

# Charging Cyberbullying

Updated July 2011

*Please be advised that not all statutes in this compilation specifically include language on bullying or harassment via the computer or other electronic means. All of the statutes included, however, could arguably be used in charging cyberbullying. Proposed legislation is indicated by a red disclaimer directly preceding the statute. Please also note that this area of law is changing rapidly. We strongly recommend checking both case law, and current legislation for possible modifications to the statutes listed below.*

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## **ALABAMA**

### **ALA. CODE § 13A-6-90 (2011). STALKING**

(a) A person who intentionally and repeatedly follows or harasses another person and who makes a credible threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking.

(b) The crime of stalking is a Class C felony.

### **ALA. CODE § 13A-6-91 (2011). AGGRAVATED STALKING**

(a) A person who violates the provisions of Section 13A-6-90(a) and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking.

(b) The crime of aggravated stalking is a Class B felony.

### **ALA. CODE § 13A-6-92 (2011). DEFINITIONS**

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise.

(a) **COURSE OF CONDUCT.** A pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose.

(b) **CREDIBLE THREAT.** A threat, expressed or implied, made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to fear for his or her safety or the safety of a family member and to cause reasonable mental anxiety, anguish, or fear.

(c) **HARASSES.** Engages in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress. Constitutionally protected conduct is not included within the definition of this term.

### **ALA. CODE § 13A-11-8 (2011). HARASSMENT – HARASSING COMMUNICATIONS**

(a)(1) **HARASSMENT.** A person commits the crime of harassment if, with intent to harass, annoy, or alarm another person, he or she either:

a. Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact.

b. Directs abusive or obscene language or makes an obscene gesture towards another person.

(2) For purposes of this section, harassment shall include a threat, verbal or nonverbal, made with the intent to carry out the threat, that would cause a reasonable person who is the target of the threat to fear for his or her safety.

(3) Harassment is a Class C misdemeanor.

(b)(1) HARASSING COMMUNICATIONS. A person commits the crime of harassing communications if, with intent to harass or alarm another person, he or she does any of the following:

a. Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm.

b. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.

c. Telephones another person and addresses to or about such other person any lewd or obscene words or language.

Nothing in this section shall apply to legitimate business telephone communications.

(2) Harassing communications is a Class C misdemeanor.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF ALABAMA. H.R. 238, 2011 LEG., REG. SESS. (ALA. 2011).**  
**TRACY'S LAW**

*Bill Status: Passed House – Pending Third Reading in Senate (Favorable from Judiciary) as of 05/31/2011*

A BILL

TO BE ENTITLED

AN ACT

To amend Sections 13A-6-90 and 13A-6-91 of the Code of Alabama 1975, to designate the crimes of stalking and aggravated stalking in the first degree; to add Sections 13A-6-90.1 and 13A-6-91.1 to the Code of Alabama 1975, to provide for the crimes of stalking and aggravated stalking in the second degree; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.



BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as "Tracy's Law."

Section 2. Sections 13A-6-90 and 13A-6-91 of the Code of Alabama 1975, are amended to read as follows:

"§13A-6-90.

"(a) A person who intentionally and repeatedly follows or harasses another person and who makes a ~~credible~~ threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking **in the first degree**.

"(b) The crime of stalking **in the first degree** is a Class C felony.

"§13A-6-91.

"(a) A person who violates the provisions of Section 13A-6-90(a) and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking **in the first degree**.

"(b) The crime of aggravated stalking **in the first degree** is a Class B felony."

Section 3. Sections 13A-6-90.1 and 13A-6-91.1 are added to Chapter 6 of Title 13A of the Code of Alabama 1975, to read as follows:

§13A-6-90.1

(a) A person who intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct is guilty of the crime of stalking in the second degree.

(b) The crime of stalking in the second degree is a Class B misdemeanor.

§13A-6-91.1

(a) A person who violates the provisions of Section 13A-6-90.1 and whose conduct in

doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the second degree.

(b) The crime of aggravated stalking in the second degree is a Class C felony.

Section 4. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 5. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF ALABAMA. H.R. 279, 2011 LEG., REG. SESS. (ALA. 2011). HARASSING COMMUNICATION, CRIME OF, LEWD OR OBSCENE LANGUAGE, CRIME MADE A CLASS C FELONY IF DEFENDANT 25 OR OVER AND VICTIM 15 OR UNDER, SEC. 13A-11-8 AM'D.**

*Bill Status: In House Committee on Judiciary as of 03/22/2011*

A BILL

TO BE ENTITLED

AN ACT

To amend Section 13A-11-8 of the Code of Alabama 1975, relating to the crime of harassing communication, to further provide the penalty if the defendant is 25 years of age or older and makes an harassing telephone call involving lewd or obscene language to a child 15 years of age or younger; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 13A-11-8 of the Code of Alabama 1975, is amended to read as follows:

“§13A-11-8.

“(a)(1) HARASSMENT. A person commits the crime of harassment if, with intent to harass, annoy, or alarm another person, he or she either:

“a. Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact.

“b. Directs abusive or obscene language or makes an obscene gesture towards another person.

“(2) For purposes of this section, harassment shall include a threat, verbal or nonverbal, made with the intent to carry out the threat, that would cause a reasonable person who is the target of the threat to fear for his or her safety.

“(3) Harassment is a Class C misdemeanor.

“(b)(1) HARASSING COMMUNICATIONS. A person commits the crime of harassing communications if, with intent to harass or alarm another person, he or she does any of the following:

“a. Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm.

“b. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.

“c. Telephones another person and addresses to or about such other person any lewd or obscene words or language.

“Nothing in this section shall apply to legitimate business telephone communications.

“(2) Harassing communications is a Class C misdemeanor, **except a harassing communication which is a violation of paragraph c. of subdivision (1) is a Class C felony if the defendant is 25 years of age or older and the victim is a child age 15 years or younger and the defendant knows or has reason to know that the victim is age 15 years of age or younger.**”

Section 2. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

## **ALASKA**

### **ALASKA STAT. § 11.41.260 (2010). STALKING IN THE FIRST DEGREE**

(a) A person commits the crime of stalking in the first degree if the person violates AS 11.41.270 and

- (1) the actions constituting the offense are in violation of an order issued or filed under AS 18.66.100--18.66.180 or issued under former AS 25.35. 010(b) or 25.35.020;
- (2) the actions constituting the offense are in violation of a condition of probation, release before trial, release after conviction, or parole;
- (3) the victim is under 16 years of age;
- (4) at any time during the course of conduct constituting the offense, the defendant possessed a deadly weapon;
- (5) the defendant has been previously convicted of a crime under this section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section, AS 11.41.270, or AS 11.56.740; or
- (6) the defendant has been previously convicted of a crime, or an attempt or solicitation to commit a crime, under (A) AS 11.41.100--11.41.250, 11.41.300--11.41.460, AS 11.56.807, 11.56.810, AS 11.61.118, 11.61.120, or (B) a law or an ordinance of this or another jurisdiction with elements similar to a crime, or an attempt or solicitation to commit a crime, under AS 11.41.100--11.41.250, 11.41.300--11.41.460, AS 11.56.807, 11.56.810, AS 11.61.118, or 11.61.120, involving the same victim as the present offense.

(b) In this section, "course of conduct" and "victim" have the meanings given in AS 11.41.270(b).

(c) Stalking in the first degree is a class C felony.

### **ALASKA STAT. § 11.41.270 (2010). STALKING IN THE SECOND DEGREE**

(a) A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.

(b) In this section,

- (1) "course of conduct" means repeated acts of nonconsensual contact involving the victim or a family member;
- (2) "family member" means a
  - (A) spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;
  - (B) person who lives, or has previously lived, in a spousal relationship with the victim;
  - (C) person who lives in the same household as the victim; or

- (D) person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim;
- (3) "nonconsensual contact" means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; "nonconsensual contact" includes
  - (A) following or appearing within the sight of that person;
  - (B) approaching or confronting that person in a public place or on private property;
  - (C) appearing at the workplace or residence of that person;
  - (D) entering onto or remaining on property owned, leased, or occupied by that person;
  - (E) contacting that person by telephone;
  - (F) sending mail or electronic communications to that person;
  - (G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;
- (4) "victim" means a person who is the target of a course of conduct.

(c) Stalking in the second degree is a class A misdemeanor.

**ALASKA STAT. § 11.61.120 (2010). HARASSMENT IN THE SECOND DEGREE**

- (a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person
- (1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;
  - (2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;
  - (3) makes repeated telephone calls at extremely inconvenient hours;
  - (4) makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact;
  - (5) subjects another person to offensive physical contact; or
  - (6) publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act.

(b) Harassment in the second degree is a class B misdemeanor.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF ALASKA. H.R. 127, 27TH LEG., 1ST REG. SESS. (ALASKA 2011). CRIMES INVOLVING MINORS/STALKING/INFO**

*Bill Status: Passed House and Senate – Eligible for Governor's Desk as of 05/06/2011*

\*

Section 1. AS 11.41.270(b)(3) is amended to read:

(3) “nonconsensual contact” means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; “nonconsensual contact” includes

- (A) following or appearing within the sight of that person;
- (B) approaching or confronting that person in a public place or on private property;
- (C) appearing at the workplace or residence of that person;
- (D) entering onto or remaining on property owned, leased, or occupied by that person;
- (E) contacting that person by telephone;
- (F) sending mail or electronic communications to that person;
- (G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;

**(H) following or monitoring that person with a global positioning device or similar technological means;**

**(I) using, installing, or attempting to use or install a device for observing, recording, or photographing events occurring in the residence, vehicle, or workplace used by that person, or on the personal telephone or computer used by that person;**

\*

Sec. 2. AS 11.41.270(b) is amended by adding a new paragraph to read:

(5) “device” includes software.

\*

Sec. 12. AS 11.61.120(a) is amended to read:

(a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person

- (1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;
- (2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;
- (3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact;

(5) subjects another person to offensive physical contact; or

(6) **except as provided in AS 11.61.116**, publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act.

\*

Sec. 30. This Act takes effect July 1, 2011.

## **ARIZONA**

### **ARIZ. REV. STAT. § 13-2921 (2011). HARASSMENT; CLASSIFICATION; DEFINITION**

**A.** A person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

1. Anonymously or otherwise contacts, communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses.

2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist.

3. Repeatedly commits an act or acts that harass another person.

4. Surveils or causes another person to surveil a person for no legitimate purpose.

5. On more than one occasion makes a false report to a law enforcement, credit or social service agency.

6. Interferes with the delivery of any public or regulated utility to a person.

**B.** A person commits harassment against a public officer or employee if the person, with intent to harass, files a nonconsensual lien against any public officer or employee that is not accompanied by an order or a judgment from a court of competent jurisdiction authorizing the filing of the lien or is not issued by a governmental entity or political subdivision or agency pursuant to its statutory authority, a validly licensed utility or water delivery company, a mechanics' lien claimant or an entity created under covenants, conditions, restrictions or declarations affecting real property.

C. Harassment under subsection A is a class 1 misdemeanor. Harassment under subsection B is a class 5 felony.

D. This section does not apply to an otherwise lawful demonstration, assembly or picketing.

E. For the purposes of this section, “harassment” means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person.

**ARIZ. REV. STAT. § 13-2921.01 (2011). AGGRAVATED HARASSMENT;  
CLASSIFICATION; DEFINITION**

A. A person commits aggravated harassment if the person commits harassment as provided in § 13-2921 and any of the following applies:

1. A court has issued an order of protection or an injunction against harassment against the person and in favor of the victim of harassment and the order or injunction has been served and is still valid.

2. The person has previously been convicted of an offense included in § 13-3601.

B. The victim of any previous offense shall be the same as in the present offense.

C. A person who violates subsection A, paragraph 1 of this section is guilty of a class 6 felony. A person who commits a second or subsequent violation of subsection A, paragraph 1 of this section is guilty of a class 5 felony. A person who violates subsection A, paragraph 2 of this section is guilty of a class 5 felony.

D. For the purposes of this section, “convicted” means a person who was convicted of an offense included in § 13-3601 or who was adjudicated delinquent for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult for an offense included in § 13-3601.

## **ARKANSAS**

**ARK. CODE ANN. § 5-27-306 (2010). INTERNET STALKING OF A CHILD**

(a) A person commits the offense of internet stalking of a child if the person being twenty-one (21) years of age or older knowingly uses a computer online service, internet service, or local internet bulletin board service to:

(1) Seduce, solicit, lure, or entice a child fifteen (15) years of age or younger in an effort to arrange a meeting with the child for the purpose of engaging in:



- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

(2) Seduce, solicit, lure, or entice an individual that the person believes to be fifteen (15) years of age or younger in an effort to arrange a meeting with the individual for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

(3) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on a child fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the child for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

(4) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on an individual that the person believes to be fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the individual for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity.

(b) Internet stalking of a child is a:

(1) Class B felony if the person attempts to arrange a meeting with a child fifteen (15) years of age or younger, even if a meeting with the child never takes place;

(2) Class B felony if the person attempts to arrange a meeting with an individual that the person believes to be fifteen (15) years of age or younger, even if a meeting with the individual never takes place; or

(3) Class A felony if the person arranges a meeting with a child fifteen (15) years of age or younger and an actual meeting with the child takes place, even if the person fails to engage the child in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity.

(c) This section does not apply to a person or entity providing an electronic communications service to the public that is used by another person to violate this section, unless the person or entity providing an electronic communications service to the public:

(1) Conspires with another person to violate this section; or

(2) Knowingly aids and abets a violation of this section.

**ARK. CODE ANN. § 5-41-108 (2010). UNLAWFUL COMPUTERIZED COMMUNICATIONS**

(a) A person commits the offense of unlawful computerized communications if, with the purpose to frighten, intimidate, threaten, abuse, or harass another person, the person sends a message:

(1) To the other person on an electronic mail or other computerized communication system and in that message threatens to cause physical injury to any person or damage to the property of any person;

(2) On an electronic mail or other computerized communication system with the reasonable expectation that the other person will receive the message and in that message threatens to cause physical injury to any person or damage to the property of any person;

(3) To another person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd, or profane language; or

(4) On an electronic mail or other computerized communication system with the reasonable expectation that the other person will receive the message and in that message uses any obscene, lewd, or profane language.

(b) Unlawful computerized communications is a Class A misdemeanor.

(c) (1) The judicial officer in a court of competent jurisdiction shall upon pretrial release of the defendant enter an order consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) A protective order under subdivision (c)(1) of this section remains in effect during the pendency of any appeal of a conviction under this section.

**ARK. CODE ANN. § 5-71-209 (2010). HARASSING COMMUNICATIONS**

(a) A person commits the offense of harassing communications if, with the purpose to

harass, annoy, or alarm another person, the person:

(1) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written communication, in a manner likely to harass, annoy, or cause alarm;

(2) Makes a telephone call or causes a telephone to ring repeatedly, with no purpose of legitimate communication, regardless of whether a conversation ensues; or

(3) Knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section.

(b) An offense involving use of a telephone may be prosecuted in the county where the defendant was located when he or she used a telephone, or in the county where the telephone made to ring by the defendant was located.

(c) Harassing communications is a Class A misdemeanor.

(d) (1) Upon the pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) This no contact order remains in effect during the pendency of any appeal of a conviction under this section.

(3) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(e) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305.

## **CALIFORNIA**

### **CAL. PENAL CODE § 646.9 (2011). STALKING**

(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses 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 immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c)(1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(g) For the purposes of this section, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of “credible threat.”

(h) For purposes of this section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k)(1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(l) For purposes of this section, “immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

**CAL. PENAL CODE § 653.2 (2011). ELECTRONIC COMMUNICATION DEVICE; PROHIBITED DISTRIBUTION OR PUBLICATION OF PERSONAL IDENTIFYING INFORMATION; DEFINITIONS**

(a) Every person who, with intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action, is guilty of a misdemeanor punishable by up to one year in a county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) For purposes of this section, “electronic communication device” includes, but is not limited to, telephones, cell phones, computers, Internet Web pages or sites, Internet phones, hybrid cellular/Internet/wireless devices, personal digital assistants (PDAs) , video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term is defined in Section 2510(12) of Title 18 of the United States Code.

(c) For purposes of this section, the following terms apply:

(1) “Harassment” means a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.

(2) “Of a harassing nature” means of a nature that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing of the person and that serves no legitimate purpose.

## **COLORADO**

### **COLO. REV. STAT. § 18-9-111 (2011). HARASSMENT**

(1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:

(a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or

(b) In a public place directs obscene language or makes an obscene gesture to or at another person; or

(c) Follows a person in or about a public place; or

(d) Repealed.

(e) Initiates communication with a person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, or computer system that is obscene; or

(f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(g) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

(h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(1.5) As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(2) Harassment pursuant to subsection (1) of this section is a class 3 misdemeanor; except that harassment is a class 1 misdemeanor if the offender commits harassment pursuant to subsection (1) of this section with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, or national origin.

(3) Any act prohibited by paragraph (e) of subsection (1) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

(4) to (6) Repealed.

## **CONNECTICUT**

### **CONN. GEN. STAT. § 53a-182b (2011). HARASSMENT IN THE FIRST DEGREE: CLASS D FELONY**

(a) A person is guilty of harassment in the first degree when, with the intent to harass, annoy, alarm or terrorize another person, he threatens to kill or physically injure that person or any other person, and communicates such threat by telephone, or by telegraph, mail, computer network, as defined in section 53a-250, or any other form of written communication, in a manner likely to cause annoyance or alarm and has been convicted of a capital felony, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a-122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For the purposes of this section, "convicted" means having a judgment of conviction entered by a court of competent jurisdiction.

(b) For purposes of this section, such offense may be deemed to have been committed either at the place where the telephone call was made or where it was received.

(c) The court may order any person convicted under this section to be examined by one or more psychiatrists.

(d) Harassment in the first degree is a class D felony.

### **CONN. GEN. STAT. § 53a-183 (2011). HARASSMENT IN THE SECOND DEGREE: CLASS C MISDEMEANOR**

(a) A person is guilty of harassment in the second degree when: (1) By telephone, he

addresses another in or uses indecent or obscene language; or (2) with intent to harass, annoy or alarm another person, he communicates with a person by telegraph or mail, by electronically transmitting a facsimile through connection with a telephone network, by computer network, as defined in section 53a-250, or by any other form of written communication, in a manner likely to cause annoyance or alarm; or (3) with intent to harass, annoy or alarm another person, he makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm.

(b) For purposes of this section such offense may be deemed to have been committed either at the place where the telephone call was made, or at the place where it was received.

(c) The court may order any person convicted under this section to be examined by one or more psychiatrists.

(d) Harassment in the second degree is a class C misdemeanor.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF CONNECTICUT. S. 1035/H.R. 6425, 2011 GEN. ASSEM., JAN. SESS. (CONN. 2011). AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES**

*Bill Status: Favorable Report; Senate Calendar Number 397; File Number 636 as of 04/27/2011*

\*

Sec. 22. Subsection (a) of section 53a-182b of the general statutes is repealed and the following is substituted in lieu thereof (Effective from passage):

(a) A person is guilty of harassment in the first degree when, with the intent to harass, annoy, alarm or terrorize another person, he threatens to kill or physically injure that person or any other person, and communicates such threat by telephone, or by telegraph, mail, computer network, as defined in section 53a-250, or any other form of written communication, in a manner likely to cause annoyance or alarm and has been convicted of a capital felony **under section 53a-54b in effect prior to the effective date of this section**, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a-122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For the purposes of this section, “convicted” means having a judgment of conviction entered by a court of competent jurisdiction.

\*

## DELAWARE



**DEL. CODE ANN. tit. 11, § 1311 (2011). HARASSMENT; CLASS A MISDEMEANOR**

(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.

(b) Harassment is a class A misdemeanor.

**DEL. CODE ANN. tit. 11, § 1312 (2011). STALKING; CLASS G FELONY, CLASS F FELONY, CLASS C FELONY**

(a) A person is guilty of stalking when the person knowingly engages in a course of conduct directed at a specific person and that conduct would cause a reasonable person to:

(1) Fear physical injury to himself or herself or that of another person; or

(2) Suffer other significant mental anguish or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(b) A violation of subsection (a) of this section is a class G felony.

(c) Stalking is a class F felony if a person is guilty of stalking and 1 or more of the following exists:

(1) The person is age 21 or older and the victim is under the age of 14; or

- (2) The person violated any order prohibiting contact with the victim; or
- (3) The victim is age 62 years of age or older; or
- (4) The course of conduct includes a threat of death or threat of serious physical injury to the victim, or to another person; or
- (5) The person causes physical injury to the victim.

(d) Stalking is a class C felony if the person is guilty of stalking and 1 or more of the following exists:

- (1) The person possesses a deadly weapon during any act; or
- (2) The person causes serious physical injury to the victim.

(e) Definitions. -- The following terms shall have the following meaning as used in this section:

(1) "Course of conduct" means 3 or more separate incidents, including, but not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about another, or interferes with, jeopardizes, damages, or disrupts another's daily activities, property, employment, business, career, education, or medical care. A conviction is not required for any predicate act relied upon to establish a course of conduct. A conviction for any predicate act relied upon to establish a course of conduct does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(2) "A reasonable person" means a reasonable person in the victim's circumstances.

(f) Notwithstanding any contrary provision of § 4205 of this title, any person who commits the crime of stalking by engaging in a course of conduct which includes any act or acts which have previously been prohibited by a then-existing court order or sentence shall receive a minimum sentence of 6 months incarceration at Level V. The first 6 months of said period of incarceration shall not be subject to suspension.

