public school administrator, is a public figure.\textsuperscript{111} Some courts have found principals to be public figures.\textsuperscript{112} Other courts have found that principals are public officials, but not public figures and thus only defamation related to a principal’s employment requires use of the “actual malice” standard.\textsuperscript{113}

Another problem in determining who is a public figure is that when \textit{Sullivan} was decided the internet did not exist. In 1964 newspapers, radio, and television were the only mediums in which wide distribution of factual information was disseminated. The rise of social networking has placed previously private information about millions of people in the public sphere. Individuals on facebook, MySpace, and those that blog have

\begin{footnotes}
\item[110] 376 U.S. 254, 280 (1964).
\item[111] 764 N.E.2d 669, 677 n.5 (Ind. Ct. App. 2002).
\item[112] Id.
\item[113] Id.
\end{footnotes}
asked for public attention. Courts have yet to deal with this issue, but certainly an argument exists that by placing themselves in the public eye social networkers may have created a need for proof not just of defamation, but of “actual malice” if an individual is to be found guilty of criminally defaming them. Publicly disseminated gossip used to be confined to public figures. Now such speech is the norm. There is currently no guidance on how this change in normative behavior effects the law of defamation.

There is also an open question of whether “actual malice” should apply to all criminal defamation cases regarding matters of public concern. The Supreme Court has held that the “actual malice” standard must be applied when a private citizen attempts to collect punitive or presumed damages for false statement regarding a matter of public concern.114 That holding along with the court’s statement in Sullivan that the libel in that case could not be criminalized led the New Mexico Court of Appeals to hold that a criminal libel statute that did not contain an “actual malice” requirement was unconstitutional when applied to statements regarding matters of public concern.115

As of yet there are no reported cases in which criminal defamation has been used to prosecute cyberbullying. It is a tool available to prosecutors, but the exact bounds of its reach are currently unknown.

**NOVEL PROSECUTIONS**


THE LORI DREW CASE

Anecdotal evidence shows that most cyberbullying is accomplished either through direct name calling or the spreading of gossip through electronic methods. However some cyberbullying may go beyond this and be subject to other laws relating to making threats. For instance federal law makes it a crime to transmit in interstate or foreign commerce any communication containing a threat to injure or kidnap.116

The most interesting of the novel cyberbullying prosecutions is the case of Lori Drew.117 Drew used MySpace to target her daughter’s classmate thirteen year old Megan.118 Drew created a fake MySpace profile on which she pretended to be sixteen year old boy named “Josh Evans.”119 Josh flirted with Megan building a relationship via MySpace.120 After building that relationship Josh informed Megan that he no longer liked her.121 Eventually, Josh told Megan “the world would be a better place without her in it.”122 Megan killed herself the day that message was sent.123

117 This case involves an adult perpetrator and a child victim and therefore does not fit within all cyberbullying definitions.
119 Id.
120 Id.
121 Id.
122 Id.
123 Id.
Prosecutors charged Drew with one count of conspiracy\textsuperscript{124} and three counts of violating a felony provisions of the Computer Fraud and Abuse Act\textsuperscript{125} ("CFAA").\textsuperscript{126}

The CFAA, originally passed to punish hackers, criminalizes unauthorized computer use.\textsuperscript{127} The theory of the case against Drew was that she violated MySpace’s terms of service in creating the fake profile.\textsuperscript{128} MySpace’s terms of service required all information posted to be truthful.\textsuperscript{129} The prosecution attempted to prove Drew acted with the tortious intent to inflect emotional distress.\textsuperscript{130} The jury rejected this theory.\textsuperscript{131} Instead the jury found Drew guilty of a lesser included misdemeanor which required proof she accessed a computer without authorization.\textsuperscript{132} The trial judge found this verdict was consistent with Congress’ intent and the evidence submitted.\textsuperscript{133}