(g) Notwithstanding any contrary provision of § 4205 of this title, any person who is convicted of stalking within 5 years of a prior conviction of stalking shall receive a minimum sentence of 1 year incarceration at Level V. The first year of said period of incarceration shall not be subject to suspension.

(h) In any prosecution under this law, it shall not be a defense that the perpetrator was not given actual notice that the course of conduct was unwanted; or that the perpetrator did not intend to cause the victim fear or other emotional distress.

(i) In any prosecution under this section, it is an affirmative defense that the person charged was engaged in lawful picketing.

(j) This section shall not apply to conduct which occurs in furtherance of legitimate activities of law-enforcement, private investigators, security officers or private detectives as those activities are defined in Chapter 13 of Title 24.

## **DISTRICT OF COLUMBIA**

### **D.C. CODE ANN. § 22-404 (2011). ASSAULT OR THREATENED ASSAULT IN A MENACING MANNER; STALKING [FORMERLY § 22-504]**

(a) (1) Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than \$ 1,000 or be imprisoned not more than 180 days, or both.

(2) Whoever unlawfully assaults, or threatens another in a menacing manner, and intentionally, knowingly, or recklessly causes significant bodily injury to another shall be fined not more than \$ 3,000 or be imprisoned not more than 3 years, or both. For the purposes of this paragraph, the term "significant bodily injury" means an injury that requires hospitalization or immediate medical attention.

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) Repealed.

## **FLORIDA**

### **FLA. STAT. ANN. § 784.048 (2011). STALKING; DEFINITIONS; PENALTIES**

(1) As used in this section, the term:

(a) "Harass" means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.

(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." Such constitutionally protected activity includes picketing or other organized protests.

(c) "Credible threat" means a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person.

(d) "Cyberstalk" means to engage 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.

(2) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury of the person, or the person's child, sibling, spouse, parent, or dependent, commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who, after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section.

(7) Any person who, after having been sentenced for a violation of s. 794.011, s. 800.04, or s. 847.0135(5) and prohibited from contacting the victim of the offense under s. 921.244, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, s. 800.04, or s. 847.0135(5).

## **FLA. STAT. ANN. § 874.11 (2011). ELECTRONIC COMMUNICATION**

Any person who, for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, uses electronic communication to intimidate or harass other persons, or to advertise his or her presence in the community, including, but not limited to, such activities as distributing, selling, transmitting, or posting on the Internet any audio, video, or still image of criminal activity, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## **GEORGIA**

### **GA. CODE ANN. § 16-5-90 (2010). STALKING; PSYCHOLOGICAL EVALUATION**

(a)(1) A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person. For the purpose of this article, the terms "computer" and "computer network" shall have the same meanings as set out in Code Section 16-9-92; the term "contact" shall mean any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device; and the place or places that contact by telephone, mail, broadcast, computer, computer network, or any other electronic device is deemed to occur shall be the place or places where such communication is received. For the purpose of this article, the term "place or places" shall include any public or private property occupied by the victim other than the residence of the defendant. For the purposes of this article, the term "harassing and intimidating" means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. This Code section shall not be construed to require that an overt threat of death or bodily injury has been made.

(2) A person commits the offense of stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, standing order issued under Code Section 19-1-1, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the harassment or intimidation of another person, broadcasts or publishes, including electronic publication, the picture, name, address, or phone number of a person for whose benefit the bond, order, or condition was made and without such person's consent in such a manner that causes other persons to harass or intimidate such person and the person making the broadcast or publication knew or had reason to believe that such broadcast or publication would cause such person to be harassed or intimidated by others.

(b) Except as provided in subsection (c) of this Code section, a person who commits the offense of stalking is guilty of a misdemeanor.

(c) Upon the second conviction, and all subsequent convictions, for stalking, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than ten years.

(d) Before sentencing a defendant for any conviction of stalking under this Code section or aggravated stalking under Code Section 16-5-91, the sentencing judge may require psychological evaluation of the offender and shall consider the entire criminal record of the offender. At the time of sentencing, the judge is authorized to issue a permanent restraining order against the offender to protect the person stalked and the members of such person's immediate family, and the judge is authorized to require psychological treatment of the offender as a part of the sentence, or as a condition for suspension or stay of sentence, or for probation.

#### **GA. CODE ANN. § 16-9-92 (2010). DEFINITIONS**

As used in this article, the term:

(1) "Computer" means an electronic, magnetic, optical, hydraulic, electrochemical, or organic device or group of devices which, pursuant to a computer program, to human instruction, or to permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. The term includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve, or communicate computer programs, computer data, or the results of computer operations to or from a person, another computer, or another device. This term specifically includes, but is not limited to, mail servers and e-mail networks. This term does not include a device that is not used to communicate with or to manipulate any other computer.

(2) "Computer network" means a set of related, remotely connected computers and any communications facilities with the function and purpose of transmitting data among them through the communications facilities.

(3) "Computer operation" means computing, classifying, transmitting, receiving, retrieving, originating, switching, storing, displaying, manifesting, measuring, detecting, recording, reproducing, handling, or utilizing any form of data for business, scientific, control, or other purposes.

(4) "Computer program" means one or more statements or instructions composed and structured in a form acceptable to a computer that, when executed by a computer in actual or modified form, cause the computer to perform one or more computer operations. The term "computer program" shall include all associated procedures and documentation, whether or not such procedures and documentation are in human readable form.

(5) "Data" includes any representation of information, intelligence, or data in any fixed medium, including documentation, computer printouts, magnetic storage media, punched cards, storage in a computer, or transmission by a computer network.

(6) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system that affects interstate or foreign commerce, but does not include:

(A) Any wire or oral communication;

(B) Any communication made through a tone-only paging device;

(C) Any communication from a tracking device; or

(D) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(7) "Electronic communication service" means any service which provides to its users the ability to send or receive wire or electronic communications.

(8) "Electronic communications system" means any wire, radio, electromagnetic, photoelectronic, photo-optical, or facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.

(9) "Electronic means" is any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than:

(A) Any telephone or telegraph instrument, equipment, or facility, or any component thereof,

(i) Furnished to the subscriber or user by a provider of electronic communication service in the ordinary course of its business and used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

(ii) Used by a provider of electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his or her duties; or

(B) A hearing aid or similar device being used to correct subnormal hearing to better than normal.

(10) "Electronic storage" means:

(A) Any temporary, intermediate storage of wire or electronic communication incidental to its electronic transmission; and

(B) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

(11) "Financial instruments" includes any check, draft, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction-authorizing mechanism, or marketable security, or any computer representation thereof.

(12) "Law enforcement unit" means any law enforcement officer charged with the duty of enforcing the criminal laws and ordinances of the state or of the counties or municipalities of the state who is employed by and compensated by the state or any county or municipality of the state or who is elected and compensated on a fee basis. The term shall include, but not be limited to, members of the Department of Public Safety, municipal police, county police, sheriffs, deputy sheriffs, and agents and investigators of the Georgia Bureau of Investigation.

(13) "Property" includes computers, computer networks, computer programs, data, financial instruments, and services.

(14) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(15) "Services" includes computer time or services or data processing services.

(16) "Use" includes causing or attempting to cause:

(A) A computer or computer network to perform or to stop performing computer operations;

(B) The obstruction, interruption, malfunction, or denial of the use of a computer, computer network, computer program, or data; or

(C) A person to put false information into a computer.

(17) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner to verify that a computer, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by unauthorized use.

(18) "Without authority" includes the use of a computer or computer network in a manner that exceeds any right or permission granted by the owner of the computer or computer network.



## **HAWAII**

### **HAW. REV. STAT. ANN. § 711-1106 (2011). HARASSMENT**

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

(a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;

(b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;

(c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;

(d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;

(e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or

(f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

(2) Harassment is a petty misdemeanor.

### **HAW. REV. STAT. ANN. § 711-1106.4 (2011). AGGRAVATED HARASSMENT BY STALKING**

(1) A person commits the offense of aggravated harassment by stalking if that person commits the offense of harassment by stalking as provided in section 711-1106.5 and has been convicted previously of harassment by stalking under section 711-1106.5 within five years of the instant offense.

(2) Aggravated harassment by stalking is a class C felony.

### **HAW. REV. STAT. ANN. § 711-1106.5 (2011). HARASSMENT BY STALKING**

(1) A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of conduct involving pursuit, surveillance, or non-consensual contact upon the other person on more than one occasion without legitimate purpose.

(2) A person convicted under this section may be required to undergo a counseling program as ordered by the court.

(3) For purposes of this section, "nonconsensual contact" means any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued. Nonconsensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or any form of electronic communication, as defined in section 711-1111(2), including electronic mail transmission.

(4) Harassment by stalking is a misdemeanor.

**HAW. REV. STAT. ANN. § 711-1106.6 (2011). HARASSMENT BY IMPERSONATION**

(1) A person commits the offense of harassment by impersonation if that person poses as another person, without the express authorization of that person, and makes or causes to be made, either directly or indirectly, a transmission of any personal information of the person to another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to harass, annoy, or alarm any person.

(2) Harassment by impersonation is a misdemeanor.

(3) For the purposes of this section:

"Personal information" means information associated with an actual person that is a name, an address, a telephone number, or an electronic mail address.

"Pose" means to falsely represent oneself, directly or indirectly, as another person or persons.

**HAW. REV. STAT. ANN. § 711-1111 (2011). VIOLATION OF PRIVACY IN THE SECOND DEGREE**

(1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

(a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place;

(b) Peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;

(c) Trespasses on property for the sexual gratification of the actor;

(d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place, including another person in a stage of undress or sexual activity;

(e) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;

(f) Covertly records or broadcasts an image of another person's intimate area underneath clothing, by use of any device, and that image is taken while that person is in a public place and without that person's consent;

(g) Intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this paragraph does not apply to:

(i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or

(ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use;

(h) Divulges, without the consent of the sender or the receiver, the existence or contents of any message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted or if the accused learned of the message or photographic image in the course of employment with an agency engaged in transmitting it; or

(i) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9.

(2) This section shall not apply to any dissemination, distribution, or transfer of images subject to this section by an electronic communication service provider or remote storage service in the ordinary course of its business. For the purpose of this subsection:

"Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

"Electronic communication service provider" means any person engaged in the offering or sale of electronic communication services to the public.

"Remote storage service" means the provision to the public of computer storage or processing services by means of an electronic communication system.

"Electronic communication system" means any wire, radio, electromagnetic, photo-optical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications, including e-mail, web hosting, multimedia messaging services, and remote storage services offered by an electronic communication service provider.

(3) For the purposes of this section:

"Intimate areas" means any portion of a person's underwear, pubic area, anus, buttocks, vulva, genitals, or female breast.

"Intimate areas underneath clothing" does not include intimate areas visible through a person's clothing or intimate areas exposed in public.

"Public place" means an area generally open to the public, regardless of whether it is privately owned, and includes but is not limited to streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses, tunnels, buildings, stores, and restaurants.

(4) Violation of privacy in the second degree is a misdemeanor. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF HAWAII. H.R. 618, 26TH LEG., REG. SESS. (HAW. 2011). COMPUTERS; ONLINE HARASSMENT; AGGRAVATED ONLINE HARASSMENT; HARASSMENT BY IMPERSONATION**

*Bill Status: Passed House – Senate Committee on Economic Development and Taxation Deferred Measure on 03/21/2011*

A BILL FOR AN ACT

RELATING TO OFFENSES AGAINST PUBLIC ORDER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 711, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§711-A Aggravated harassment by online impersonation. (1) A person commits the offense of aggravated harassment by online harassment if that person commits the offense of harassment by online impersonation as provided in section 711-B and has been convicted of harassment by online impersonation under section 711-B within five years preceding the instant offense.**

**(2) Aggravated harassment by online impersonation is a class C felony.**

**§711-B Harassment by online impersonation. (1) A person commits the offense of harassment by online impersonation if that person uses the name or persona of another person to create a web page on or to post one or more messages on a commercial social networking site:**

**(a) Without obtaining the other person's consent; and**

**(b) With the intent to harm, defraud, intimidate, or threaten any person. For purposes of this subsection, “harm” shall have the same meaning as in section 710-1000.**

**(2) Harassment by online impersonation is a misdemeanor.**

**(3) It shall be a defense to prosecution under this section that the actor is any of the following entities or that the actor's conduct consists solely of action taken as an employee of any of the following entities:**

**(a) A commercial social networking site;**

**(b) An internet service provider;**

**(c) A telecommunications provider;**

**(d) A cable operator, as defined by section 440G-3; or**

**(e) An interactive computer service, as defined by Title 47 United States Code, Section 230.**

**(4) For the purposes of this section, “commercial social networking site” means any business, organization, or other similar entity operating a website that permits persons to become registered users for the purpose of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users. The term does not include an electronic mail program or a message board program.”**

SECTION 2. Section 711-1106.6, Hawaii Revised Statutes, is amended to read as follows:

“[§711-1106.6] Harassment by impersonation. (1) A person commits the offense of harassment by impersonation if that person poses as another person, without the express authorization of ~~that~~ **the other** person, and makes or causes to be made, either directly or indirectly, a transmission of any personal information of the **other** person to another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to harass, annoy, or alarm any person.

(2) Harassment by impersonation is a misdemeanor; **provided that, if the offense is committed with the intent to solicit a response by emergency services personnel, then the offense is a class C felony.**

(3) For the purposes of this section:

“Personal information” means information associated with an actual person that is a name, an address, **a domain address**, a telephone number, or an electronic mail address.

“Pose” means to falsely represent oneself, directly or indirectly, as another person or persons.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken.

New statutory material is underscored.

SECTION 6. This Act shall take effect on January 7, 2059.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF HAWAII. S. 237, 26TH LEG., REG. SESS. (HAW. 2011). RELATING TO CYBERBULLYING**

*Bill Status: Passed Second Reading - In Senate Committee on Judiciary and Labor as of 02/15/2011*

A BILL FOR AN ACT

RELATING TO CYBERBULLYING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that across the country, states are grappling with escalating instances of cyberbullying and their often tragic results. Currently, twenty-five states have passed laws against cyberbullying, and most states direct local school districts on how to deal with cyberbullying ‘l ranging from training personnel to disciplining students.

The department of education and board of education have both rules and policies governing cyberbullying. As recently as the September 28, 2010, meeting of the board of education, members reviewed how the department addresses cyberbullying, and what might be done to provide greater protection for students.

The legislature further finds that currently, the department refers cyberbullying issues to the police. The police, however, are hampered in their response because there is no clear penalty for cyberbullying.

The purpose of this Act is to provide greater protection for victims of cyberbullying by expanding the types of electronic communication applicable to the current law relating to violation of privacy in the second degree.

SECTION 2. Section 711-1111, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) This section shall not apply to any dissemination, distribution, or transfer of images subject to this section by an electronic communication service provider or remote storage service in the ordinary course of its business. For the purpose of this subsection:

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system; **including the Internet, cell phone, personal digital assistance device, or any wireless hand-held device.**

“Electronic communication service” means any service that provides to users thereof the ability to send or receive wire or electronic communications.

“Electronic communication service provider” means any person engaged in the offering or sale of electronic communication services to the public.

“Electronic communication system” means any wire, radio, electromagnetic, photo-optical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications, including e-mail, web hosting, multimedia messaging services, and remote storage services offered by an electronic communication service provider.

“Remote storage service” means the provision to the public of computer storage or processing services by means of an electronic communication system.”

SECTION 3. The provisions of this Act shall be liberally construed to give effect to the purposes thereof.

SECTION 4. Nothing in this Act is intended to interfere with the First Amendment rights of free speech and expression of any person affected.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

## **IDAHO**

### **IDAHO CODE ANN. § 18-7905 (2011). STALKING IN THE FIRST DEGREE**

(1) A person commits the crime of stalking in the first degree if the person violates section 18-7906, Idaho Code, and:

(a) The actions constituting the offense are in violation of a temporary restraining order, protection order, no contact order or injunction, or any combination thereof; or

(b) The actions constituting the offense are in violation of a condition of probation or parole; or

(c) The victim is under the age of sixteen (16) years; or

(d) At any time during the course of conduct constituting the offense, the defendant possessed a deadly weapon or instrument; or

(e) The defendant has been previously convicted of a crime under this section or section 18-7906, Idaho Code, or a substantially conforming foreign criminal violation within seven (7) years, notwithstanding the form of the judgment or withheld judgment; or

(f) The defendant has been previously convicted of a crime, or an attempt, solicitation or conspiracy to commit a crime, involving the same victim as the present offense under any of the following provisions of Idaho Code or a substantially conforming foreign criminal violation within seven (7) years, notwithstanding the form of the judgment or withheld judgment:

(i) Chapter 9, title 18;

(ii) Chapter 15, title 18;

(iii) Chapter 61, title 18;

(iv) Section 18-4014 (administering poison with intent to kill);



- (v) Section 18-4015 (assault with intent to murder);
- (vi) Section 18-4501 (kidnapping);
- (vii) Section 18-5501 (poisoning);
- (viii) Section 18-6608 (forcible sexual penetration by use of foreign object);
- (ix) Section 18-7902 (malicious harassment); or
- (x) Section 18-8103 (act of terrorism).

(2) In this section, "course of conduct" and "victim" have the meanings given in section 18-7906(2), Idaho Code.

(3) For the purpose of this section, a "substantially conforming foreign criminal violation" exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of this section or section 18-7906, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(4) Stalking in the first degree is a felony punishable by a fine not exceeding ten thousand dollars (\$ 10,000) or imprisonment in the state prison for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment.

#### **IDAHO CODE ANN. § 18-7906 (2011). STALKING IN THE SECOND DEGREE**

(1) A person commits the crime of stalking in the second degree if the person knowingly and maliciously:

(a) Engages in a course of conduct that seriously alarms, annoys or harasses the victim and is such as would cause a reasonable person substantial emotional distress; or

(b) Engages in a course of conduct such as would cause a reasonable person to be in fear of death or physical injury, or in fear of the death or physical injury of a family or household member.

(2) As used in this section:

(a) "Course of conduct" means repeated acts of nonconsensual contact involving the victim or a family or household member of the victim, provided however, that constitutionally protected activity is not included within the meaning of this definition.

(b) "Family or household member" means:

(i) A spouse or former spouse of the victim, a person who has a child in common with

the victim regardless of whether they have been married, a person with whom the victim is cohabiting whether or not they have married or have held themselves out to be husband or wife, and persons related to the victim by blood, adoption or marriage; or

(ii) A person with whom the victim is or has been in a dating relationship, as defined in section 39-6303, Idaho Code; or

(iii) A person living in the same residence as the victim.

(c) "Nonconsensual contact" means any contact with the victim that is initiated or continued without the victim's consent, that is beyond the scope of the consent provided by the victim, or that is in disregard of the victim's expressed desire that the contact be avoided or discontinued. "Nonconsensual contact" includes, but is not limited to:

(i) Following the victim or maintaining surveillance, including by electronic means, on the victim;

(ii) Contacting the victim in a public place or on private property;

(iii) Appearing at the workplace or residence of the victim;

(iv) Entering onto or remaining on property owned, leased or occupied by the victim;

(v) Contacting the victim by telephone or causing the victim's telephone to ring repeatedly or continuously regardless of whether a conversation ensues;

(vi) Sending mail or electronic communications to the victim; or

(vii) Placing an object on, or delivering an object to, property owned, leased or occupied by the victim.

(d) "Victim" means a person who is the target of a course of conduct.

(3) Stalking in the second degree is punishable by imprisonment in the county jail for not more than one (1) year or by a fine of not more than one thousand dollars (\$ 1,000), or by both such fine and imprisonment.

**IDAHO CODE ANN. § 18-917A (2011). STUDENT HARASSMENT --  
INTIMIDATION -- BULLYING**

(1) No student shall intentionally commit, or conspire to commit, an act of harassment, intimidation or bullying against another student.

(2) As used in this section, "harassment, intimidation or bullying" means any intentional gesture, or any intentional written, verbal or physical act or threat by a student that:

(a) A reasonable person under the circumstances should know will have the effect of:

- (i) Harming a student; or
- (ii) Damaging a student's property; or
- (iii) Placing a student in reasonable fear of harm to his or her person; or
- (iv) Placing a student in reasonable fear of damage to his or her property; or

(b) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student.

An act of harassment, intimidation or bullying may also be committed through the use of a land line, car phone or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network.

(3) A student who personally violates any provision of this section may be guilty of an infraction.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF IDAHO. S. 1105, 61ST LEG., 1ST REG. SESS. (IDAHO 2011). STUDENT HARASSMENT/INTIMID/BULLYING**

*Bill Status: Passed Senate – Awaiting Third Reading in House as of 03/24/2011*

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-917A, Idaho Code, be, and the same is hereby amended to read as follows:

18-917A. STUDENT HARASSMENT -- INTIMIDATION -- BULLYING. (1) No student **or minor present on school property or at school activities** shall intentionally commit, or conspire to commit, an act of harassment, intimidation or bullying against another student.

(2) As used in this section, “harassment, intimidation or bullying” means any intentional gesture, or any intentional written, verbal or physical act or threat by a student that:

- (a) A reasonable person under the circumstances should know will have the effect of:
  - (i) Harming a student; or (ii) Damaging a student's property; or (iii) Placing a student in reasonable fear of harm to his or her person; or (iv) Placing a student in reasonable fear of damage to his or her property; or (b) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student.

An act of harassment, intimidation or bullying may also be committed through the use of a land line, car phone or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network.

(3) A ~~student who personally violates~~ **violation of** any provision of this section ~~may~~ **shall** be ~~guilty of~~ an infraction.

SECTION 2. That Chapter 16, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW SECTION**, to be known and designated as Section 33-1626, Idaho Code, and to read as follows: 33-1626. REQUIREMENTS FOR HARASSMENT, INTIMIDATION AND BULLYING INFORMATION AND PROFESSIONAL DEVELOPMENT. (1) School districts and charter schools shall undertake all reasonable efforts to ensure that information on harassment, intimidation and bullying of students is disseminated annually to all school personnel, parents and students, including an affirmation that school personnel are authorized and expected to intervene or facilitate intervention on behalf of students facing harassment, intimidation or bullying.

(2) School districts and charter schools shall provide ongoing professional development to build skills of all school staff members to prevent, identify and respond to harassment, intimidation and bullying. The state board shall promulgate rules regarding the content of the professional development required by this subsection.

(3) District policies shall include a series of graduated consequences including, but not limited to, diversion, use of juvenile specialty courts, restorative practices, suspension and expulsion for any student who commits an act of bullying, intimidation, harassment, violence or threats of violence. Guidelines for such policies will be set forth in the rules of the state board.

(4) Annually school districts shall report bullying incidents to the state department of education in a format set forth in rule by the state board. District policy shall designate persons to whom bullying reports are to be made and a procedure for a teacher or other school employee, student, parent, guardian or other person to report or otherwise provide information on bullying activity.

## ILLINOIS

### **720 ILL. COMP. STAT. 5/12-7.5 (2011). CYBERSTALKING** § 12-7.5. Cyberstalking.

(a) A person commits cyberstalking when he or she engages in a course of conduct using electronic communication directed at a specific person, and he or she knows or should know that would cause a reasonable person to:

(1) fear for his or her safety or the safety of a third person; or

(2) suffer other emotional distress.

(a-3) A person commits cyberstalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions, harasses another person through the use of electronic communication and:

(1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person; or

(2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; or

(3) at any time knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

(a-5) A person commits cyberstalking when he or she, knowingly and without lawful justification, creates and maintains an Internet website or webpage which is accessible to one or more third parties for a period of at least 24 hours, and which contains statements harassing another person and:

(1) which communicates a threat of immediate or future bodily harm, sexual assault, confinement, or restraint, where the threat is directed towards that person or a family member of that person, or

(2) which places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint, or

(3) which knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

(b) Sentence. Cyberstalking is a Class 4 felony; a second or subsequent conviction is a Class 3 felony.

(c) For purposes of this Section:

(1) “Course of conduct” means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. The incarceration in a penal institution of a person who commits the course of conduct is not a bar to prosecution under this Section.

(2) “Electronic communication” means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,

electromagnetic, photoelectric, or photo-optical system. "Electronic communication" includes transmissions by a computer through the Internet to another computer.

(3) "Emotional distress" means significant mental suffering, anxiety or alarm.

(4) "Harass" means to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, or terrorizes that person.

(5) "Non-consensual contact" means any contact with the victim that is initiated or continued without the victim's consent, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; entering onto or remaining on property owned, leased, or occupied by the victim; or placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.

(6) "Reasonable person" means a person in the victim's circumstances, with the victim's knowledge of the defendant and the defendant's prior acts.

(7) "Third party" means any person other than the person violating these provisions and the person or persons towards whom the violator's actions are directed.

(d) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

**720 ILL. COMP. STAT. 135/1 (2011). TRANSMISSION OF OBSCENE MESSAGES PROHIBITED**

§ 1. Any person in this State who sends messages or uses language or terms which are obscene, lewd or immoral with the intent to offend by means of or while using a telephone or telegraph facilities, equipment or wires of any person, firm or corporation engaged in the transmission of news or messages between states or within the State of Illinois is guilty of a Class B misdemeanor. The use of language or terms which are obscene, lewd or immoral is prima facie evidence of the intent to offend.

**720 ILL. COMP. STAT. 135/1-1 (2011). HARASSMENT BY TELEPHONE**

§ 1-1. Harassment by telephone. Harassment by telephone is use of telephone communication for any of the following purposes:

(1) Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent with an intent to offend; or

- (2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or
- (3) Making or causing the telephone of another repeatedly to ring, with intent to harass any person at the called number; or
- (4) Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or
- (4.1) Making a telephone call or knowingly inducing a person to make a telephone call for the purpose of harassing another person who is under 13 years of age, regardless of whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense; or
- (5) Knowingly permitting any telephone under one's control to be used for any of the purposes mentioned herein.

Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this Section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING". All telephone companies in this State shall cooperate with law enforcement agencies in using their facilities and personnel to detect and prevent violations of this Act.

**720 ILL. COMP. STAT. 135/1-2 (2011). HARASSMENT THROUGH ELECTRONIC COMMUNICATIONS**

§ 1-2. Harassment through electronic communications.

(a) Harassment through electronic communications is the use of electronic communication for any of the following purposes:

- (1) Making any comment, request, suggestion or proposal which is obscene with an intent to offend;
- (2) Interrupting, with the intent to harass, the telephone service or the electronic communication service of any person;
- (3) Transmitting to any person, with the intent to harass and regardless of whether the communication is read in its entirety or at all, any file, document, or other communication which prevents that person from using his or her telephone service or electronic communications device;
- (3.1) Transmitting an electronic communication or knowingly inducing a person to transmit an electronic communication for the purpose of harassing another person who is under 13 years of age, regardless of whether the person under 13 years of age consents to

the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense;

(4) Threatening injury to the person or to the property of the person to whom an electronic communication is directed or to any of his or her family or household members; or

(5) Knowingly permitting any electronic communications device to be used for any of the purposes mentioned in this subsection (a).

(b) As used in this Act:

(1) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system. "Electronic communication" includes transmissions by a computer through the Internet to another computer.

(2) "Family or household member" includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, and persons with disabilities and their personal assistants. For purposes of this Act, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship.

(c) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

## **720 ILL. COMP. STAT. 135/2 (2011). SENTENCE**

§ 2. Sentence.

(a) Except as provided in subsection (b), a person who violates any of the provisions of Section 1, 1-1, or 1-2 of this Act is guilty of a Class B misdemeanor. Except as provided in subsection (b), a second or subsequent violation of Section 1, 1-1, or 1-2 of this Act is a Class A misdemeanor, for which the court shall impose a minimum of 14 days in jail or, if public or community service is established in the county in which the offender was convicted, 240 hours of public or community service.

(b) In any of the following circumstances, a person who violates Section 1, 1-1, or 1-2 of this Act shall be guilty of a Class 4 felony:



- (1) The person has 3 or more prior violations in the last 10 years of harassment by telephone under Section 1-1 of this Act, harassment through electronic communications under Section 1-2 of this Act, or any similar offense of any state;
- (2) The person has previously violated the harassment by telephone provisions of Section 1-1 of this Act or the harassment through electronic communications provisions of Section 1-2 of this Act or committed any similar offense in any state with the same victim or a member of the victim's family or household;
- (3) At the time of the offense, the offender was under conditions of bail, probation, mandatory supervised release or was the subject of an order of protection, in this or any other state, prohibiting contact with the victim or any member of the victim's family or household;
- (4) In the course of the offense, the offender threatened to kill the victim or any member of the victim's family or household;
- (5) The person has been convicted in the last 10 years of a forcible felony as defined in Section 2-8 of the Criminal Code of 1961;
- (6) The person violates paragraph (4.1) of Section 1-1 or paragraph (3.1) of subsection (a) of Section 1-2; or
- (7) The person was at least 18 years of age at the time of the commission of the offense and the victim was under 18 years of age at the time of the commission of the offense.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF ILLINOIS. H.R. 2052, 97TH GEN. ASSEM., 1ST REG. SESS. (ILL. 2011). ELECTRONIC COMMUNICATION**

*Bill Status: In House Rules Committee as of 03/17/2011.*

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Harassing and Obscene Communications Act is amended by changing Sections 1-2 and 2 as follows:

(720 ILCS 135/1-2)

Sec. 1-2. Harassment through electronic communications.

(a) Harassment through electronic communications is the use of electronic communication for any of the following purposes:

- (1) Making any comment, request, suggestion or proposal which is obscene with an intent to offend;

(2) Interrupting, with the intent to harass, the telephone service or the electronic communication service of any person;

(3) Transmitting to any person, with the intent to harass and regardless of whether the communication is read in its entirety or at all, any file, document, or other communication which prevents that person from using his or her telephone service or electronic communications device;

(3.1) Transmitting an electronic communication or knowingly inducing a person to transmit an electronic communication for the purpose of harassing another person who is under 13 years of age, regardless of whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense;

(4) Threatening injury to the person or to the property of the person to whom an electronic communication is directed or to any of his or her family or household members; or

**(4.1) Knowingly frightening, intimidating, or causing emotional distress to another person by anonymously making a telephone call or any electronic communication; or making false postings on an Internet website for longer than 24 hours regardless of that information being sent to the victim;**

**(4.2) Knowingly communicating with another person by any electronic means who is, or who purports to be under 18 years of age and in so doing and without good cause recklessly frightening, intimidating, or causing emotional distress to such other person;**

**(4.3) Knowingly making repeated unwanted communication to another person;**

**(4.4) Without good cause engaging in any other act with the purpose of frightening, intimidating, or causing emotional distress to another person, causing such person to be frightened, intimidated, or emotionally distressed, and such person's response to the act is one of a person of average sensibilities considering the age of such person; or**

(5) Knowingly permitting any electronic communications device to be used for any of the purposes mentioned in this subsection (a).

(b) As used in this Act:

(1) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system. "Electronic communication" includes transmissions by a computer through the Internet to another computer.

(2) "Family or household member" includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement

relationship, and persons with disabilities and their personal assistants. For purposes of this Act, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship.

(c) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this

Section.

**(d) Paragraphs (4.1), (4.2), (4.3), and (4.4) of subsection (a) of this Section do not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of a violation of federal, State, county, or municipal law.**

(Source: P.A. 95-849, eff. 1-1-09; 95-984, eff. 6-1-09; 96-328, eff. 8-11-09.)

(720 ILCS 135/2) (from Ch. 134, par. 16.5)

Sec. 2. Sentence.

(a) Except as provided in subsection (b), a person who violates any of the provisions of Section 1, 1-1, or 1-2 of this Act is guilty of a Class B misdemeanor. Except as provided in subsection (b), a second or subsequent violation of Section 1, 1-1, or 1-2 of this Act is a Class A misdemeanor, for which the court shall impose a minimum of 14 days in jail or, if public or community service is established in the county in which the offender was convicted, 240 hours of public or community service.

(b) In any of the following circumstances, a person who violates Section 1, 1-1, or 1-2 of this Act shall be guilty of a Class 4 felony:

(1) The person has 3 or more prior violations in the last 10 years of harassment by telephone under Section 1-1 of this Act, harassment through electronic communications under Section 1-2 of this Act, or any similar offense of any state;

(2) The person has previously violated the harassment by telephone provisions of Section 1-1 of this Act or the harassment through electronic communications provisions of

Section 1-2 of this Act or committed any similar offense in any state with the same victim or a member of the victim's family or household;

(3) At the time of the offense, the offender was under conditions of bail, probation, mandatory supervised release or was the subject of an order of protection, in this or any

other state, prohibiting contact with the victim or any member of the victim's family or household;

(4) In the course of the offense, the offender threatened to kill the victim or any member of the victim's family or household;

(5) The person has been convicted in the last 10 years of a forcible felony as defined in Section 2-8 of the Criminal Code of 1961;

(6) The person violates paragraph (4.1) of Section 1-1 or paragraph (3.1) of subsection (a) of Section 1-2; or (7) The person was at least 18 years of age at the time of the commission of the offense and the victim was under 18 years of age at the time of the commission of the offense.

**(c)(1) Except as otherwise provided in this subsection (c), a person who violates paragraph (4.1), (4.2), (4.3), or (4.4) of subsection (a) of Section 1-2 of this Act is guilty of a Class A misdemeanor.**

**(2) A person who is 21 years of age or over who violates paragraph (4.1), (4.2), (4.3), or (4.4) of subsection (a) of**

**Section 1-2 of this Act in which the victim of the offense, at the time of the commission of the offense, is under 17 years of age is guilty of a Class 4 felony.**

**(3) A person who violates paragraph (4.1), (4.2), (4.3), or (4.4) of subsection (a) of Section 1-2 of this Act who has previously pleaded guilty to or has been found guilty of a violation of paragraph (4.1), (4.2), (4.3), or (4.4) of subsection (a) of Section 1-2 of this Act or of any similar offense committed in violation of any county or municipal ordinance of this State or any other state, any similar state law of another state, or any similar federal law, including a violation of the Uniform Code of Military Justice, is guilty of a Class 4 felony.**

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF ILLINOIS. H.R. 2935, 97TH GEN. ASSEM., 1ST REG. SESS. (ILL. 2011). ELECTRONIC COMMUNICATION**

*Bill Status: Passed both Houses. Sent to Governor on 06/15/2011.*

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Criminal Code of 1961 is amended by changing Section 12-7.5 as follows:

(720 ILCS 5/12-7.5)

Sec. 12-7.5. Cyberstalking.

(a) A person commits cyberstalking when he or she engages in a course of conduct using

electronic communication directed at a specific person, and he or she knows or should know that would cause a reasonable person to:

(1) fear for his or her safety or the safety of a third person; or (2) suffer other emotional distress.

(a-3) A person commits cyberstalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions, harasses another person through the use of electronic communication and:

(1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person; or (2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; or (3) at any time knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

(a-5) A person commits cyberstalking when he or she, knowingly and without lawful justification, creates and maintains an Internet website or webpage which is accessible to one or more third parties for a period of at least 24 hours, and which contains statements harassing another person and:

(1) which communicates a threat of immediate or future bodily harm, sexual assault, confinement, or restraint, where the threat is directed towards that person or a family member of that person, or (2) which places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint, or (3) which knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

(b) Sentence. Cyberstalking is a Class 4 felony. A second or subsequent conviction for cyberstalking is a Class 3 felony.

(c) For purposes of this Section:

(1) "Course of conduct" means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. The incarceration in a penal institution of a person who commits the course of conduct is not a bar to prosecution under this Section.

(2) "Electronic communication" means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. "Electronic communication"

includes transmissions **through an electronic device including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mail, instant message, text message, or voice mail** ~~by a computer through the Internet to another computer.~~

(3) "Emotional distress" means significant mental suffering, anxiety or alarm.

(4) "Harass" means to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, or terrorizes that person.

(5) "Non-consensual contact" means any contact with the victim that is initiated or continued without the victim's consent, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; entering onto or remaining on property owned, leased, or occupied by the victim; or placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.

(6) "Reasonable person" means a person in the victim's circumstances, with the victim's knowledge of the defendant and the defendant's prior acts.

(7) "Third party" means any person other than the person violating these provisions and the person or persons towards whom the violator's actions are directed.

(d) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this

Section.

(Source: P.A. 95-849, eff. 1-1-09; 96-328, eff. 8-11-09; 96-686, eff. 1-1-10; 96-1000, eff. 7-2-10.)

Section 10. The Harassing and Obscene Communications Act is amended by changing Section 1-2 as follows:

(720 ILCS 135/1-2)

Sec. 1-2. Harassment through electronic communications.

(a) Harassment through electronic communications is the use of electronic communication for any of the following purposes:

(1) Making any comment, request, suggestion or proposal which is obscene with an intent to offend;

(2) Interrupting, with the intent to harass, the telephone service or the electronic communication service of any person;

(3) Transmitting to any person, with the intent to harass and regardless of whether the communication is read in its entirety or at all, any file, document, or other communication which prevents that person from using his or her telephone service or electronic communications device;

(3.1) Transmitting an electronic communication or knowingly inducing a person to transmit an electronic communication for the purpose of harassing another person who is under 13 years of age, regardless of whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense;

(4) Threatening injury to the person or to the property of the person to whom an electronic communication is directed or to any of his or her family or household members; or (5) Knowingly permitting any electronic communications device to be used for any of the purposes mentioned in this subsection (a).

(b) As used in this Act:

(1) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system. "Electronic communication" includes transmissions **through an electronic device including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mail, instant message, text message, or voice mail** ~~by a computer through the Internet to another computer.~~

(2) "Family or household member" includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, and persons with disabilities and their personal assistants. For purposes of this Act, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship.

(c) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic

communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this

Section.

(Source: P.A. 95-849, eff. 1-1-09; 95-984, eff. 6-1-09; 96-328, eff. 8-11-09.)

Section 99. Effective date. This Act takes effect upon becoming law.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF ILLINOIS. S. 51, 97TH GEN. ASSEM., 1ST REG. SESS. (ILL. 2011). HARASS-INTERNET IMPERSONATION**

*Bill Status: Re-referred to House Assignments on 03/18/2011.*

A BILL FOR SB0051 LRB097 05435 RLC 45493 b AN ACT concerning criminal law. Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Harassing and Obscene Communications Act is amended by changing Sections 1-2 and 2 as follows:

(720 ILCS 135/1-2)

Sec. 1-2. Harassment through electronic communications.

(a) Harassment through electronic communications is the use of electronic communication for any of the following purposes:

(1) Making any comment, request, suggestion or proposal which is obscene with an intent to offend;

(2) Interrupting, with the intent to harass, the telephone service or the electronic communication service of any person;

(3) Transmitting to any person, with the intent to harass and regardless of whether the communication is read in its entirety or at all, any file, document, or other communication which prevents that person from using his or her telephone service or electronic communications device;

(3.1) Transmitting an electronic communication or knowingly inducing a person to transmit an electronic communication for the purpose of harassing another person SB0051 LRB097 05435 RLC 45493 b who is under 13 years of age, regardless of whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense;



(4) Threatening injury to the person or to the property of the person to whom an electronic communication is directed or to any of his or her family or household members; or

(5) Knowingly permitting any electronic communications device to be used for any of the purposes mentioned in this subsection (a); or **(6) Knowingly and without consent credibly impersonating another actual person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person.**

(b) As used in this Act:

**(0.05) “Credibly impersonating” means another person would reasonably believe, or did reasonably believe, that the defendant was or is the person who was impersonated.**

(1) “Electronic communication” means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system. “Electronic communication” includes transmissions by a computer through the Internet to another SB0051 LRB097 05435 RLC 45493 b computer. **“Electronic communication” includes opening an e-mail account or an account or profile on a social networking Internet Web site in another person’s name.**

(2) “Family or household member” includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, and persons with disabilities and their personal assistants. For purposes of this Act, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship.

(c) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this

Section.

(Source: P.A. 95-849, eff. 1-1-09; 95-984, eff. 6-1-09; 96-328, SB0051 LRB097 05435 RLC 45493 b eff. 8-11-09.)

(720 ILCS 135/2) (from Ch. 134, par. 16.5)

Sec. 2. Sentence.

(a) Except as provided in subsection (b), a person who violates any of the provisions of Section 1, 1-1, or 1-2, **other than paragraph (6) of subsection (a) of Section 1-2,** of this Act is guilty of a Class B misdemeanor. **Except as provided in subsection (b), a person who violates paragraph (6) of subsection (a) of Section 1-2 of this Act is guilty of a Class A misdemeanor.** Except as provided in subsection (b), a second or subsequent violation of Section 1, 1-1, or 1-2 of this Act is a Class A misdemeanor, for which the court shall impose a minimum of 14 days in jail or, if public or community service is established in the county in which the offender was convicted, 240 hours of public or community service.

(b) In any of the following circumstances, a person who violates Section 1, 1-1, or 1-2 of this Act shall be guilty of a Class 4 felony:

(1) The person has 3 or more prior violations in the last 10 years of harassment by telephone under Section 1-1 of this Act, harassment through electronic communications under Section 1-2 of this Act, or any similar offense of any state;

(2) The person has previously violated the harassment by telephone provisions of Section 1-1 of this Act or the SB0051 LRB097 05435 RLC 45493 b harassment through electronic communications provisions of

Section 1-2 of this Act or committed any similar offense in any state with the same victim or a member of the victim's family or household;

(3) At the time of the offense, the offender was under conditions of bail, probation, mandatory supervised release or was the subject of an order of protection, in this or any other state, prohibiting contact with the victim or any member of the victim's family or household;

(4) In the course of the offense, the offender threatened to kill the victim or any member of the victim's family or household;

(5) The person has been convicted in the last 10 years of a forcible felony as defined in Section 2-8 of the Criminal Code of 1961;

(6) The person violates paragraph (4.1) of Section 1-1 or paragraph (3.1) of subsection (a) of Section 1-2; ~~or~~

(7) The person was at least 18 years of age at the time of the commission of the offense and the victim was under 18 years of age at the time of the commission of the offense; **or**  
**(8) The person has previously violated paragraph (6) of subsection (a) of Section 1-2.**

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF ILLINOIS. S. 2267, 97TH GEN. ASSEM., 1ST REG. SESS. (ILL. 2011). CRIM CD-STALKING-THIRD PARTY**

*Bill Status: Passed both Houses. Sent to Governor on 06/14/2011.*

\*

Adds section (e) to Sec. 12-7.5. Cyberstalking.