However, the court went on to find the statute itself was void-for-vagueness.\textsuperscript{134}

\begin{footnotes}
\item[124] 18 U.S.C. § 371
\item[125] 18 U.S.C. §§ 1030(a)(2)(C); (c)(2)(B)(ii).
\item[127] 18 U.S.C. § 1030.
\item[128] \textit{Drew}, 259 F.R.D. at 453-55.
\item[129] \textit{Id.} at 454.
\item[130] \textit{Id.} at 452-53.
\item[131] \textit{Id.} at 453.
\item[132] \textit{Id.}
\item[133] \textit{Id.} at 457-62.
\item[134] \textit{Id.} at 467.
\end{footnotes}
The void-for-vagueness doctrine is appropriate either where a statute fails to give sufficient notice conduct is illegal or where no guideline exists for enforcement of the statute.\(^{135}\) In this instance the court found the statute gave insufficient notice of the activity it criminalized and failed to set guidelines for law enforcement.\(^{136}\)

The court came to this conclusion because individuals of common intelligence would not have been on notice that violating a public website’s terms of service would be a crime, it was unclear exactly what violations would constitute a crime, such statutory construction would allow private parties to define criminal conduct without normal legislative checks, and the lack of minimal guidelines to govern law enforcement.\(^{137}\)

Specifically the court held:

One need only look to the . . . terms of service to see the expansive and elaborate scope of such provisions whose breach engenders the potential for criminal prosecution. Obvious examples of such breadth would include: 1) the lonely-heart who submits intentionally inaccurate data about his or her age, height, and/or physical appearance, which contravenes the . . . prohibition against providing ‘information that you know is false or misleading’; 2) the student who posts candid photographs of classmates without their permission, which breaches the . . . provision covering ‘a photo-graph of another person that you have posted without that person’s consent’; and/or 3) the exasperated parent who sends out a group message to neighborhood friends entreating them to purchase his or her daughter’s girl scout cookies, which transgress the . . . rule against ‘advertising to, or solicitation of, any Member to buy or sell any products or services through the Services.’ However, one need not consider hypotheticals to demonstrate the problem. In this case, Megan (who was then 13 years old) had her own profile on MySpace, which was in clear violation of the [requirement] that users be ‘14 years of age or older.’ No one would seriously suggest that Megan’s conduct was

\(^{135}\) Id. at 463; see also Kolender v. Lawson, 461 U.S. 352, 357-58 (1983).

\(^{136}\) Id. at 467.

\(^{137}\) Id.
criminal or should be subject to criminal prosecution.138

This case typifies problems with trying to force cyberbullying prosecutions under statutes not designed to reach speech. Cyberbullying is almost always electronic speech. Speech tends to be the most protected civil right. Therefore any statute criminalizing cyberbullying must be narrowly drawn in order to prohibit only non-protected speech. This means that traditional criminal speech laws such as harassment and stalking are effective tools. It also means that statutes whose purpose was to prohibit some type of act other than speech may simply go too far if applied to speech.

PRIVATE ACTIONS AGAINST CYBERBULLIES

This presentation deals with cyberbullying as a crime, however, a full understanding of cyberbullying requires at least a brief overview of other ways in which society deals with this problem. The first of those ways are through traditional tort suits. The most common torts used in combatting cyberbullying are defamation and outrageous conduct causing severe emotional distress.

DEFAMATION

Defamation is generally defined as statements that are (a) false; (b) published without the privilege to publish; (c) published negligently, recklessly, or intentionally; and, (d) specially harmful or of such a nature that no special harm is required.139 However, many statements made by cyberbullies are opinions or are truthful and thus not

138 Id. at 466.

139 RESTATEMENT (SECOND) OF TORTS § 558.

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actionable under this theory. Additionally, the traditional damages available are for loss of reputation.\textsuperscript{140} Because children do not have professional reputations actual damages under this theory may be difficult to prove. Some jurisdictions do allow for defamation victims to collect emotional suffering damages.\textsuperscript{141} In these jurisdictions defamation is a much better weapon against cyberbullying

**OUTRAGEOUS CONDUCT CAUSING SEVERE EMOTIONAL DISTRESS**

A majority of states recognize the common law tort of outrageous conduct causing severe emotional distress.\textsuperscript{142} This tort requires outrageous and extreme conduct that intentionally or recklessly causes emotional distress if bodily harm results from the conduct.\textsuperscript{143} The problem with using this action to combat cyberbullying is the requirement of bodily injury. Only the most severe cyberbullying could meet this requirement and then the tort would only be available after an extreme consequence of cyberbullying had occurred.