(e) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.

\*

## **INDIANA**

### **IND. CODE § 35-45-2-1 (2011). INTIMIDATION**

Sec. 1. (a) A person who communicates a threat to another person, with the intent:

- (1) that the other person engage in conduct against the other person's will;
- (2) that the other person be placed in fear of retaliation for a prior lawful act; or
- (3) of causing:

(A) a dwelling, a building, or another structure; or

(B) a vehicle;

to be evacuated;

commits intimidation, a Class A misdemeanor.

(b) However, the offense is a:

(1) Class D felony if:

(A) the threat is to commit a forcible felony;

(B) the person to whom the threat is communicated:

(i) is a law enforcement officer;

(ii) is a judge or bailiff of any court;

(iii) is a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat;

(iv) is an employee of a school corporation;

(v) is a community policing volunteer;

(vi) is an employee of a court;

(vii) is an employee of a probation department; or

(viii) is an employee of a community corrections program.

(C) the person has a prior unrelated conviction for an offense under this section concerning the same victim; or

(D) the threat is communicated using property, including electronic equipment or systems, of a school corporation or other governmental entity; and

(2) Class C felony if, while committing it, the person draws or uses a deadly weapon.

(c) “Threat” means an expression, by words or action, of an intention to:

(1) unlawfully injure the person threatened or another person, or damage property;

(2) unlawfully subject a person to physical confinement or restraint;

(3) commit a crime;

(4) unlawfully withhold official action, or cause such withholding;

(5) unlawfully withhold testimony or information with respect to another person's legal claim or defense, except for a reasonable claim for witness fees or expenses;

(6) expose the person threatened to hatred, contempt, disgrace, or ridicule;

(7) falsely harm the credit or business reputation of the person threatened; or

(8) cause the evacuation of a dwelling, a building, another structure, or a vehicle.

**IND. CODE § 35-45-2-2 (2011). HARASSMENT; “OBSCENE MESSAGE”  
DEFINED**

Sec. 2. (a) A person who, with intent to harass, annoy, or alarm another person but with no intent of legitimate communication:

- (1) makes a telephone call, whether or not a conversation ensues;
  - (2) communicates with a person by telegraph, mail, or other form of written communication;
  - (3) transmits an obscene message, or indecent or profane words, on a Citizens Radio Service channel; or
  - (4) uses a computer network (as defined in IC 35-43-2-3(a)) or other form of electronic communication to:
    - (A) communicate with a person; or
    - (B) transmit an obscene message or indecent or profane words to a person;commits harassment, a Class B misdemeanor.
- (b) A message is obscene if:
- (1) the average person, applying contemporary community standards, finds that the dominant theme of the message, taken as a whole, appeals to the prurient interest in sex;
  - (2) the message refers to sexual conduct in a patently offensive way; and
  - (3) the message, taken as a whole, lacks serious artistic, literary, political, or scientific value.

**IND. CODE § 35-43-2-3 (2011). COMPUTER TRESPASS**

Sec. 3. (a) As used in this section:

“Access” means to:

- (1) approach;
- (2) instruct;
- (3) communicate with;
- (4) store data in;
- (5) retrieve data from; or
- (6) make use of resources of;

a computer, computer system, or computer network.

“Computer network” means the interconnection of communication lines or wireless telecommunications with a computer or wireless telecommunication device through:

- (1) remote terminals;
- (2) a complex consisting of two (2) or more interconnected computers; or
- (3) a worldwide collection of interconnected networks operating as the Internet.

“Computer system” means a set of related computer equipment, software, or hardware.

“Hoarding program” means a computer program designed to bypass or neutralize a security measure, access control system, or similar system used by the owner of a computer network or computer system to limit the amount of merchandise that one (1) person may purchase by means of a computer network.

(b) A person who knowingly or intentionally accesses:

- (1) a computer system;
- (2) a computer network; or
- (3) any part of a computer system or computer network;

without the consent of the owner of the computer system or computer network, or the consent of the owner's licensee, commits computer trespass, a Class A misdemeanor.

(c) A person who knowingly or intentionally uses a hoarding program to purchase merchandise by means of a computer network commits computer merchandise hoarding, a Class A misdemeanor. It is a defense to a prosecution under this subsection that the person used the hoarding program with the permission of the person selling the merchandise.

(d) A person who knowingly or intentionally sells, purchases, or distributes a hoarding program commits unlawful distribution of a hoarding program, a Class A misdemeanor. It is a defense to a prosecution under this subsection that the hoarding program was sold, purchased, or distributed for legitimate scientific or educational purposes.

# IOWA

## **IOWA CODE § 708.7 (2011). HARASSMENT**

1. a. A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:

(1) Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

(2) Places a simulated explosive or simulated incendiary device in or near a building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person.

(3) Orders merchandise or services in the name of another, or to be delivered to another, without the other person's knowledge or consent.

(4) Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the act did not occur.

b. A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person. As used in this section, unless the context otherwise requires, "personal contact" means an encounter in which two or more people are in visual or physical proximity to each other. "Personal contact" does not require a physical touching or oral communication, although it may include these types of contacts.

2. a. A person commits harassment in the first degree when the person commits harassment involving a threat to commit a forcible felony, or commits harassment and has previously been convicted of harassment three or more times under this section or any similar statute during the preceding ten years.

b. Harassment in the first degree is an aggravated misdemeanor.

3. a. A person commits harassment in the second degree when the person commits harassment involving a threat to commit bodily injury, or commits harassment and has previously been convicted of harassment two times under this section or any similar statute during the preceding ten years.

b. Harassment in the second degree is a serious misdemeanor.

4. a. Any other act of harassment is harassment in the third degree.

b. Harassment in the third degree is a simple misdemeanor.

5. For purposes of determining whether or not the person should register as a sex offender pursuant to the provisions of chapter 692A, the fact finder shall make a determination as provided in section 692A.126.

## **KANSAS**

### **KAN. STAT. ANN. § 21-3438 (2010). STALKING (REPEALED – EFFECTIVE 07/01/2011)**

(a) Stalking is:

(1) Intentionally or recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear;

(2) intentionally engaging in a course of conduct targeted at a specific person which the individual knows will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or

(3) after being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, and amendments thereto, that prohibits contact with a targeted person, intentionally or recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.

(b)(1) Upon a first conviction, stalking as described in subsection (a)(1) is a class A person misdemeanor. Upon a second or subsequent conviction, stalking as described in subsection (a)(1) is a severity level 7, person felony.

(2) Upon a first conviction, stalking as described in subsection (a)(2) is a class A person misdemeanor. Upon a second or subsequent conviction, stalking as described in subsection (a)(2) is a severity level 5, person felony.

(3) Upon a first conviction, stalking as described in subsection (a)(3) is a severity level 9, person felony. Upon a second or subsequent conviction, stalking as described in subsection (a)(3) is a severity level 5, person felony.

(c) For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a uniformed law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted intentionally as to any like future act targeted at the specific person or persons



named in the order or as advised by the officer.

(d) In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

(e) The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.

(f) As used in this section:

(1) "Course of conduct" means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:

(A) Threatening the safety of the targeted person or a member of such person's immediate family.

(B) Following, approaching or confronting the targeted person or a member of such person's immediate family.

(C) Appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family.

(D) Causing damage to the targeted person's residence or property or that of a member of such person's immediate family.

(E) Placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person.

(F) Causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family.

(G) Any act of communication.

(2) "Communication" means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer.

(3) “Computer” means a programmable, electronic device capable of accepting and processing data.

(4) “Conviction” includes being convicted of a violation of this section or being convicted of a law of another state which prohibits the acts that this section prohibits.

(5) “Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person.

(g) If any provision or application of this section is held invalid for any reason, the invalidity of such provision or application is severable and does not affect other provisions or applications of this section which can be given effect without the invalid provisions or applications.

### **2011 KAN. SESS. LAWS, CHAP. 30. (H.R. 2339)**

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Sec. 27. Section 62 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows:

Sec. 62. (a) Stalking is:

(1) Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear;

(2) engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or

(3) after being served with, or otherwise provided notice of, any protective order included in K.S.A. 21–3843, prior to its repeal or section 149 **of chapter 136 of the 2010 Session Laws of Kansas**, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.

(b) Stalking as defined in:

(1) Subsection (a)(1) is a:

(A) Class A person misdemeanor, except as provided in subsection (b)(1)(B); and

(B) severity level 7, person felony upon a second or subsequent conviction;

(2) subsection (a)(2) is a:

(A) Class A person misdemeanor, except as provided in subsection (b)(2)(B); and

(B) severity level 5, person felony upon a second or subsequent conviction; and

(3) subsection (a)(3) is a:

(A) Severity level 9, person felony, except as provided in subsection (b)(3)(B);  
and

(B) severity level 5, person felony, upon a second or subsequent conviction.

(c) For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, prior to its repeal and **or** section 149 **of chapter 136 of the 2010 Session Laws of Kansas**, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

(d) In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

(e) The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.

(f) As used in this section:

(1) "Course of conduct" means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:

(A) Threatening the safety of the targeted person or a member of such person's immediate family;

(B) following, approaching or confronting the targeted person or a member of such person's immediate family;

(C) appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family;

(D) causing damage to the targeted person's residence or property or that of a member of such person's immediate family;

(E) placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person;

(F) causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family;

(G) any act of communication;

(2) "communication" means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer;

(3) "computer" means a programmable, electronic device capable of accepting and processing data;

(4) "conviction" includes being convicted of a violation of K.S.A. 21-3438, prior to its repeal, this section or a law of another state which prohibits the acts that this section prohibits; and

(5) "immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person.

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## **KENTUCKY**

### **KY. REV. STAT. ANN. § 525.080 (2010). HARASSING COMMUNICATIONS**

(1) A person is guilty of harassing communications when, with intent to intimidate, harass, annoy, or alarm another person, he or she:

(a) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written communication in a manner which causes annoyance or alarm and serves no purpose of legitimate communication;

(b) Makes a telephone call, whether or not conversation ensues, with no purpose of legitimate communication; or

(c) Communicates, while enrolled as a student in a local school district, with or about another school student, anonymously or otherwise, by telephone, the Internet, telegraph, mail, or any other form of electronic or written communication in a manner which a reasonable person under the circumstances should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication.

(2) Harassing communications is a Class B misdemeanor.

## **LOUISIANA**

### **LA. REV. STAT. ANN. § 14:40.3 (2010). CYBERSTALKING**

A. For the purposes of this Section, the following words shall have the following meanings:

(1) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) “Electronic mail” means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

B. Cyberstalking is action of any person to accomplish any of the following:

(1) Use in electronic mail or electronic communication of any words or language threatening to inflict bodily harm to any person or to such person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to threaten, terrify, or harass.

(4) Knowingly permit an electronic communication device under the person's control to be used for the taking of an action in Paragraph (1), (2), or (3) of this Subsection.

C. (1) Whoever commits the crime of cyberstalking shall be fined not more than two thousand dollars, or imprisoned for not more than one year, or both.

(2) Upon a second conviction occurring within seven years of the prior conviction for cyberstalking, the offender shall be imprisoned for not less than one hundred and eighty days and not more than three years, and may be fined not more than five thousand dollars, or both.

(3) Upon a third or subsequent conviction occurring within seven years of a prior conviction for stalking, the offender shall be imprisoned for not less than two years and not more than five years and may be fined not more than five thousand dollars, or both.

(4)(a) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

D. Any offense under this Section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received, or originally viewed by any person.

E. This Section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others.

#### **LA. REV. STAT. ANN. § 14:40.7 (2010). CYBERBULLYING**

A. Cyberbullying is the transmission of any electronic textual, visual, written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen.

B. For purposes of this Section:

(1) "Cable operator" means any person or group of persons who provides cable service over a cable system and directly, or through one or more affiliates, owns a significant interest in such cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(2) “Electronic textual, visual, written, or oral communication” means any communication of any kind made through the use of a computer online service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or online messaging service.

(3) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(4) “Telecommunications service” means the offering of telecommunications for a fee directly to the public, regardless of the facilities used.

C. An offense committed pursuant to the provisions of this Section may be deemed to have been committed where the communication was originally sent, originally received, or originally viewed by any person.

D. (1) Except as provided in Paragraph (2) of this Subsection, whoever commits the crime of cyberbullying shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both.

(2) When the offender is under the age of seventeen, the disposition of the matter shall be governed exclusively by the provisions of Title VII of the Children's Code.

E. The provisions of this Section shall not apply to a provider of an interactive computer service, provider of a telecommunications service, or a cable operator as defined by the provisions of this Section.

F. The provisions of this Section shall not be construed to prohibit or restrict religious free speech pursuant to Article I, Section 8 of the Constitution of Louisiana.

## **MAINE**

### **ME. REV. STAT. ANN. tit. 17-A, § 210-A (2011) STALKING**

**1.** A person is guilty of stalking if:

**A.** The actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person

**(1)** To suffer serious inconvenience or emotional distress;

**(2)** To fear bodily injury or to fear bodily injury to a close relation;

- (3) To fear death or to fear the death of a close relation;
- (4) To fear damage or destruction to or tampering with property; or
- (5) To fear injury to or the death of an animal owned by or in the possession and control of that specific person.

Violation of this paragraph is a Class D crime; or

**B. Deleted.**

C. The actor violates paragraph A and has 2 or more prior convictions in this State or another jurisdiction. Notwithstanding section 2, subsection 3-B, as used in this paragraph, “another jurisdiction” also includes any Indian tribe.

Violation of this paragraph is a Class C crime.

For the purposes of this paragraph, “prior conviction” means a conviction for a violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19, section 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary, emergency, interim or final protective order; an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe; or a court-approved consent agreement. Section 9-A governs the use of prior convictions when determining a sentence.

2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. “Course of conduct” means 2 or more acts, including but not limited to acts in which the actor, by any action, method, device or means, directly or indirectly follows, monitors, tracks, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property. ”Course of conduct” also includes, but is not limited to, threats implied by conduct and gaining unauthorized access to personal, medical, financial or other identifying or confidential information

B. “Close relation” means a current or former spouse or domestic partner, parent, child, sibling, stepchild, stepparent, grandparent, any person who regularly resides in the household or who within the prior 6 months regularly resided in the household or any person with a significant personal or professional relationship.

**C. Deleted.**

D. “Emotional distress” means mental or emotional suffering of the person being stalked as evidenced by anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of emotional distress or a mental health diagnosis.



E. "Serious inconvenience" means that a person significantly modifies that person's actions or routines in an attempt to avoid the actor or because of the actor's course of conduct. "Serious inconvenience" includes, but is not limited to, changing a phone number, changing an electronic mail address, moving from an established residence, changing daily routines, changing routes to and from work, changing employment or work schedule or losing time from work or a job.

### **3. Repealed.**

#### **ME. REV. STAT. ANN. tit. 17-A, § 506 (2011). HARASSMENT BY TELEPHONE**

1. A person is guilty of harassment by telephone if:

A. By means of telephone he makes any comment, request, suggestion or proposal which is, in fact, offensively coarse or obscene, without the consent of the person called;

B. He makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;

C. He makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;

D. He makes repeated telephone calls, during which conversation ensues, with the intent to harass any person at the called number; or

E. He knowingly permits any telephone under his control to be used for any purpose prohibited by this section.

2. The crime defined in this section may be prosecuted and punished in the county in which the defendant was located when he used the telephone, or in the county in which the telephone called or made to ring by the defendant was located.

3. Harassment by telephone is a Class E crime.

#### **ME. REV. STAT. ANN. tit. 17-A, § 506-A (2011). HARASSMENT**

1. A person is guilty of harassment if, without reasonable cause:

A. The person engages in any course of conduct with the intent to harass, torment or threaten another person:

(1) After having been notified, in writing or otherwise, not to engage in such conduct by:

(a) Any sheriff, deputy sheriff, constable, police officer or justice of the peace. The notification not to engage in such conduct expires one year from the date of issuance; or

(b) A court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007; or

(2) If the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees.

Violation of this paragraph is a Class E crime; or

B. The person violates paragraph A and, at the time of the harassment, the person has 2 or more prior Maine convictions under this section in which the victim was the same person or a member of that victim's immediate family or for engaging in substantially similar conduct to that contained in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.

## 2. Repealed.

3. For the purposes of this section, "immediate family" means spouse, parent, child, sibling, stepchild and stepparent.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF MAINE. H.R. 1028, 125TH LEG., 1ST REG. SESS. (ME. 2011). AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE CRIMINAL LAW ADVISORY COMMISSION RELATIVE TO THE MAINE CRIMINAL CODE AND RELATED STATUTES**

*Bill Status: House Committee on Criminal Justice and Public Safety Voted Ought to Pass as Amended on 06/13/2011*

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Sec. 15. 17-A MRSA §506, as amended by PL 1981, c. 317, §20, is further amended to read:

§ 506. Harassment by telephone or by electronic communication device

1. A person is guilty of harassment by telephone **or by electronic communication device** if:

A. By means of telephone **or electronic communication device the person** makes any comment, request, suggestion or proposal **which that** is, in fact, offensively coarse or obscene, without the consent of the person called **or contacted**;

B. He **The person** makes a telephone call **or makes a call or contact by means of an electronic communication device**, whether or not **oral or written** conversation ensues, without disclosing his **the person's** identity and with **the** intent to annoy, abuse, threaten or harass any person at the called **or contacted** number **or account**;

C. He **The person** makes or causes the telephone **or electronic communication device** of another repeatedly or continuously to ring **or activate or receive data**, with **the** intent to harass any person at the called **or contacted** number **or account**;

D. He **The person** makes repeated telephone calls **or repeated calls or contacts by means of an electronic communication device**, during which **oral or written** conversation ensues, with the intent to harass any person at the called **or contacted** number **or account**; or

E. He **The person** knowingly permits any telephone **or electronic communication device** under his **the person's** control to be used for any purpose prohibited by this section.

2. The crime defined in this section may be prosecuted and punished in the county in which the defendant was located when he **the defendant** used the telephone **or electronic communication device**, or in the county in which the telephone called or made to ring **or the electronic communication device called or made to ring or be activated or receive data** by the defendant was located. **2-A. As used in this section, "electronic communication device" means any electronic or digital product that communicates at a distance by electronic transmission impulses or by fiber optics, including any software capable of sending and receiving communication, allowing a person to electronically engage in the conduct prohibited under this section.**

3. Harassment by telephone **or by electronic communication device** is a Class E crime.

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## MARYLAND

### MD. CODE ANN., CRIM. LAW § 3-803 (2011). HARASSMENT

(a) Prohibited. -- A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:

(1) with the intent to harass, alarm, or annoy the other;

(2) after receiving a reasonable warning or request to stop by or on behalf of the other;  
and

(3) without a legal purpose.

(b) Exception. -- This section does not apply to a peaceable activity intended to express a political view or provide information to others.

(c) Penalty. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$ 500 or both.

**MD. CODE ANN., CRIM. LAW § 3-805 (2011). MISUSE OF ELECTRONIC MAIL**

(a) "Electronic mail" defined. -- In this section, "electronic mail" means the transmission of information or a communication by the use of a computer or other electronic means that is sent to a person identified by a unique address and that is received by the person.

(b) Prohibited. -- A person may not use electronic mail with the intent to harass:

(1) one or more persons; or

(2) by sending lewd, lascivious, or obscene material.

(c) Construction of section. -- It is not a violation of this section for any of the following persons to provide information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail or to conduct surveillance of electronic mail, if a court order directs the person to provide the information, facilities, or technical assistance:

(1) a provider of electronic mail;

(2) an officer, employee, agent, landlord, or custodian of a provider of electronic mail;  
or

(3) a person specified in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail or to conduct surveillance of electronic mail.

(d) Exception. -- This section does not apply to a peaceable activity intended to express a political view or provide information to others.

(e) Penalty. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$ 500 or both.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF MARYLAND. H.D. 510, 2011 LEG., 428TH SESS. (MD. 2011). CRIMINAL LAW - HARASSMENT - PENALTIES**

*Bill Status: Signed by the Governor – effective 10/01/2011*

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**Article--Criminal Law**

**<< MD CRIM LAW § 3-803 >>**

**3-803.**

(a) A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:

(1) with the intent to harass, alarm, or annoy the other;

(2) after receiving a reasonable warning or request to stop by or on behalf of the other; and

(3) without a legal purpose.

(b) This section does not apply to a peaceable activity intended to express a political view or provide information to others.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

**(1) for a first offense, imprisonment not exceeding 90 days or a fine not exceeding \$500 or both; and**

**(2) for a second or subsequent offense, imprisonment not exceeding 180 days or a fine not exceeding \$1,000 or both.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF MARYLAND. H.D. 582, 2011 LEG., 428TH SESS. (MD. 2011). CRIMES - ELECTRONIC COMMUNICATIONS - HARASSMENT**

*Bill Status: In House Committee on Judiciary as of 03/23/2011*

AN ACT concerning

**Crimes - Electronic Communications - Harassment**

FOR the purpose of altering the prohibition against using electronic mail with the intent to harass to specify the intent to annoy, abuse, torment, or embarrass; altering the definition of “electronic mail”; and generally relating to harassment prohibitions.

BY repealing and reenacting, without amendments, Article - Criminal Law Section 3-804 Annotated Code of Maryland (2002 Volume and 2010 Supplement)

BY repealing and reenacting, with amendments, Article - Criminal Law Section 3-805 Annotated Code of Maryland (2002 Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article - Criminal Law**

**3-804.**

(a) A person may not use telephone facilities or equipment to make:

(1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another;

(2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another;  
or

(3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$500 or both.

3-805.

(a) In this section, “electronic mail” means ~~the~~ **A POSTING OR** transmission of information or a communication by the use of a computer ~~or~~, other electronic means, **OR ANY AVAILABLE TECHNOLOGY** that is sent:

**(1)** to a person identified by a unique address and that is received by the person; **OR**

**(2) WITH A REASONABLE EXPECTATION THAT OTHER PEOPLE WILL RECEIVE THE INFORMATION OR COMMUNICATION ABOUT THE PERSON WITHOUT THE PERSON'S PERMISSION.**

(b) A person may not use electronic mail with the intent to harass~~;~~:

~~(1) one or more persons; or~~

~~(2) by sending lewd, lascivious, or obscene material;~~ **ANNOY, ABUSE, TORMENT, OR EMBARRASS ONE OR MORE PERSONS.**

(c) It is not a violation of this section for any of the following persons to provide information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail or to conduct surveillance of electronic mail, if a court order directs the person to provide the information, facilities, or technical assistance:

(1) a provider of electronic mail;

(2) an officer, employee, agent, landlord, or custodian of a provider of electronic mail; or

(3) a person specified in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail or to conduct surveillance of electronic mail.

(d) This section does not apply to a peaceable activity intended to express a political view or provide information to others.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

## **MASSACHUSETTS**

### **MASS. GEN. LAWS CH. 265, § 43 (2011). STALKING**

(a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of correction for not more than 2 1/2 years or by both such fine and imprisonment. The conduct, acts or threats described in this subsection shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

(b) Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to sections eighteen, thirty-four B, or thirty-four C of chapter two hundred and eight; or section thirty-two of chapter two hundred and nine; or sections three, four, or five of chapter two hundred and nine A; or sections fifteen or twenty of chapter two hundred and nine C or a protection order issued by another jurisdiction; or a temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year and not more than five years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this subsection.

(c) Whoever, after having been convicted of the crime of stalking, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of two years.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this section.



**MASS. GEN. LAWS CH. 265, § 43A (2011). CRIMINAL HARASSMENT;  
PUNISHMENT**

(a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than 2 1/2 years or by a fine of not more than \$1,000, or by both such fine and imprisonment. The conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

(b) Whoever, after having been convicted of the crime of criminal harassment, commits a second or subsequent such crime, or whoever commits the crime of criminal harassment having previously been convicted of a violation of section 43, shall be punished by imprisonment in a house of correction for not more than two and one-half years or by imprisonment in the state prison for not more than ten years.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT  
THE LAW OF MASSACHUSETTS. H.R. 1314, 187TH LEG., REG. SESS. (MASS.  
2011). AN ACT RELATIVE TO PROTECTIVE ORDERS**

*Bill Status: In House Committee on Judiciary as of 02/16/2011*

SECTION 1. Subsection (a) of section 43A of chapter 265 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:-

Notwithstanding the provisions of any other general or special law to the contrary, any person suffering from the willful and malicious conduct of another, as described in this section or section 43 may file a complaint in the court requesting protection from such abuse.

**MICHIGAN**

**MICH. COMP. LAWS § 750.411h (2011). STALKING; DEFINITIONS;  
VIOLATION, PENALTIES; PROBATION, TERM, CONDITIONS; EVIDENCE,  
REBUTTABLE PRESUMPTION; PENALTY ADDITIONAL**

Sec. 411h. (1) As used in this section:

(a) “Course of conduct” means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

(d) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(e) “Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(i) Following or appearing within the sight of that individual.

(ii) Approaching or confronting that individual in a public place or on private property.

(iii) Appearing at that individual's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.

(v) Contacting that individual by telephone.

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

(f) “Victim” means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(2) An individual who engages in stalking is guilty of a crime as follows:

(a) Except as provided in subdivision (b), a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(3) The court may place an individual convicted of violating this section on probation for a term of not more than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

(a) Refrain from stalking any individual during the term of probation.

(b) Refrain from having any contact with the victim of the offense.

(c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and if, determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(4) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(5) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

**MICH. COMP. LAWS § 750.411i (2011). AGGRAVATED STALKING; COURSE OF CONDUCT; VIOLATION, PENALTIES; PROBATION; REBUTTABLE PRESUMPTION**

Sec. 411i. (1) As used in this section:

(a) “Course of conduct” means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) “Credible threat” means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.

(c) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(d) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

(e) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(f) “Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(i) Following or appearing within the sight of that individual.

(ii) Approaching or confronting that individual in a public place or on private property.

(iii) Appearing at that individual's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.

(v) Contacting that individual by telephone.

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

(g) “Victim” means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(2) An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:

(a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.

(b) At least 1 of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(c) The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.

(d) The individual has been previously convicted of a violation of this section or section 411h.

(3) Aggravated stalking is a felony punishable as follows:

(a) Except as provided in subdivision (b), by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.

(4) The court may place an individual convicted of violating this section on probation for any term of years, but not less than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

(a) Refrain from stalking any individual during the term of probation.

(b) Refrain from any contact with the victim of the offense.

(c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(5) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(6) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

**MICH. COMP. LAWS § 750.411s (2011). POSTING MESSAGES THROUGH ELECTRONIC MEDIUM WITHOUT CONSENT**

Sec. 411s. (1) A person shall not post a message through the use of any medium of communication, including the internet or a computer, computer program, computer system, or computer network, or other electronic medium of communication, without the

victim's consent, if all of the following apply:

(a) The person knows or has reason to know that posting the message could cause 2 or more separate noncontinuous acts of unconsented contact with the victim.

(b) Posting the message is intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(c) Conduct arising from posting the message would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(d) Conduct arising from posting the message causes the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(b) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both:

(i) Posting the message is in violation of a restraining order and the person has received actual notice of that restraining order or posting the message is in violation of an injunction or preliminary injunction.

(ii) Posting the message is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(iii) Posting the message results in a credible threat being communicated to the victim, a member of the victim's family, or another individual living in the same household as the victim.

(iv) The person has been previously convicted of violating this section or section 145d, 411h, or 411i, or section 6 of 1979 PA 53, MCL 752. 796, or a substantially similar law of another state, a political subdivision of another state, or of the United States.

(v) The victim is less than 18 years of age when the violation is committed and the person committing the violation is 5 or more years older than the victim.

(3) This section does not apply to an internet or computer network service provider who in good faith, and without knowledge of the specific nature of the message posted, provides the medium for disseminating information or communication between persons.

(4) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for the expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

(5) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

(6) This section does not prohibit constitutionally protected speech or activity.

(7) A person may be prosecuted in this state for violating or attempting to violate this section only if 1 of the following applies:

(a) The person posts the message while in this state.

(b) Conduct arising from posting the message occurs in this state.

(c) The victim is present in this state at the time the offense or any element of the offense occurs.

(d) The person posting the message knows that the victim resides in this state.

(8) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Credible threat" means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes

the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.

(f) “Device” includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(h) “Internet” means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

(i) “Post a message” means transferring, sending, posting, publishing, disseminating, or otherwise communicating or attempting to transfer, send, post, publish, disseminate, or otherwise communicate information, whether truthful or untruthful, about the victim.

(j) “Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes any of the following:

(i) Following or appearing within sight of the victim.

(ii) Approaching or confronting the victim in a public place or on private property.

(iii) Appearing at the victim's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by the victim.

(v) Contacting the victim by telephone.

(vi) Sending mail or electronic communications to the victim through the use of any medium, including the internet or a computer, computer program, computer system, or computer network.

(vii) Placing an object on, or delivering or having delivered an object to, property owned, leased, or occupied by the victim.

(k) “Victim” means the individual who is the target of the conduct elicited by the posted message or a member of that individual's immediate family.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF MICHIGAN. H.R. 4237, 96TH LEG., REG. SESS. (MICH. 2011). CRIMES; OTHER; CYBERBULLYING; PROHIBIT, AND PROVIDE PENALTIES**

*Bill Status: In House Committee on Judiciary as of 02/10/2011*



A bill to amend 1931 PA 328, entitled “The Michigan penal code,” (MCL 750.1 to 750.568) by adding section 411w.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 411w. (1) A person shall not do any of the following:

(a) Post a message or statement in a public media forum about **any other person who is less than 18 years of age if all of the following apply:**

(i) **The person knows that the message or statement is false or intentionally misleading.**

(ii) **A reasonable person would find the message or statement to be damaging to the character or reputation of another person.**

(iii) **The message or statement is posted with the intent to intimidate, frighten, or harass any other person or to cause emotional distress.**

(b) Post a message or statement in a public media forum about **any other person who is less than 18 years of age if both of the following apply:**

(i) **The person intentionally conceals his or her identity in order to mislead any other person into believing that the message was posted by another person.**

(ii) **The message or statement is posted with the intent to intimidate, frighten, or harass any other person or to cause emotional distress.**

(c) Post a message or statement in a public media forum **urging, recommending, or soliciting another person who is less than years of age to injure or kill himself or herself if any of the following apply:**

(i) **The message or statement is posted with the intent to cause the other person to injure or kill himself or herself or is posted under circumstances or in such a manner that a reasonable person would know that the other person may injure or kill himself or herself.**

(ii) **The message or statement is posted with the intent to intimidate, frighten, or harass any other person or to cause emotional distress.**

(2) A person who violates this section is guilty of a crime as **follows:**

(a) If the person who violates this section is less than 18 **years of age:**

(i) **Except as provided in subparagraph (ii), for a violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.**

(ii) For a second or subsequent violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(iii) For a violation of subsection (1)(c), the person is guilty of a crime as follows:

(A) Except as provided in sub-subparagraphs (B) and (C), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(B) If the other person causes serious impairment of a body function to himself or herself, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(C) If the other person kills himself or herself, the person is guilty of a felony punishable by imprisonment for not more than years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(b) If the person who violates this section is 18 years of age or older:

(i) Except as provided in subparagraph (ii), for a violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(ii) For a second or subsequent violation of subsection (1)(a) or (b), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(iii) For a violation of subsection (1)(c), the person is guilty of a crime as follows:

(A) Except as provided in sub-subparagraphs (B) and (C), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(B) If the other person causes serious impairment of a body function to himself or herself, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(C) If the other person kills himself or herself, the person is guilty of a felony punishable by imprisonment for not more than years or a fine of not less than \$5,000.00 or more than \$20,000.00, or both.

(3) As used in this section:

(a) "Public media forum" means the internet or any other medium designed or intended to be used to convey information to other individuals, regardless of whether a membership or password is required to view the information.

(b) “Serious impairment of a body function” means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF MICHIGAN. S. 124, 96TH LEG., REG. SESS. (MICH. 2011).**

**CRIMES; OTHER; CYBERBULLYING; PROHIBIT, AND PROVIDE PENALTIES**

*Bill Status: In Senate Committee on Judiciary as of 02/09/2011*

A bill to amend 1931 PA 328, entitled “The Michigan penal code,” (MCL 750.1 to 750.568) by adding section 411w.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

**Sec. 411w. (1) A person shall not do any of the following:**

**(a) Post a message or statement in a public media forum about any other person if all of the following apply:**

**(i) The person knows that the message or statement is false or intentionally misleading.**

**(ii) A reasonable person would find the message or statement to be damaging to the character or reputation of another person.**

**(iii) The message or statement is posted with the intent to intimidate, frighten, or harass any other person or to cause emotional distress.**

**(b) Post a message or statement in a public media forum about any other person if both of the following apply:**

**(i) The person intentionally conceals his or her identity in order to mislead any other person into believing that the message was posted by another person.**

**(ii) The message or statement is posted with the intent to intimidate, frighten, or harass any other person or to cause emotional distress.**

**(c) Post a message or statement in a public media forum urging, recommending, or soliciting another person to injure or kill himself or herself if any of the following apply:**

**(i) The message or statement is posted with the intent to cause the other person to injure or kill himself or herself or is posted under circumstances or in such a manner that a reasonable person would know that the other person may injure or kill himself or herself.**

**(ii) The message or statement is posted with the intent to intimidate, frighten, or harass any other person or to cause emotional distress.**

**(2) A person who violates this section is guilty of a crime as follows:**

**(a) If the person who violates this section is less than 18 years of age:**

**(i) Except as provided in subparagraph (ii), for a violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.**

**(ii) For a second or subsequent violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.**

**(iii) For a violation of subsection (1)(c), the person is guilty of a crime as follows:**

**(A) Except as provided in sub-subparagraphs (B) and (C), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.**

**(B) If the other person causes serious impairment of a body function to himself or herself, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.**

**(C) If the other person kills himself or herself, the person is guilty of a felony punishable by imprisonment for not more than years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.**

**(b) If the person who violates this section is 18 years of age or older:**

**(i) Except as provided in subparagraph (ii), for a violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.**

**(ii) For a second or subsequent violation of subsection (1)(a) or (b), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.**

**(iii) For a violation of subsection (1)(c), the person is guilty of a crime as follows:**

**(A) Except as provided in sub-subparagraphs (B) and (C), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.**

**(B) If the other person causes serious impairment of a body function to himself or herself, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.**

**(C) If the other person kills himself or herself, the person is guilty of a felony punishable by imprisonment for not more than years or a fine of not less than \$5,000.00 or more than \$20,000.00, or both.**

**(3) As used in this section:**

**(a) “Public media forum” means the internet or any other medium designed or intended to be used to convey information to other individuals, regardless of whether a membership or password is required to view the information.**

**(b) “Serious impairment of a body function” means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.**

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF MICHIGAN. S. 262, 96TH LEG., REG. SESS. (MICH. 2011). CRIMES; OTHER; CYBERBULLYING; PROHIBIT, AND PROVIDE PENALTIES**

*Bill Status: In Senate Committee on Judiciary as of 03/10/2011*

A bill to amend 1931 PA 328, entitled

“The Michigan penal code,”

(MCL 750.1 to 750.568) by adding section 411w.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

**Sec. 411w. (1) A person shall not do any of the following:**

**(a) Post a message or statement in a public media forum about any other person who is less than 18 years of age if all of the following apply:**

**(i) The person knows that the message or statement is false or intentionally misleading.**

**(ii) A reasonable person would find the message or statement to be damaging to the character or reputation of any other person.**

**(iii) The message or statement is posted with the intent to intimidate, frighten, or harass any other person or to cause emotional distress.**

**(b) Post a message or statement in a public media forum about any other person who is less than 18 years of age if both of the following apply:**

**(i) The person intentionally conceals his or her identity in order to mislead any other person into believing that the message was posted by someone else.**

**(ii) The message or statement is posted with the intent to intimidate, frighten, or harass any other person or to cause emotional distress.**

**(c) Post a message or statement in a public media forum urging, recommending, or soliciting another person who is less than years of age to injure or kill himself or herself if any of the following apply:**

(i) The message or statement is posted with the intent to cause the other person to injure or kill himself or herself or is posted under circumstances or in such a manner that a reasonable person would know that the other person may injure or kill himself or herself.

(ii) The message or statement is posted with the intent to intimidate, frighten, or harass the other person or to cause emotional distress.

(2) A person who violates this section is guilty of a crime as follows:

(a) If the person who violates this section is less than 18 years of age:

(i) Except as provided in subparagraph (ii), for a violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(ii) For a second or subsequent violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(iii) For a violation of subsection (1)(c), the person is guilty of a crime as follows:

(A) Except as provided in sub-subparagraphs (B) and (C), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(B) If the other person causes serious impairment of a body function to himself or herself, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(C) If the other person kills himself or herself, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(b) If the person who violates this section is 18 years of age or older:

(i) Except as provided in subparagraph (ii), for a violation of subsection (1)(a) or (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(ii) For a second or subsequent violation of subsection (1)(a) or (b), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(iii) For a violation of subsection (1)(c), the person is guilty of a crime as follows:

**(A) Except as provided in sub-subparagraphs (B) and (C), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.**

**(B) If the other person causes serious impairment of a body function to himself or herself, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.**

**(C) If the other person kills himself or herself, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not less than \$5,000.00 or more than \$20,000.00, or both.**

**(3) As used in this section:**

**(a) “Public media forum” means the internet or any other medium designed or intended to be used to convey information to other individuals, regardless of whether a membership or password is required to view the information.**

**(b) “Serious impairment of a body function” means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.**

## **MINNESOTA**

### **MINN. STAT. § 609.749 (2011). HARASSMENT; STALKING; PENALTIES**

**Subdivision 1. Definition.** As used in this section, “stalking” means to engage in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim.

**Subd. 1a. No proof of specific intent required.** In a prosecution under this section, the state is not required to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated, or except as otherwise provided in subdivision 3, paragraph (a), clause (4), or paragraph (b), that the actor intended to cause any other result.

**Subd. 1b. Venue.** (a) When acts constituting a violation of this section are committed in two or more counties, the accused may be prosecuted in any county in which one of the acts was committed for all acts in violation of this section.

(b) The conduct described in subdivision 2, clauses (4) and (5) may be prosecuted at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides or in the jurisdiction of the victim's designated address if the

victim participates in the address confidentiality program established by chapter 5B. The conduct described in subdivision 2, clause (2), may be prosecuted where the actor or victim resides. The conduct described in subdivision 2, clause (6), may be prosecuted where any letter, telegram, message, package, or other object is sent or received or, in the case of wireless or electronic communication or communication made through other available technologies, where the actor or victim resides or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established by chapter 5B.

**Subd. 1c. Arrest.** For all violations under this section, except a violation of subdivision 2, clause (7), a peace officer may make an arrest under the provisions of section 629.34. A peace officer may not make a warrantless, custodial arrest of any person for a violation of subdivision 2, clause (7).

**Subd. 2. Stalking crimes.** A person who stalks another by committing any of the following acts is guilty of a gross misdemeanor:

- (1) directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;
- (2) follows, monitors, or pursues another, whether in person or through any available technological or other means;
- (3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;
- (4) repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;
- (5) makes or causes the telephone of another repeatedly or continuously to ring;
- (6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for the visually or hearing impaired, or any communication made through any available technologies or other objects; or
- (7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

**Subd. 3. Aggravated violations.** (a) A person who commits any of the following acts is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both:

- (1) commits any offense described in subdivision 2 because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in



section 363A.03, age, or national origin;

(2) commits any offense described in subdivision 2 by falsely impersonating another;

(3) commits any offense described in subdivision 2 and possesses a dangerous weapon at the time of the offense;

(4) stalks another, as defined in subdivision 1, with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(5) commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim.

(b) A person who commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

**Subd. 4. Second or subsequent violations; felony.** (a) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency, and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency, and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

**Subd. 5. Pattern of stalking conduct.** (a) A person who engages in a pattern of stalking conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(b) For purposes of this subdivision, a “pattern of stalking conduct” means two or more acts within a five-year period that violate or attempt to violate the provisions of any of the following or a similar law of another state, the United States, the District of Columbia, tribe, or United States territories:

- (1) this section;
- (2) sections 609.185 to 609.205 (first- to third-degree murder and first- and second-degree manslaughter);
- (3) section 609.713 (terroristic threats);
- (4) section 609.224 (fifth-degree assault);
- (5) section 609.2242 (domestic assault);
- (6) section 518B.01, subdivision 14 (violations of domestic abuse orders for protection);
- (7) section 609.748, subdivision 6 (violations of harassment restraining orders);
- (8) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7) (certain trespass offenses);
- (9) section 609.78, subdivision 2 (interference with an emergency call);
- (10) section 609.79 (obscene or harassing telephone calls);
- (11) section 609.795 (letter, telegram, or package; opening; harassment);
- (12) section 609.582 (burglary);
- (13) section 609.595 (damage to property);
- (14) section 609.765 (criminal defamation);
- (15) sections 609.342 to 609.3451 (first- to fifth-degree criminal sexual conduct); or
- (16) section 629.75, subdivision 2 (violations of domestic abuse no contact orders).

(c) Words set forth in parentheses after references to statutory sections in paragraph (b) are mere catchwords included solely for convenience in reference. They are not substantive and may not be used to construe or limit the meaning of the cited statutory provision.

**Subd. 6. Mental health assessment and treatment.** (a) When a person is convicted of a felony offense under this section, or another felony offense arising out of a charge based on this section, the court shall order an independent professional mental health assessment of the offender's need for mental health treatment. The court may waive the assessment if an adequate assessment was conducted prior to the conviction.

(b) Notwithstanding sections 13.384, 13.85, 144.291 to 144.298, 260B.171, or 260C.171, the assessor has access to the following private or confidential data on the person if access is relevant and necessary for the assessment:

- (1) medical data under section 13.384;
- (2) welfare data under section 13.46;
- (3) corrections and detention data under section 13.85;
- (4) health records under sections 144.291 to 144.298; and
- (5) juvenile court records under sections 260B.171 and 260C.171.

Data disclosed under this section may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

(c) If the assessment indicates that the offender is in need of and amenable to mental health treatment, the court shall include in the sentence a requirement that the offender undergo treatment.

(d) The court shall order the offender to pay the costs of assessment under this subdivision unless the offender is indigent under section 563.01.

**Subd. 7. Exception.** Conduct is not a crime under this section if it is performed under terms of a valid license, to ensure compliance with a court order, or to carry out a specific lawful commercial purpose or employment duty, is authorized or required by a valid contract, or is authorized, required, or protected by state, federal, or tribal law or the state, federal, or tribal constitutions. Subdivision 2, clause (2), does not impair the right of any individual or group to engage in speech protected by the federal, state, or tribal constitutions, or federal, state, or tribal law, including peaceful and lawful handbilling and picketing.