**SCHOOL DISCIPLINE**

**PUNISHMENT**

The broadest combat against cyberbullying is waged through schools. Forty-four

\textsuperscript{140} \textsc{Restatement (Second) of Torts} § 621.

\textsuperscript{141} \textsc{Restatement (Second) of Torts} § 623.

\textsuperscript{142} \textsc{Restatement (Second) of Torts} § 46.

\textsuperscript{143} \textsc{Restatement (Second) of Torts} § 46. An individual may also be liable for physical harm that comes as a result of intentional infliction of emotional distress. See \textsc{Restatement (Second) of Torts} §§ 312; 313.
states have anti-bullying statutes. New Mexico does not have a statute, but the state administrative code has an anti-bullying measure. Generally these statutes require school districts to adopt anti-bullying discipline policies. This is consistent with the

144 ALA. CODE §§ 16-28B-1, et seq. (statute does not use the term “bullying”); ALASKA STAT. §§ 14.33.200, et seq.; ARIZ. REV. STAT. ANN. § 15-341; ARK. CODE ANN. § 6-18-514; CAL. EDUC. CODE §§ 32261, 32265, 32270, 48900; DEL. CODE ANN. tit. 14 §§ 4112D; 4123A; FLA. STAT. §§ 1006.147; IA. CODE ANN. §§ 18-197A; 32-205; 33-512; 105 ILL. COMP. STAT. 5/10-20.14; 27-13.3; 27-23.9; IND. CODE §§ 5-2-10.1-11; 5-2-10.1-12; 20-33-8-0.2; 20-33-8-13.5; IOWA CODE §§ 280.12; 280.28; KAN. STAT. ANN. § 72-8256; KAN. STAT. ANN. § 72-7538; KY. REV. STAT. ANN. §§ 555; see also KY. REV. STAT. ANN. § 158.148; LA. REV. STAT. ANN. § 17:416.13; see also LA. REV. STAT. ANN. §§ 17:53; 17:416.17; ME. REV. STAT. ANN. tit. 20-A § 1001; MD. CODE ANN., EDUC. §§ 7-424; 7-424.1; MASS. GEN. LAWS ch. 69 § 1D; ch. 71 §§ 37H; 37O; see also MASS. GEN. LAWS ch. 6 § 15N; MINN. STAT. §§ 14-458.1; 115C-407.15, et seq.; OHIO REV. CODE ANN. §§ 3301.22; 3313.666; 3313.67; OKLA STAT. tit. 70 §§ 24-100.2, et seq.; OR. REV. STAT. §§ 339.351, et seq.; § 24 PA. CONS. STAT. §§ 13-1302-A; 13-1303.1-A; R.I. GEN. LAWS § 16-21-24; 16-21-26; S.C. CODE ANN. §§ 59-63-120, et seq.; TENN. CODE ANN. §§ 49-6-812; 49-6-1014, et seq.; TEX. EDUC. CODE ANN. §§ 25.0342; 37.001; 37.083; 37.217; UTAH CODE ANN. §§ 53A-11a-101, et seq.; UT. STAT. ANN. tit. 16 §§ 11; 131; 165; 565; 1161a; VA. CODE ANN. §§ 22.1-208.01; 22.1-279.6; see also VA. CODE ANN. § 8.01-220.1:2; WASH. REV. CODE §§ 28A.230.158; W. VA. CODE §§ 18-2C-1, et seq.; see also W. VA. CODE § 18A-5-1c; WIS. STAT. §§ 118.46; see also WIS. STAT. § 118.02; WY. STAT. ANN. §§ 21-4-312, et seq.; see also GUAM CODE ANN. tit. 17 § 3112.1

145 See, ALASKA STAT. § 14.33.200; ARIZ. REV. STAT. ANN. § 15-341; ARK. CODE ANN. § 6-18-514; Colo. Rev. Stat. §§ 7-424; 7-424.1; CONN. GEN. STAT. §§ 14-220a; 10-224; 10-222b; see also CONN. GEN. STAT. §§ 10-145a; 10-263e; DEL. CODE ANN. tit. 14 §§ 4112D; 4123A; FLA. STAT. §§ 1006.147; see also FLA. STAT. §§ 1003.4205; GA. CODE ANN. §§ 20-2-145; 20-2-751.4; 20-2-751.5; see also GA. CODE ANN. § 37-1-27; IDAHO CODE ANN. §§ 18-197A; 32-205; 33-512; 105 ILL. COMP. STAT. 5/10-20.14; 27-13.3; 27-23.9; IND. CODE §§ 5-2-10.1-11; 5-2-10.1-12; 20-33-8-0.2; 20-33-8-13.5; IOWA CODE §§ 280.12; 280.28; KAN. STAT. ANN. § 72-8256; see also KAN. STAT. ANN. § 72-7538; KY. REV. STAT. ANN. §§ 555; see also KY. REV. STAT. ANN. § 158.148; LA. REV. STAT. ANN. § 17:416.13; see also LA. REV. STAT. ANN. §§ 17:53; 17:416.17; ME. REV. STAT. ANN. tit. 20-A § 1001; MD. CODE ANN., EDUC. §§ 7-424; 7-424.1; MASS. GEN. LAWS ch. 69 § 1D; ch. 71 §§ 37H; 37O; see also MASS. GEN. LAWS ch. 6 § 15N; MINN. STAT. §§ 14-458.1; 115C-407.15, et seq.; OHIO REV. CODE ANN. §§ 3301.22; 3313.666; 3313.67; OKLA STAT. tit. 70 §§ 24-100.2, et seq.; OR. REV. STAT. §§ 339.351, et seq.; § 24 PA. CONS. STAT. §§ 13-1302-A; 13-1303.1-A; R.I. GEN. LAWS § 16-21-24; 16-21-26; S.C. CODE ANN. §§ 59-63-120, et seq.; TENN. CODE ANN. §§ 49-6-812; 49-6-1014, et seq.; TEX. EDUC. CODE ANN. §§ 25.0342; 37.001; 37.083; 37.217; UTAH CODE ANN. §§ 53A-11a-101, et seq.; VT. STAT. ANN. tit. 16 §§ 11; 131; 165; 565; 1161a; VA. CODE ANN. §§ 22.1-208.01; 22.1-279.6; see also VA. CODE ANN. § 8.01-220.1:2; WASH. REV. CODE §§ 28A.230.158; W. VA. CODE §§ 18-2C-1, et seq.; see also W. VA. CODE § 18A-5-1c; WIS. STAT. §§ 118.46; see also WIS. STAT. § 118.02; WY. STAT. ANN. §§ 21-4-312, et seq.; see also GUAM CODE ANN. tit. 17 § 3112.1

best practices developed by the Health Resources and Services Administration in regards to all bullying.\textsuperscript{147}

These policies require punishment following incidents of cyberbullying. There is no question that schools can punish a student who hits another student. The question of whether a school can punish a student who verbally bullies another student is more difficult because of the bullies’ First Amendment rights. That question becomes even more difficult when the bullying takes place outside of the school. Cyberbullying takes place on cell phones and websites. The specific acts of cyberbullying can be done from anywhere. There is a lot of guidance on punishing verbal bullying on campus, but there is not much case law on what off campus speech can be punished by a school.

\textbf{EDUCATION}

One area where schools have total jurisdiction is education. Schools have the ability to adopt educational policies designed to teach students about the dangers of cyberbullying in an effort to prevent that behavior.

Alabama has an aspirational goal of offering coaching through its Department of Education for students who are at risk of dropping out of school because of bullying.\textsuperscript{148} Many other states encourage professional development for teachers and counseling for those bullied. There is very little information currently available about the breadth of actually initiated programs or their effectiveness. However, this is doubtlessly an area

\footnotesize{\begin{itemize}
\item \textsuperscript{147} Kowalski, et al., Cyber Bullying: Bullying in the Digital Age, 36 (2008) (citing HRSA 2006).
\item \textsuperscript{148} ALA. CODE § 16-28-3.1.
\end{itemize}}

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which will be developing as the problems with cyberbullying become more clear.

**CONCLUSION**

The presentation has offered only a very general overview of cyberbullying. While research is beginning to show the breadth and effect of this type of behavior, a consistent and effective way to combat it does not yet exist. Courts are currently developing a body of law that attempts to balance society’s need to stop cyberbullying and the First Amendment rights of those that engage in this type of speech. At this moment clear answers do not exist, but the questions properly before courts have come to light.