**Subd. 8. Stalking; firearms.** (a) When a person is convicted of a stalking crime under this section and the court determines that the person used a firearm in any way during commission of the crime, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(b) Except as otherwise provided in paragraph (a), when a person is convicted of a stalking crime under this section, the court shall inform the defendant that the defendant

is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

(c) Except as otherwise provided in paragraph (a), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1996, of a stalking crime under this section, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

(d) If the court determines that a person convicted of a stalking crime under this section owns or possesses a firearm and used it in any way during the commission of the crime, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

## **MISSISSIPPI**

### **MISS. CODE ANN. § 97-3-107 (2010). STALKING AND AGGRAVATED STALKING; ELEMENTS; VENUE; DEFENSES; PENALTIES; RESTRAINING ORDERS; DEFINITIONS; APPLICATION**

(1)(a) Any person who purposefully engages in a course of conduct directed at a specific person, or who makes a credible threat, and who knows or should know that the conduct would cause a reasonable person to fear for his or her own safety, to fear for the safety of another person, or to fear damage or destruction of his or her property, is guilty of the crime of stalking.

(b) A person who is convicted of the crime of stalking under this section shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

(c) Any person who is convicted of a violation of this section when there is in effect at the time of the commission of the offense a valid temporary restraining order, ex parte protective order, protective order after hearing, court approved consent agreement, or an injunction issued by a municipal, justice, county, circuit or chancery court, federal or tribal court or by a foreign court of competent jurisdiction prohibiting the behavior described in this section against the same party, shall be punished by imprisonment in the county jail for not more than one (1) year and by a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00).

(2)(a) A person who commits acts that would constitute the crime of stalking as defined in this section is guilty of the crime of aggravated stalking if any of the following circumstances exist:

(i) At least one (1) of the actions constituting the offense involved the use or display of a deadly weapon with the intent to place the victim of the stalking in reasonable fear of death or great bodily injury to self or a third person;

(ii) Within the past seven (7) years, the perpetrator has been previously convicted of stalking or aggravated stalking under this section or a substantially similar law of another state, political subdivision of another state, of the United States, or of a federally recognized Indian tribe, whether against the same or another victim; or

(iii) At the time of the offense, the perpetrator was a person required to register as a sex offender pursuant to state, federal, military or tribal law and the victim was under the age of eighteen (18) years.

(b) Aggravated stalking is a felony punishable as follows:

(i) Except as provided in subparagraph (ii), by imprisonment in the custody of the Department of Corrections for not more than five (5) years and a fine of not more than Three Thousand Dollars (\$3,000.00).

(ii) If, at the time of the offense, the perpetrator was required to register as a sex offender pursuant to state, federal, military or tribal law, and the victim was under the age of eighteen (18) years, by imprisonment for not more than six (6) years in the custody of the Department of Corrections and a fine of Four Thousand Dollars (\$4,000.00).

(3) Upon conviction, the sentencing court shall consider issuance of an order prohibiting the perpetrator from any contact with the victim. The duration of any order prohibiting contact with the victim shall be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim or another person.

(4) Every conviction of stalking or aggravated stalking may require as a condition of any suspended sentence or sentence of probation that the defendant, at his own expense, submit to psychiatric or psychological counseling or other such treatment or behavioral modification program deemed appropriate by the court.

(5) In any prosecution under this section, it shall not be a defense that the perpetrator was not given actual notice that the course of conduct was unwanted or that the perpetrator did not intend to cause the victim fear.

(6) When investigating allegations of a violation of this section, law enforcement officers shall utilize the Uniform Offense Report prescribed by the Office of the Attorney General in consultation with the sheriffs' and police chiefs' associations. However, failure of law enforcement to utilize the Uniform Offense Report shall in no way invalidate the crime charged under this section.

(7) For purposes of venue, any violation of this section shall be considered to have been committed in any county in which any single act was performed in furtherance of a violation of this section. An electronic communication shall be deemed to have been committed in any county from which the electronic communication is generated or in which it is received.

(8) For the purposes of this section:

(a) "Course of conduct" means a pattern of conduct composed of a series of two (2) or more acts over a period of time, however short, evidencing a continuity of purpose and that would cause a reasonable person to fear for his or her own safety, to fear for the safety of another person, or to fear damage or destruction of his or her property. Such acts may include, but are not limited to, the following or any combination thereof, whether done directly or indirectly: (i) following or confronting the other person in a public place or on private property against the other person's will; (ii) contacting the other person by telephone or mail, or by electronic mail or communication as defined in Section 97-45-1; or (iii) threatening or causing harm to the other person or a third party.

(b) "Credible threat" means a verbal or written threat to cause harm to a specific person or to cause damage to property that would cause a reasonable person to fear for the safety of that person or damage to the property.

(c) "Reasonable person" means a reasonable person in the victim's circumstances.

(9) The incarceration of a person at the time the threat is made shall not be a bar to prosecution under this section. Constitutionally protected activity is not prohibited by this section.

**MISS. CODE ANN. § 97-29-45 (2010). OBSCENE ELECTRONIC COMMUNICATIONS**

(1) It shall be unlawful for any person or persons:

(a) To make any comment, request, suggestion or proposal by means of telecommunication or electronic communication which is obscene, lewd or lascivious with intent to abuse, threaten or harass any party to a telephone conversation, telecommunication or electronic communication;

(b) To make a telecommunication or electronic communication with intent to terrify, intimidate or harass, and threaten to inflict injury or physical harm to any person or to his property;

(c) To make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;

- (d) To make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;
- (e) To make repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or
- (f) Knowingly to permit a computer or a telephone of any type under his control to be used for any purpose prohibited by this section.
- (2) Upon conviction of any person for the first offense of violating subsection (1) of this section, such person shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned in the county jail for not more than six (6) months, or both.
- (3) Upon conviction of any person for the second offense of violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned in the county jail for not more than one (1) year, or both.
- (4) For any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not more than Two Thousand Dollars (\$2,000.00) and/or imprisoned in the State Penitentiary for not more than two (2) years, or both.
- (5) The provisions of this section do not apply to a person or persons who make a telephone call that would be covered by the provisions of the federal Fair Debt Collection Practices Act, 15 USCS Section 1692 et seq.
- (6) Any person violating this section may be prosecuted in the county where the telephone call, conversation or language originates in case such call, conversation or language originates in the State of Mississippi. In case the call, conversation or language originates outside of the State of Mississippi then such person shall be prosecuted in the county to which it is transmitted.
- (7) For the purposes of this section, “telecommunication” and “electronic communication” mean and include any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet.
- (8) No person shall be held to have violated this section solely for providing access or connection to telecommunications or electronic communications services where the services do not include the creation of the content of the communication. Companies organized to do business as commercial broadcast radio stations, television stations,

telecommunications service providers, Internet service providers, cable service providers or news organizations shall not be criminally liable under this section.

**MISS. CODE ANN. § 97-45-15 (2010). CYBERSTALKING**

(1) It is unlawful for a person to:

(a) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(b) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying or harassing any person.

(c) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to threaten, terrify or harass.

(d) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(2) Whoever commits the offense of cyberstalking shall be punished, upon conviction:

(a) Except as provided herein, the person is guilty of a felony punishable by imprisonment for not more than two (2) years or a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

(b) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both:

(i) The offense is in violation of a restraining order and the person has received actual notice of that restraining order or posting the message is in violation of an injunction or preliminary injunction.

(ii) The offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release or a condition of release on bond pending appeal.



(iii) The offense results in a credible threat being communicated to the victim, a member of the victim's family, or another individual living in the same household as the victim.

(iv) The person has been previously convicted of violating this section or a substantially similar law of another state, a political subdivision of another state, or of the United States.

(3) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest or assembly.

## **MISSOURI**

### **MO. REV. STAT. § 565.090 (2011). HARASSMENT**

1. A person commits the crime of harassment if he or she:

(1) Knowingly communicates a threat to commit any felony to another person and in so doing, frightens, intimidates, or causes emotional distress to such other person; or

(2) When communicating with another person, knowingly uses coarse language offensive to one of average sensibility and thereby puts such person in reasonable apprehension of offensive physical contact or harm; or

(3) Knowingly frightens, intimidates, or causes emotional distress to another person by anonymously making a telephone call or any electronic communication; or

(4) Knowingly communicates with another person who is, or who purports to be, seventeen years of age or younger and in so doing and without good cause recklessly frightens, intimidates, or causes emotional distress to such other person; or

(5) Knowingly makes repeated unwanted communication to another person; or

(6) Without good cause engages in any other act with the purpose to frighten, intimidate, or cause emotional distress to another person, cause such person to be frightened, intimidated, or emotionally distressed, and such person's response to the act is one of a person of average sensibilities considering the age of such person.

2. Harassment is a class A misdemeanor unless:

(1) Committed by a person twenty-one years of age or older against a person seventeen years of age or younger; or

(2) The person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this subsection.

In such cases, harassment shall be a class D felony.

3. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.

**MO. REV. STAT. § 565.225 (2011). CRIME OF STALKING--DEFINITIONS—  
PENALTIES**

1. As used in this section, the following terms shall mean:

(1) “Course of conduct”, a pattern of conduct composed of two or more acts, which may include communication by any means, over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct. Such constitutionally protected activity includes picketing or other organized protests;

(2) “Credible threat”, a threat communicated with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety, or the safety of his or her family, or household members or domestic animals or livestock as defined in section 276.606, RSMo, kept at such person's residence or on such person's property. The threat must be against the life of, or a threat to cause physical injury to, or the kidnapping of, the person, the person's family, or the person's household members or domestic animals or livestock as defined in section 276.606, RSMo, kept at such person's residence or on such person's property;

(3) “Harasses”, to engage in a course of conduct directed at a specific person that serves no legitimate purpose, that would cause a reasonable person under the circumstances to be frightened, intimidated, or emotionally distressed.

2. A person commits the crime of stalking if he or she purposely, through his or her course of conduct, harasses or follows with the intent of harassing another person.

3. A person commits the crime of aggravated stalking if he or she purposely, through his or her course of conduct, harasses or follows with the intent of harassing another person, and:

- (1) Makes a credible threat; or
- (2) At least one of the acts constituting the course of conduct is in violation of an order of protection and the person has received actual notice of such order; or
- (3) At least one of the actions constituting the course of conduct is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal; or
- (4) At any time during the course of conduct, the other person is seventeen years of age or younger and the person harassing the other person is twenty-one years of age or older; or
- (5) He or she has previously pleaded guilty to or been found guilty of domestic assault, violation of an order of protection, or any other crime where the other person was the victim.

4. The crime of stalking shall be a class A misdemeanor unless the person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this section, in which case stalking shall be a class D felony.

5. The crime of aggravated stalking shall be a class D felony unless the person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this section, aggravated stalking shall be a class C felony.

6. Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section.

7. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF MISSOURI. S. 30, 96TH GEN. ASSEM., 1ST REG. SESS. (MO. 2011). INCREASES THE PENALTY FOR THE CRIME OF HARASSMENT**

*Bill Status: Second Reading - In Senate Judiciary and Civil and Criminal Jurisprudence Committee as of 01/12/2011*

AN ACT

To repeal section 565.090, RSMo, and to enact in lieu thereof one new section relating to harassment, with a penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 565.090, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 565.090, to read as follows:

565.090. 1. A person commits the crime of harassment if he or she:

- (1) Knowingly communicates a threat to commit any felony to another person and in so doing frightens, intimidates, or causes emotional distress to such other person; or
- (2) When communicating with another person, knowingly uses coarse language offensive to one of average sensibility and thereby puts such person in reasonable apprehension of offensive physical contact or harm; or
- (3) Knowingly frightens, intimidates, or causes emotional distress to another person by anonymously making a telephone call or any electronic communication; or
- (4) Knowingly communicates with another person who is, or who purports to be, seventeen years of age or younger and in so doing and without good cause recklessly frightens, intimidates, or causes emotional distress to such other person; or
- (5) Knowingly makes repeated unwanted communication to another person; or
- (6) Without good cause engages in any other act with the purpose to frighten, intimidate, or cause emotional distress to another person, cause such person to be frightened, intimidated, or emotionally distressed, and such person's response to the act is one of a person of average sensibilities considering the age of such person.

2. Harassment is a class ~~{A misdemeanor}~~ **D felony** unless:

- (1) Committed by a person twenty-one years of age or older against a person seventeen years of age or younger; or
- (2) The person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this subsection. In such cases, harassment shall be a class ~~{D}~~ **C** felony.

3. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.

## **MONTANA**

### **MONT. CODE ANN. § 45-5-220 (2010). STALKING -- EXEMPTION -- PENALTY**

(1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication, as defined in 45-8-213, or any other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

### **MONT. CODE ANN. § 45-8-213 (2010). PRIVACY IN COMMUNICATIONS**

(1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings;

(iii) persons given warning of the transcription or recording, and if one person provides the warning, either party may record; or

(iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(3)(a) A person convicted of the offense of violating privacy in communications shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(4) “Electronic communication” means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

## **NEBRASKA**

### **NEB. REV. STAT. § 28-311.02 (2010). STALKING AND HARASSMENT; LEGISLATIVE INTENT; TERMS, DEFINED**

(1) It is the intent of the Legislature to enact laws dealing with stalking offenses which will protect victims from being willfully harassed, intentionally terrified, threatened, or intimidated by individuals who intentionally follow, detain, stalk, or harass them or impose any restraint on their personal liberty and which will not prohibit constitutionally protected activities.

(2) For purposes of sections 28-311.02 to 28-311.05, 28-311.09, and 28-311.10:

(a) Harass means to engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose;

(b) Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning, contacting, or otherwise communicating with the person;

(c) Family or household member means a spouse or former spouse of the victim, children of the victim, a person presently residing with the victim or who has resided with the victim in the past, a person who had a child in common with the victim, other persons related to the victim by consanguinity or affinity, or any person presently involved in a dating relationship with the victim or who has been involved in a dating relationship with the victim. For purposes of this subdivision, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement but does not include a casual relationship or an ordinary association between persons in a business or social context; and

(d) Substantially conforming criminal violation means a guilty plea, a nolo contendere plea, or a conviction for a violation of any federal law or law of another state or any county, city, or village ordinance of this state or another state substantially similar to section 28-311.03. Substantially conforming is a question of law to be determined by the court.

### **NEB. REV. STAT. § 28-311.03 (2010). STALKING**

Any person who willfully harasses another person or a family or household member of

such person with the intent to injure, terrify, threaten, or intimidate commits the offense of stalking.

**NEB. REV. STAT. § 28-311.04 (2010). STALKING; VIOLATIONS; PENALTIES**

(1) Except as provided in subsection (2) of this section, any person convicted of violating section 28-311.03 is guilty of a Class I misdemeanor.

(2) Any person convicted of violating section 28-311.03 is guilty of a Class IV felony if:

(a) The person has a prior conviction under such section or a substantially conforming criminal violation within the last seven years;

(b) The victim is under sixteen years of age;

(c) The person possessed a deadly weapon at any time during the violation;

(d) The person was also in violation of section 28-311.09, 42-924, or 42-925 at any time during the violation; or

(e) The person has been convicted of any felony in this state or has been convicted of a crime in another jurisdiction which, if committed in this state, would constitute a felony and the victim or a family or household member of the victim was also the victim of such previous felony.

**NEVADA**

**NEV. REV. STAT. § 200.571 (2010). HARASSMENT: DEFINITION; PENALTIES**

1. A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(1) To cause bodily injury in the future to the person threatened or to any other person;

(2) To cause physical damage to the property of another person;

(3) To subject the person threatened or any other person to physical confinement or restraint; or

(4) To do any act which is intended to substantially harm the person threatened or any other person with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.



2. Except where the provisions of subsection 2 or 3 of NRS 200.575 are applicable, a person who is guilty of harassment:

(a) For the first offense, is guilty of a misdemeanor.

(b) For the second or any subsequent offense, is guilty of a gross misdemeanor.

3. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.

**NEV. REV. STAT. § 200.575 (2010). STALKING: DEFINITIONS; PENALTIES**

1. A person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, commits the crime of stalking. Except where the provisions of subsection 2 or 3 are applicable, a person who commits the crime of stalking:

(a) For the first offense, is guilty of a misdemeanor.

(b) For any subsequent offense, is guilty of a gross misdemeanor.

2. A person who commits the crime of stalking and in conjunction therewith threatens the person with the intent to cause the person to be placed in reasonable fear of death or substantial bodily harm commits the crime of aggravated stalking. A person who commits the crime of aggravated stalking shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$5,000.

3. A person who commits the crime of stalking with the use of an Internet or network site, electronic mail, text messaging or any other similar means of communication to publish, display or distribute information in a manner that substantially increases the risk of harm or violence to the victim shall be punished for a category C felony as provided in NRS 193.130.

4. Except as otherwise provided in subsection 2 of NRS 200.571, a criminal penalty provided for in this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

5. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.

6. As used in this section:

(a) “Course of conduct” means a pattern of conduct which consists of a series of acts over time that evidences a continuity of purpose directed at a specific person.

(b) “Family or household member” means a spouse, a former spouse, a parent or other person who is related by blood or marriage or is or was actually residing with the person.

(c) “Internet or network site” has the meaning ascribed to it in NRS 205.4744.

(d) “Network” has the meaning ascribed to it in NRS 205.4745.

(e) “Provider of Internet service” has the meaning ascribed to it in NRS 205.4758.

(f) “Text messaging” means a communication in the form of electronic text or one or more electronic images sent from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(g) “Without lawful authority” includes acts which are initiated or continued without the victim's consent. The term does not include acts which are otherwise protected or authorized by constitutional or statutory law, regulation or order of a court of competent jurisdiction, including, but not limited to:

(1) Picketing which occurs during a strike, work stoppage or any other labor dispute.

(2) The activities of a reporter, photographer, camera operator or other person while gathering information for communication to the public if that person is employed or engaged by or has contracted with a newspaper, periodical, press association or radio or television station and is acting solely within that professional capacity.

(3) The activities of a person that are carried out in the normal course of his or her lawful employment.

(4) Any activities carried out in the exercise of the constitutionally protected rights of freedom of speech and assembly.

## **NEW HAMPSHIRE**

### **N.H. REV. STAT. ANN. § 644:4 (2011). HARASSMENT**

I. A person is guilty of a misdemeanor, and subject to prosecution in the jurisdiction where the communication originated or was received, if such person:

(a) Makes a telephone call, whether or not a conversation ensues, with no legitimate communicative purpose or without disclosing his or her identity and with a purpose to

annoy, abuse, threaten, or alarm another; or

(b) Makes repeated communications at extremely inconvenient hours or in offensively coarse language with a purpose to annoy or alarm another; or

(c) Insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response; or

(d) Knowingly communicates any matter of a character tending to incite murder, assault, or arson; or

(e) With the purpose to annoy or alarm another, communicates any matter containing any threat to kidnap any person or to commit a violation of RSA 633:4; or a threat to the life or safety of another; or

(f) With the purpose to annoy or alarm another, having been previously notified that the recipient does not desire further communication, communicates with such person, when the communication is not for a lawful purpose or constitutionally protected.

II. As used in paragraph I, “communicates” means to impart a message by any method of transmission, including but not limited to telephoning or personally delivering or sending or having delivered any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer. For purposes of this section, “computer” means a programmable, electronic device capable of accepting and processing data.

III. In any complaint or information brought for the enforcement of RSA 644:4, I(f), it shall not be necessary for the state to negate any exception, excuse, proviso, or exemption contained therein and the burden of proof of any exception, excuse, proviso, or exemption shall be upon the defendant.

IV. A person shall be guilty of a class B felony if the person violates RSA 644:4, I(a) under circumstances involving making telephone calls to a telephone number that he or she knows is being used, at the time of the calls, to facilitate the transportation of voters to polling places or otherwise to support voting or registering to vote.

#### VALIDITY

*Paragraph I(f) of this section has been held unconstitutional in the case of State v. Pierce (2005) 152 N.H. 790, 887 A.2d 132.*

## **NEW JERSEY**

### **N.J. STAT. ANN. § 2C:12-10 (2011). STALKING**

a. As used in this act:

(1) “Course of conduct” means repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

(2) “Repeatedly” means on two or more occasions.

(3) “Emotional distress” means significant mental suffering or distress.

(4) “Cause a reasonable person to fear” means to cause fear which a reasonable victim, similarly situated, would have under the circumstances.

b. A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress.

c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.

d. A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.

e. A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.

f. This act shall not apply to conduct which occurs during organized group picketing.

**N.J. STAT. ANN. § 2C:33-4 (2011). HARASSMENT**

Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c. 443).

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF NEW JERSEY. A. 311/S. 119, 214TH LEG., 1ST SESS. (N.J. 2010). AN ACT CONCERNING HARASSMENT AND AMENDING N.J.S.2C:33-4**

*Bill Status: In Senate Judiciary Committee as of 01/12/2010; In Assembly Judiciary Committee as of 01/12/2010*

An Act concerning harassment by electronic communication and amending N.J.S. 2C:33-4.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:33-4 is amended to read as follows:  
2C:33-4. Harassment.

Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, [he] the person:

- a. Makes, or causes to be made, a communication or communications anonymously or otherwise, or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
- b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
- c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. of this section includes, but is not limited to, the posting of a photographic images or other descriptive material on an Internet website, or the sending of a telephonic message, electronic mail, text message or similar type of electronic message or communication, by means of an electronic communication device. "Electronic communication device" includes, but is not limited to, a telephone, cellular telephone, computer, computer network, computer system, video recorder, facsimile machine or pager. A communication under subsection a. may be deemed to have been

made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c.443).

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

As used in this subsection, the terms “computer,” “computer network” and “computer system” have the same meanings as are ascribed to those terms in section 1 of P.L.1984, c.182 (C.2A:38A-1).

(cf: P.L.2001, c.443, s.3)

2. This act shall take effect immediately.

#### STATEMENT

This bill amends the existing harassment statute; N.J.S.2C:33-4, to criminalize cyber-harassment which occurs when offenders use the Internet or other forms of electronic communication to commit these offenses.

Currently, N.J.S.2C:33-4 provides that a person who makes, or causes to be made, a communication “anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm” is guilty of harassment, a petty disorderly persons offense. This bill provides that a communication which is made anonymously or otherwise by means of an electronic communication device for the purpose of harassing another person shall constitute a petty disorderly offense. Under the bill, the term “electronic communication device” is defined as including, but not limited to, a telephone, cellular telephone, computer, computer network, computer system, video recorder, facsimile machine or pager.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF NEW JERSEY. A. 1001, 214TH LEG., 1ST SESS. (N.J. 2010). MODIFIES ELEMENTS OF THE CRIME OF STALKING**

*Bill Status: In Assembly Judiciary Committee as of 01/12/2010*

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1992, c.209 (C.2C:12-10) is amended to read as follows:

1. a. As used in this act:

(1) “Course of conduct” means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying, or causing to be conveyed, verbal or written threats or

threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

(2) “Repeatedly” means on [two or more occasions] **more than one occasion**.

(3) “Immediate family” means a spouse, parent, child, sibling or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.

b. A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly **(1)** engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or a member of his immediate family or to fear the death of himself or a member of his immediate family; **or**

**(2) repeatedly harasses a person in violation of N.J.S.2C:33-4.**

c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.

d. A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.

e. A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.

f. This act shall not apply to conduct which occurs during organized group picketing.

(cf: P.L.2001, c.220, s.2).

2. This act shall take effect immediately.

## STATEMENT

This bill modifies the elements of the crime of stalking to make it easier for the prosecution to obtain a conviction. Under current law, a person is guilty of the fourth degree crime of stalking if he engages in a “course of conduct” directed at a specific person that would cause a reasonable person to fear bodily injury to himself or a member of his immediate family or to fear the death of himself or a member of his immediate family. The statute defines “course of conduct” as “repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.” “Repeatedly” is defined as “on two or more occasions.”

The bill amends the statute in order to conform it to the requirements of pending Federal legislation. Under the provisions of H.R. 3595 (introduced December 20, 2001), states

would be eligible for certain grants under the federal “Violence Against Women Act” (42 U.S.C.A. 14031) if they amend their stalking statutes to require, “as elements of the offense, not more than the following: that the defendant has on more than one occasion harassed or threatened the victim.” The bill, which changes the definition of “repeatedly” from the current “on two or more occasions” to “on more than one occasion” and includes the harassment element, is intended to enact such an amendment.

This bill retains the current provisions of the stalking law and adds the harassment element as an additional way of violating the stalking statute. The crime of stalking may be committed if harassment is committed in violation of N.J.S.2C:33-4 on more than one occasion.

Thus, under the provisions of the bill, a person is guilty of the crime of stalking if he either:

(1) Engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or a member of his immediate family or to fear the death of himself or a member of his immediate family (such as the current law reads); or

(2) Repeatedly (defined as “on more than one occasion”) harasses a person in violation of N.J.S.2C:33-4.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF NEW JERSEY. A. 1142/S. 2524, 214TH LEG., 1ST SESS. (N.J. 2010). AN ACT CONCERNING HARASSMENT AND AMENDING N.J.S.2C:33-4**

*Bill Status: In Senate Judiciary Committee as of 12/09/2010; In Assembly Judiciary Committee as of 01/12/2010*

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:33-4 is amended to read as follows:

Except as provided in subsection e., f. or g., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications:

(1) anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

(2) which exposes or publicizes any secret or any asserted fact, whether true or false, tending to subject another person to hatred, contempt or ridicule;

b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or



c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm, embarrass, humiliate or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c.443).

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

f. A person commits a crime of the fourth degree if, in committing an offense under this section, he makes or causes to be made a communication or communications in violation of this section by electronic means, to persons other than the victim or in such manner that persons other than the victim may readily observe the communication or communications. For purposes of this subsection, "electronic means" shall have the same meaning as that term is defined in P.L.1993, c.291 (C.2C:13-6).

g. A person commits a crime of the third degree if he purposely commits an offense under this section which involves conduct that a reasonable person would believe is likely to cause another person to suffer bodily injury or extreme emotional distress. For purposes of this section, "extreme emotional distress" means mental suffering or distress of an extreme nature or degree such that it would significantly impair a reasonable person's ability to function normally.

(cf: P.L.2001, c.443, s.3)

2. This act shall take effect immediately.

## STATEMENT

This bill would upgrade the offense of harassment under certain circumstances and create a new type of harassment offense.

Under current law, set out in N.J.S.A.2C:33-4, a person is guilty of the petty disorderly persons offense of harassment if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

Under the bill, a person would also be guilty of harassment if he makes, or causes to be made, a communication which exposes or publicizes any secret or any asserted fact, whether true or false, tending to subject another person to hatred, contempt or ridicule. The bill also adds new language to the provision concerning “any other course of alarming conduct or of repeatedly committed acts” in current law, providing that a person is guilty of harassment if the purpose is to embarrass or humiliate the other person.

Currently, it is a crime of the fourth degree to commit harassment while serving a term of imprisonment or while on parole or probation as a result of a conviction of an indictable offense.

The bill would add two new harassment crimes.

(1) The bill provides that a person is guilty of a crime of the fourth degree if, in committing a harassment offense, he makes or causes to be made a communication in violation of N.J.S.A.2C:33-4 by electronic means, to persons other than the victim or in such manner that persons other than the victim may readily observe the communication.

(2) The bill makes it a crime of the third degree to purposely commit a harassment offense which involves conduct that a reasonable person would believe is likely to cause another person to suffer bodily injury or extreme emotional distress. The bill defines “extreme emotional distress” as mental suffering or distress of an extreme nature or degree such that it would significantly impair a reasonable person's ability to function normally.

This bill is part of the Attorney General's initiative concerning Internet safety.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF NEW JERSEY. A. 3328, 214TH LEG., 1ST SESS. (N.J. 2010). UPGRADES HARASSMENT UNDER CERTAIN CIRCUMSTANCES; RESTRICTS CYBERBULLYING OFFENDERS' ACCESS TO THE INTERNET**

*Bill Status: In Assembly Judiciary Committee as of 10/07/2010*

An Act concerning cyberbullying, amending various parts of the statutory law and supplementing Title 2C.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. (New section) a. In the case of a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for a violation of subsection f. of N.J.S.2C:33-4 or section 1 of P.L.1992, c.209 (C.2C:12-10), and where the trier of fact makes a finding that a computer or any other device with Internet capability was used to facilitate the commission of the offense the court may, in addition to any other

disposition, order the following Internet access conditions:

(1) Prohibit the person from accessing or using a computer or any other device with Internet capability without the prior written approval of the court except, if such person is on probation or parole, the person may use a computer or any other device with Internet capability in connection with that person's employment or search for employment with the prior approval of the person's probation or parole officer;

(2) Require the person to submit to periodic unannounced examinations of the person's computer or any other device with Internet capability by a probation officer, parole officer, law enforcement officer or assigned computer or information technology specialist, including the retrieval and copying of all data from the computer or device and any internal or external peripherals and removal of such information, equipment or device to conduct a more thorough inspection;

(3) Require the person to submit to the installation on the person's computer or device with Internet capability, at the person's expense, one or more hardware or software systems to monitor the Internet use; and

(4) Require the person to submit to any other appropriate restrictions concerning the person's use or access of a computer or any other device with Internet capability.

b. A person who fails to comply with the Internet access conditions set forth in this section shall be guilty of a crime of the fourth degree.

c. The appropriate agency heads shall promulgate guidelines which set forth standards to guide agency action in regard to the specific Internet access conditions which may be imposed on a person pursuant to the provisions of this act.

2. N.J.S.2C:33-4 is amended to read as follows:  
2C:33-4. Harassment.

Except as provided in [subsection e.] subsections e. and f., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c.443).

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

f. A person commits a crime of the fourth degree if he commits an offense under subsection a. of this section and the victim is a person under the age of 18 or one who the person reasonably believes to be under the age of 18.

(cf: P.L.2001, c.443, s.3)

3. N.J.S.2C:45-1 is amended to read as follows:

2C:45-1. Conditions of Suspension or Probation.

a. When the court suspends the imposition of sentence on a person who has been convicted of an offense or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or is likely to assist him to do so. These conditions may be set forth in a set of standardized conditions promulgated by the county probation department and approved by the court.

b. The court, as a condition of its order, may require the defendant:

(1) To support his dependents and meet his family responsibilities;

(2) To find and continue in gainful employment;

(3) To undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;

(4) To pursue a prescribed secular course of study or vocational training;

(5) To attend or reside in a facility established for the instruction, recreation or residence of persons on probation;

(6) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(7) Not to have in his possession any firearm or other dangerous weapon unless granted written permission;

(8) (Deleted by amendment, P.L.1991, c.329);

(9) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;

(10) To report as directed to the court or the probation officer, to permit the officer to visit his home, and to answer all reasonable inquiries by the probation officer;

(11) To pay a fine;

(12) To satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience;

(13) To require the performance of community-related service; and

(14) To be subject to Internet access conditions pursuant to paragraph (2) of subsection d. of this section.

In addition to any condition of probation, the court may enter an order prohibiting a defendant who is convicted of a sex offense from having any contact with the victim including, but not limited to, entering the victim's residence, place of employment or business, or school, and from harassing or stalking the victim or victim's relatives in any way, and may order other protective relief as provided in section 2 of P.L.2007, c.133 (C.2C:14-12).

c. The court, as a condition of its order, shall require the defendant to pay any assessments required by section 2 of P.L.1979, c.396 (C.2C:43-3.1) and shall, consistent with the applicable provisions of N.J.S.2C:43-3, N.J.S.2C:43-4 and N.J.S.2C:44-2 or section 1 of P.L.1983, c.411 (C.2C:43-2.1) require the defendant to make restitution.

d. (1) In addition to any condition imposed pursuant to subsection b. or c., the court shall order a person placed on probation to pay a fee, not exceeding \$25.00 per month for the probationary term, to probation services for use by the State, except as provided in subsection g. of this section. This fee may be waived in cases of indigency upon application by the chief probation officer to the sentencing court.

(2) In addition to any conditions imposed pursuant to subsection b. or c., the court may order a person who has been convicted or adjudicated delinquent of a sex offense as defined in subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-2), and who is required to register as provided in subsections c. and d. of section 2 of P.L.1994, c.133 (C.2C:7-2), or who has been convicted or adjudicated delinquent for a violation of N.J.S.2C:34-3, subsection f. of N.J.S.2C:33-4, or section 1 of P.L.1992, c.209 (C.2C:12-10) to be subject to any of the following Internet access conditions:

(a) Prohibit the person from accessing or using a computer or any other device with Internet capability without the prior written approval of the court, except the person may use a computer or any other device with Internet capability in connection with that person's employment or search for employment with the prior approval of the person's probation officer;

(b) Require the person to submit to periodic unannounced examinations of the person's computer or any other device with Internet capability by a probation officer, law enforcement officer or assigned computer or information technology specialist, including the retrieval and copying of all data from the computer or device and any internal or external peripherals and removal of such information, equipment or device to conduct a more thorough inspection;

(c) Require the person to submit to the installation on the person's computer or device with Internet capability, at the person's expense, one or more hardware or software systems to monitor the Internet use; and

(d) Require the person to submit to any other appropriate restrictions concerning the person's use or access of a computer or any other device with Internet capability.

e. When the court sentences a person who has been convicted of a crime to be placed on probation, it may require him to serve a term of imprisonment not exceeding 364 days as an additional condition of its order. When the court sentences a person convicted of a disorderly persons offense to be placed on probation, it may require him to serve a term of imprisonment not exceeding 90 days as an additional condition of its order. In imposing a term of imprisonment pursuant to this subsection, the sentencing court shall specifically place on the record the reasons which justify the sentence imposed. The term of imprisonment imposed hereunder shall be treated as part of the sentence, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent sentence. A term of imprisonment imposed under this section shall be governed by the "Parole Act of 1979," P.L.1979, c.441 (C.30:4-123.45 et al.).

Whenever a person is serving a term of parole as a result of a sentence of incarceration imposed as a condition of probation, supervision over that person shall be maintained pursuant to the provisions of the law governing parole. Upon termination of the period of parole supervision provided by law, the county probation department shall assume responsibility for supervision of the person under sentence of probation. Nothing contained in this section shall prevent the sentencing court from at any time proceeding under the provisions of this chapter against any person for a violation of probation.

f. The defendant shall be given a copy of the terms of his probation or suspension of sentence and any requirements imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly. The defendant shall acknowledge, in writing, his receipt of these documents and his consent to their terms.

g. Of the moneys collected under the provisions of subsection d. of this section, \$15.00 of each monthly fee collected before January 1, 1995 shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275, and \$10.00 of each shall be deposited into a "Community Service Supervision Fund" which shall be established by each county. The moneys in the "Community Service Supervision Fund" shall be expended only in accordance with the provisions of State law as shall be enacted to provide for expenditures from this fund for the purpose of supervising and monitoring probationers performing community service to ensure, by whatever means necessary and appropriate, that probationers are performing the community service ordered by the court and that the performance is in the manner and under the terms ordered by the court.

(cf: P.L.2007, c.219, s.4)

4. Section 15 of P.L.1979, c.441 (C.30:4-123.59) is amended to read as follows:

15. a. Each adult parolee shall at all times remain in the legal custody of the Commissioner of Corrections and under the supervision of the State Parole Board and each juvenile parolee shall at all times remain in the legal custody of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170), except that the Commissioner of Corrections or the Executive Director of the Juvenile Justice Commission, after providing notice to the Attorney General, may consent to the supervision of a parolee by the federal government pursuant to the Witness Security Reform Act, Pub.L.98-473 (18 U.S.C. s.3521 et seq.). An adult parolee, except those under the Witness Security Reform Act, shall remain under the supervision of the State Parole Board and in the legal custody of the Department of Corrections, and a juvenile parolee, except those under the Witness Security Reform Act, shall remain under the supervision of the Juvenile Justice Commission, as appropriate, in accordance with the policies and rules of the board.

b. (1) Each parolee shall agree, as evidenced by his signature to abide by specific conditions of parole established by the appropriate board panel which shall be enumerated in writing in a certificate of parole and shall be given to the parolee upon release. Such conditions shall include, among other things, a requirement that the parolee conduct himself in society in compliance with all laws and refrain from committing any crime, a requirement that the parolee will not own or possess any firearm as defined in subsection f. of N.J.S.2C:39-1 or any other weapon enumerated in subsection r. of N.J.S.2C:39-1, a requirement that the parolee refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.2C:35-2 and N.J.S.2C:35-11, a requirement that the parolee obtain permission from his parole officer for any change in his residence, and a requirement that the parolee report at reasonable intervals to an assigned parole officer. In addition, based on prior history of the parolee or information provided by a victim or a member of the family of a murder victim, the member or board panel certifying parole release pursuant to section 11 of P.L.1979, c.441 (C.30:4-123.55) may impose any other specific conditions of parole deemed reasonable in order to reduce the likelihood of recurrence of criminal or delinquent behavior, including a requirement that the parolee comply with the Internet access conditions set forth in paragraph (2) of

this subsection. Such special conditions may include, among other things, a requirement that the parolee make full or partial restitution, the amount of which restitution shall be set by the sentencing court upon request of the board. In addition, the member or board panel certifying parole release may, giving due regard to a victim's request, impose a special condition that the parolee have no contact with the victim, which special condition may include, but need not be limited to, restraining the parolee from entering the victim's residence, place of employment, business or school, and from harassing or stalking the victim or victim's relatives in any way. Further, the member, board panel or board certifying parole release may impose a special condition that the person shall not own or possess an animal for an unlawful purpose or to interfere in the performance of duties by a parole officer.

(2) In addition, the member or board panel certifying parole release may impose on any person who has been convicted or adjudicated delinquent for the commission of a sex offense as defined in subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-2), and who is required to register as provided in subsections c. and d. of section 2 of P.L.1994, c.133 (C.2C:7-2), or who has been convicted or adjudicated delinquent for a violation of N.J.S.2C:34-3, subsection f. of N.J.S.2C:33-4, or section 1 of P.L.1992, c.209 (C.2C:12-10) any of the following Internet access conditions:

(a) Prohibit the person from accessing or using a computer or any other device with Internet capability without the prior written approval of the court, except the person may use a computer or any other device with Internet capability in connection with that person's employment or search for employment with the prior approval of the person's parole officer;

(b) Require the person to submit to periodic unannounced examinations of the person's computer or any other device with Internet capability by a parole officer, law enforcement officer or assigned computer or information technology specialist, including the retrieval and copying of all data from the computer or device and any internal or external peripherals and removal of such information, equipment or device to conduct a more thorough inspection;

(c) Require the person to submit to the installation on the person's computer or device with Internet capability, at the person's expense, one or more hardware or software systems to monitor the Internet use; and

(d) Require the person to submit to any other appropriate restrictions concerning the person's use or access of a computer or any other device with Internet capability.

c. The appropriate board panel may in writing relieve a parolee of any parole conditions, and may permit a parolee to reside outside the State pursuant to the provisions of the Uniform Act for Out-of-State Parolee Supervision (N.J.S.2A:168-14 et seq.), the Interstate Compact on Juveniles, P.L.1955, c.55 (C.9:23-1 to 9:23-4), and, with the consent of the Commissioner of the Department of Corrections or the Executive Director of the Juvenile Justice Commission after providing notice to the Attorney General, the



federal Witness Security Reform Act, if satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense which would be a crime under the laws of this State. The appropriate board panel may revoke such permission, except in the case of a parolee under the Witness Security Reform Act, or reinstate relieved parole conditions for any period of time during which a parolee is under its jurisdiction.

d. The appropriate board panel may parole an inmate to any residential facility funded in whole or in part by the State if the inmate would not otherwise be released pursuant to section 9 of P.L.1979, c.441 (C.30:4-123.53) without such placement. But if the residential facility provides treatment for mental illness or mental retardation, the board panel only may parole the inmate to the facility pursuant to the laws and admissions policies that otherwise govern the admission of persons to that facility, and the facility shall have the authority to discharge the inmate according to the laws and policies that otherwise govern the discharge of persons from the facility, on 10 days' prior notice to the board panel. The board panel shall acknowledge receipt of this notice in writing prior to the discharge. Upon receipt of the notice the board panel shall resume jurisdiction over the inmate.

e. Parole officers shall provide assistance to the parolee in obtaining employment, education or vocational training or in meeting other obligations to assure the parolee's compliance with meeting legal requirements related to sex offender notification, address changes and participation in rehabilitation programs as directed by the assigned parole officer.

f. The board panel on juvenile commitments and the assigned parole officer shall insure that the least restrictive available alternative is used for any juvenile parolee.

g. If the board has granted parole to any inmate from a State correctional facility or juvenile facility and the court has imposed a fine on such inmate, the appropriate board panel shall release such inmate on condition that the parolee make specified fine payments to the State Parole Board or the Juvenile Justice Commission. For violation of such conditions, or for violation of a special condition requiring restitution, parole may be revoked only for refusal or failure to make a good faith effort to make such payment.

h. Upon collection of the fine the same shall be paid over by the Department of Corrections or by the Juvenile Justice Commission to the State Treasury.

(cf: P.L.2007, c.219, s.5)

5. This act shall take effect immediately and shall apply to any person who commits an offense after the effective date of this act and to any person who is under probation or parole supervision on the effective date of this act.

STATEMENT

This bill would restrict Internet access for offenders who are convicted of harassment of a minor or of stalking, when the offense is committed using an Internet-capable device. These offenses are commonly referred to as “cyberbullying.”

Section 1 would supplement Title 2C to provide that, in sentencing an offender found to have committed harassment in violation of subsection a. of N.J.S.2C:33-4 or stalking in violation of N.J.S.A.2C:12-10, the court may impose certain restrictions on Internet access. The bill would require the appropriate agency heads to promulgate guidelines regarding the specific Internet restrictions that may be imposed on an offender. Failure to comply with these restrictions would be a crime of the fourth degree.

Section 2 of the bill would amend N.J.S.2C:33-4 to upgrade the crime of harassment under certain circumstances from a petty disorderly persons offense to a crime of the fourth degree. Under the bill, a person would be guilty of a crime of the fourth degree if that person makes a communication “in a manner likely to cause annoyance or alarm” and the victim is either under the age of eighteen or when the offender reasonably believes the victim to be under the age of eighteen. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000 or both.

Sections 3 and 4 of the bill would amend N.J.S.A.2C:45-1, concerning probation, and N.J.S.A.30:4-123.59, concerning parole, to subject these “cyberbullying” offenders to Internet access restrictions as a condition of parole or probation.

The restrictions imposed on Internet access would be as follows: prior court approval for the use of any Internet-capable device, except where the device is used in connection with employment or the search for employment; periodic, unannounced inspections of the offender's Internet-capable device by approved court and law enforcement officers, which would include copying and removal of data from the device for a more thorough inspection; the mandatory installation of equipment to monitor Internet usage on the device; and any other appropriate restrictions.

The provisions of this bill would become effective immediately and apply to any person who commits an offense after the effective date of the bill or who is under probation or parole supervision at that time.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF NEW JERSEY. A. 3409, 214TH LEG., 1ST SESS. (N.J. 2010). MAKES HARASSMENT BY ELECTRONIC MEANS A CRIME OF THE FOURTH DEGREE**

*Bill Status: In Assembly Judiciary Committee as of 10/18/2010*

An Act concerning cyberbullying and amending N.J.S.2C:33-4.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:33-4 is amended to read as follows:  
2C:33-4. Harassment.

Except as provided in [subsection e.] subsections e. and f., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

- a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
- b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
- c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c.443).

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

f. A person commits a crime of the fourth degree if he makes a communication or communications under subsection a. of this section by electronic means. For purposes of this subsection, "electronic means" includes but is not limited to any communications conveyed by any electronic communication device, which includes but is not limited to, a wire, radio, electromagnetic, photoelectric or photo-optical system, telephone, including a cordless, cellular or digital telephone, computer, video recorder, fax machine, pager, or any other means of transmitting voice or data.

(cf: P.L.2001, c.443, s.3)

2. This act shall take effect immediately and shall apply to any offense committed on or after the effective date of this act.

#### STATEMENT

This bill is intended to address the problem of cyberbullying. It would amend N.J.S.2C:33-4 to upgrade the crime of harassment under certain circumstances from a petty disorderly persons offense to a crime of the fourth degree.

Under current law, a person is guilty of the petty disorderly persons offense of harassment if, among other acts, he “makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm.”

Under the bill, it would be a crime of the fourth degree to commit the act of harassment by electronic means. The bill defines “electronic means” as including but not limited to any communications conveyed by any electronic communication device, which includes but is not limited to, a wire, radio, electromagnetic, photoelectric or photo-optical system, telephone, including a cordless, cellular or digital telephone, computer, video recorder, fax machine, pager, or any other means of transmitting voice or data.

A disorderly persons offense is punishable by a term of imprisonment of up to 30 days, a fine of up to \$500, or both. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000 or both.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF NEW JERSEY. S. 1562, 214TH LEG., 1ST SESS. (N.J. 2010).**  
**UPGRADES CRIME OF STALKING WHEN VICTIM IS LESS THAN 18 YEARS OLD**

*Bill Status: In Senate Judiciary Committee as of 03/04/2010*

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1992, c.209 (C.2C:12-10) is amended to read as follows:

1. a. As used in this act:

(1) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

(2) "Repeatedly" means on two or more occasions.

(3) "Immediate family" means a spouse, parent, child, sibling or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.

b. A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or a member of his immediate family or to fear the death of himself or a member of his immediate family.

c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.

d. A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.

e. A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.

f. This act shall not apply to conduct which occurs during organized group picketing.

**g. A person is guilty of a crime of the third degree if he commits the crime of stalking on a victim who is less than 18 years old.**

(cf: P.L.2001, c.220, s.2)

2. This act shall take effect immediately.

#### STATEMENT

This bill would upgrade the crime of stalking from a crime of the fourth degree to a crime of the third degree if the victim was less than 18 years old. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000 or both.

## NEW MEXICO

### **N.M. STAT. ANN. § 30-3A-2 (2010). HARASSMENT; PENALTIES**

A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

B. Whoever commits harassment is guilty of a misdemeanor.

### **N.M. STAT. ANN. § 30-3A-3 (2010). STALKING; PENALTIES**

A. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.

B. As used in this section:

(1) “lawful authority” means within the scope of lawful employment or constitutionally protected activity; and

(2) “pattern of conduct” means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.

C. Whoever commits stalking is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth degree felony.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person's own expense or a domestic violence offender treatment or intervention program.

## **NEW YORK**

### **N.Y. PENAL LAW § 240.30 (2011). AGGRAVATED HARASSMENT IN THE SECOND DEGREE**

A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she:

1. Either (a) communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or

(b) causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or

2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or

3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or

4. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article

within the preceding ten years.

5. For the purposes of subdivision one of this section, “form of written communication” shall include, but not be limited to, a recording as defined in subdivision six of section 275.00 of this part.

Aggravated harassment in the second degree is a class A misdemeanor.

**N.Y. PENAL LAW § 240.31 (2011). AGGRAVATED HARASSMENT IN THE FIRST DEGREE**

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises exceeds fifty dollars; or
2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he or she has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years; or
3. Etches, paints, draws upon or otherwise places a swastika, commonly exhibited as the emblem of Nazi Germany, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property;
4. Sets on fire a cross in public view; or
5. Etches, paints, draws upon or otherwise places or displays a noose, commonly exhibited as a symbol of racism and intimidation, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property.

Aggravated harassment in the first degree is a class E felony.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF NEW YORK. A. 1205/S. 471, 234TH SESS. (N.Y. 2011). ADDS COMMUNICATION BY MEANS OF A ‘COMPUTER NETWORK’ TO AGGRAVATED HARASSMENT IN THE SECOND DEGREE**

*Bill Status: In Committee on Assembly Codes as of 01/05/2011; In Committee on Senate Codes as of 01/05/2011*

AN ACT to amend the penal law, in relation to adding by means of computer network to the crime of aggravated harassment in the second degree

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 240.00 of the penal law is amended by adding a new subdivision 7 to read as follows:

7. “Computer network” means (a) a set of related devices connected to a computer communications facility, or (b) a complex of two or more computers, including related devices, connected by communicated facilities.

§ 2. Section 240.30 of the penal law, as amended by chapter 510 of the laws of 2008, is amended to read as follows:

§ 240.30 Aggravated harassment in the second degree. A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she:

1. Either (a) communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or

(b) causes a communication to be initiated by mechanical or electronic means or computer network or otherwise with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or

2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or

3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or



4. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years.

5. For the purposes of subdivision one of this section, “form of written communication” shall include, but not be limited to, a recording as defined in subdivision six of section 275.00 of this part. Aggravated harassment in the second degree is a class A misdemeanor.

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

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF NEW YORK. A. 6982/S. 3070, 234TH SESS. (N.Y. 2011).**

**CURTAILS TRANSMISSION OF UNSOLICITED ELECTRONIC MAIL OVER PUBLIC COMPUTER NETWORKS**

*Bill Status: In Committee on Assembly Codes as of 04/07/2011; In Committee on Senate Codes as of 02/08/2011*

AN ACT to amend the penal law, in relation to aggravated harassment of an individual through electronic mail

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 240.30 of the penal law is amended by adding a new subdivision 1-a to read as follows:

**1-a. Transmits an electronic message over a computer network without the express authority of the recipient, when such message provides neither any purpose of legitimate communication nor any information to the recipient which would allow a direct reply to inform the sender of the annoyance; or**

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

## **NORTH CAROLINA**

**N.C. GEN. STAT. § 14-196 (2010). USING PROFANE, INDECENT OR THREATENING LANGUAGE TO ANY PERSON OVER TELEPHONE; ANNOYING OR HARASSING BY REPEATED TELEPHONING OR MAKING FALSE STATEMENTS OVER TELEPHONE**

(a) It shall be unlawful for any person:

- (1) To use in telephonic communications any words or language of a profane, vulgar, lewd, lascivious or indecent character, nature or connotation;
  - (2) To use in telephonic communications any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person;
  - (3) To telephone another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person at the called number;
  - (4) To make a telephone call and fail to hang up or disengage the connection with the intent to disrupt the service of another;
  - (5) To telephone another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct or criminal conduct of the person telephoned or of any member of his family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass;
  - (6) To knowingly permit any telephone under his control to be used for any purpose prohibited by this section.
- (b) Any of the above offenses may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received. For purposes of this section, the term "telephonic communications" shall include communications made or received by way of a telephone answering machine or recorder, telefacsimile machine, or computer modem.
- (c) Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

### **N.C. GEN. STAT. § 14-196.3 (2010). CYBERSTALKING**

(a) The following definitions apply in this section:

- (1) Electronic communication. -- Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.
- (2) Electronic mail. -- The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly.

**N.C. GEN. STAT. § 14-458.1 (2010). CYBER-BULLYING; PENALTY**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) With the intent to intimidate or torment a minor:

a. Build a fake profile or Web site;

b. Pose as a minor in:

1. An Internet chat room;

2. An electronic mail message; or

3. An instant message;
- c. Follow a minor online or into an Internet chat room; or
- d. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.

(2) With the intent to intimidate or torment a minor or the minor's parent or guardian:

- a. Post a real or doctored image of a minor on the Internet;
- b. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords; or
- c. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor.

(3) Plant any statement, whether true or false, tending to provoke or that actually provokes any third party to stalk or harass a minor.

(4) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(5) Sign up a minor for a pornographic Internet site.

(6) Without authorization of the minor or the minor's parent or guardian, sign up a minor for electronic mailing lists or to receive junk electronic messages and instant messages, resulting in intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber-bullying, which offense shall be punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the defendant is under the age of 18 at the time the offense is committed, the offense shall be punishable as a Class 2 misdemeanor.

(c) Whenever any person pleads guilty to or is guilty of an offense under this section, and the offense was committed before the person attained the age of 18 years, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require. Upon fulfillment of the terms and conditions of the probation provided for in this subsection, the court shall discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a

conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Upon discharge and dismissal pursuant to this subsection, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 15A-146.

## **NORTH DAKOTA**

### **N.D. CENT. CODE § 12.1-17-07 (2011). HARASSEMENT**

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:
  - a. Communicates in writing or by telephone a threat to inflict injury on any person, to any person's reputation, or to any property;
  - b. Makes a telephone call anonymously or in offensively coarse language;
  - c. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
  - d. Communicates a falsehood in writing or by telephone and causes mental anguish.
2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.
3. Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.
4. A person who telephones a 911 emergency line with the intent to annoy or harass another person or who makes a false 911 report is guilty of a class A misdemeanor.
  - a. Intent to annoy or harass is established by proof of one or more calls with no legitimate 911 purpose.
  - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.
5. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means.

### **N.D. CENT. CODE § 12.1-17-07.1 (2011). STALKING**

1. As used in this section:

a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.

b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.

c. "Stalk" means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment.

2. No person may intentionally stalk another person.

3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.

4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.

5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

6. a. A person who violates this section is guilty of a class C felony if:

(1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;

(2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or

(3) The person previously has been convicted of violating this section.

b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

## OHIO

### OHIO REV. CODE ANN. § 2903.211 (2011). MENACING BY STALKING

(A) (1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.

(2) No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (A)(1) of this section.

(3) No person, with a sexual motivation, shall violate division (A)(1) or (2) of this section.

(B) Whoever violates this section is guilty of menacing by stalking.

(1) Except as otherwise provided in divisions (B)(2) and (3) of this section, menacing by stalking is a misdemeanor of the first degree.

(2) Menacing by stalking is a felony of the fourth degree if any of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of this section or a violation of section 2911.211 of the Revised Code.

(b) In committing the offense under division (A)(1), (2), or (3) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (A)(2) or (3) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

(c) In committing the offense under division (A)(1), (2), or (3) of this section, the offender trespassed on the land or premises where the victim lives, is employed, or attends school, or as a result of an offense committed under division (A)(2) or (3) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

(d) The victim of the offense is a minor.

(e) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(f) While committing the offense under division (A)(1) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(1) of this

section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (B)(2)(f) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(2) of this section.

(g) At the time of the commission of the offense, the offender was the subject of a protection order issued under section 2903.213 or 2903.214 of the Revised Code, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(h) In committing the offense under division (A)(1), (2), or (3) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or as a result of an offense committed under division (A)(2) of this section or an offense committed under division (A)(3) of this section based on a violation of division (A)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

(i) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

(3) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing by stalking is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(C) Section 2919.271 of the Revised Code applies in relation to a defendant charged with a violation of this section.

(D) As used in this section:

(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or



the posting of messages or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct."

(2) "Mental distress" means any of the following:

(a) Any mental illness or condition that involves some temporary substantial incapacity;

(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section 2133.21 of the Revised Code.

(4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section 2909.04 of the Revised Code.

(5) "Public official" has the same meaning as in section 2921.01 of the Revised Code.

(6) "Computer," "computer network," "computer program," "computer system," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(7) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

(8) "Third person" means, in relation to conduct as described in division (A)(2) of this section, an individual who is neither the offender nor the victim of the conduct.

(9) "Sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.

(E) The state does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (D)(2)(b) of this section.

(F) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not

under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section.

(2) Division (F)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Division (F)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

**OHIO REV. CODE ANN. § 2917.21 (2011). TELECOMMUNICATIONS HARASSMENT**

(A) No person shall knowingly make or cause to be made a telecommunication, or knowingly permit a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:

(1) Fails to identify the caller to the recipient of the telecommunication and makes the telecommunication with purpose to harass or abuse any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient;

(2) Describes, suggests, requests, or proposes that the caller, the recipient of the telecommunication, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested, in a previous telecommunication or in the immediate telecommunication, that the caller not make a telecommunication to the recipient or to the premises to which the telecommunication is made;

(3) During the telecommunication, violates section 2903.21 of the Revised Code;

(4) Knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged;

(5) Knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.

(B) No 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.

(C)(1) Whoever violates this section is guilty of telecommunications harassment.

(2) A violation of division (A)(1), (2), (3), or (5) or (B) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(4) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. If a violation of division (A)(4) of this section results in economic harm of five hundred dollars or more but less than five thousand dollars, telecommunications harassment is a felony of the fifth degree. If a violation of division (A)(4) of this section results in economic harm of five thousand dollars or more but less than one hundred thousand dollars, telecommunications harassment is a felony of the fourth degree. If a violation of division (A)(4) of this section results in economic harm of one hundred thousand dollars or more, telecommunications harassment is a felony of the third degree.

(D) No cause of action may be asserted in any court of this state against any provider of a telecommunications service or information service, or against any officer, employee, or agent of a telecommunication service or information service, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section. A provider of a telecommunications service or information service, or an officer, employee, or agent of a telecommunications service or information service, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section.

(E) As used in this section:

(1) "Economic harm" means all direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct. "Economic harm" includes, but is not limited to, all of the following:

- (a) All wages, salaries, or other compensation lost as a result of the criminal conduct;
  - (b) The cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;
  - (c) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;
  - (d) The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.
- (2) “Caller” means the person described in division (A) of this section who makes or causes to be made a telecommunication or who permits a telecommunication to be made from a telecommunications device under that person's control.
- (3) “Telecommunication” and “telecommunications device” have the same meanings as in section 2913.01 of the Revised Code.
- (4) “Sexual activity” has the same meaning as in section 2907.01 of the Revised Code.
- (F) Nothing in this section prohibits a person from making a telecommunication to a debtor that is in compliance with the “Fair Debt Collection Practices Act,” 91 Stat. 874 (1977), 15 U.S.C. 1692, as amended, or the “Telephone Consumer Protection Act,” 105 Stat. 2395 (1991), 47 U.S.C. 227, as amended.

## **OKLAHOMA**

### **OKLA. STAT. tit. 21, § 1172 (2011). OBSCENE, THREATENING OR HARASSING TELECOMMUNICATION OR OTHER ELECTRONIC COMMUNICATIONS--PENALTY**

A. It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either:

1. Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent;
2. Makes a telecommunication or other electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person;
3. Makes a telecommunication or other electronic communication, whether or not conversation ensues, with intent to put the party called in fear of physical harm or death;

4. Makes a telecommunication or other electronic communication, whether or not conversation ensues, without disclosing the identity of the person making the call or communication and with intent to annoy, abuse, threaten, or harass any person at the called number;

5. Knowingly permits any telecommunication or other electronic communication under the control of the person to be used for any purpose prohibited by this section; and

6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s).

B. As used in this section, "telecommunication" and "electronic communication" mean any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet. The term includes:

1. A communication initiated by electronic mail, instant message, network call, or facsimile machine; and

2. A communication made to a pager.

C. Use of a telephone or other electronic communications facility under this section shall include all use made of such a facility between the points of origin and reception. Any offense under this section is a continuing offense and shall be deemed to have been committed at either the place of origin or the place of reception.

D. Except as provided in subsection E of this section, any person who is convicted of the provisions of subsection A of this section, shall be guilty of a misdemeanor.

E. Any person who is convicted of a second offense under this section shall be guilty of a felony.

### **OKLA. STAT. tit. 21, § 1173 (2011). STALKING--PENALTIES**

A. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:

1. Would cause a reasonable person or a member of the immediate family of that person as defined in subsection F of this section to feel frightened, intimidated, threatened, harassed, or molested; and

2. Actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested,

upon conviction, shall be guilty of the crime of stalking, which is a misdemeanor punishable by imprisonment in a county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$ 1,000.00), or by both such fine and imprisonment.

B. Any person who violates the provisions of subsection A of this section when:

1. There is a permanent or temporary restraining order, a protective order, an emergency ex parte protective order, or an injunction in effect prohibiting the behavior described in subsection A of this section against the same party, when the person violating the provisions of subsection A of this section has actual notice of the issuance of such order or injunction; or

2. Said person is on probation or parole, a condition of which prohibits the behavior described in subsection A of this section against the same party or under the conditions of a community or alternative punishment; or

3. Said person, within ten (10) years preceding the violation of subsection A of this section, completed the execution of sentence for a conviction of a crime involving the use or threat of violence against the same party, or against any member of the immediate family of such party,

upon conviction, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years or by a fine of not more than Two Thousand Five Hundred Dollars (\$ 2,500.00), or by both such fine and imprisonment.

C. Any person who commits a second act of stalking within ten (10) years of the completion of sentence for a prior conviction under subsection A of this section, upon conviction thereof, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years, or by a fine of not more than Two Thousand Five Hundred Dollars (\$ 2,500.00), or by both such fine and imprisonment.

D. Any person who commits an act of stalking within ten (10) years of the completion of execution of sentence for a prior conviction under subsection B or C of this section, shall, upon conviction thereof, be guilty of a felony punishable by a fine of not less than Two Thousand Five Hundred Dollars (\$ 2,500.00) nor more than Ten Thousand Dollars (\$ 10,000.00), or by imprisonment in the State Penitentiary for a term not exceeding ten (10) years, or by both such fine and imprisonment.

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact, as defined in subsection F of this section, with the victim after having been requested by the victim to discontinue the same or any other form of unconsented contact, and to refrain from any further unconsented contact with the victim, shall give rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or

molested.

F. For purposes of this section:

1. "Harasses" means a pattern or course of conduct directed toward another individual that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Harassment shall include harassing or obscene phone calls as prohibited by Section 1172 of this title and conduct prohibited by Section 850 of this title. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

2. "Course of conduct" means a pattern of conduct composed of a series of two (2) or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct";

3. "Emotional distress" means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling;

4. "Unconsented contact" means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the following:

- a. following or appearing within the sight of that individual,
- b. approaching or confronting that individual in a public place or on private property,
- c. appearing at the workplace or residence of that individual,
- d. entering onto or remaining on property owned, leased, or occupied by that individual,
- e. contacting that individual by telephone,
- f. sending mail or electronic communications to that individual,  
and
- g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual; and

5. "Member of the immediate family", for the purposes of this section, means any spouse, parent, child, person related within the third degree of consanguinity or affinity or

any other person who regularly resides in the household or who regularly resided in the household within the prior six (6) months.

**OKLA. STAT. tit. 21, § 1953 (2011). PROHIBITED ACTS**

A. It shall be unlawful to:

1. Willfully, and without authorization, gain or attempt to gain access to and damage, modify, alter, delete, destroy, copy, make use of, disclose or take possession of a computer, computer system, computer network or any other property;
2. Use a computer, computer system, computer network or any other property as hereinbefore defined for the purpose of devising or executing a scheme or artifice with the intent to defraud, deceive, extort or for the purpose of controlling or obtaining money, property, services or other thing of value by means of a false or fraudulent pretense or representation;
3. Willfully exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property;
4. Willfully and without authorization, gain or attempt to gain access to a computer, computer system, computer network or any other property;
5. Willfully and without authorization use or cause to be used computer services;
6. Willfully and without authorization disrupt or cause the disruption of computer services or deny or cause the denial of access or other computer services to an authorized user of a computer, computer system or computer network;
7. Willfully and without authorization provide or assist in providing a means of accessing a computer, computer system or computer network in violation of this section;
8. Willfully use a computer, computer system, or computer network to annoy, abuse, threaten, or harass another person; and
9. Willfully use a computer, computer system, or computer network to put another person in fear of physical harm or death.

B. Any person convicted of violating paragraph 1, 2, 3, 6, 7 or 9 of subsection A of this section shall be guilty of a felony punishable as provided in Section 1955 of this title.

C. Any person convicted of violating paragraph 4, 5 or 8 of subsection A of this section shall be guilty of a misdemeanor.



## **OREGON**

### **OR. REV. STAT. § 163.732 (2011). STALKING**

(1) A person commits the crime of stalking if:

(a) The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person;

(b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

(2)(a) Stalking is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, stalking is a Class C felony if the person has a prior conviction for:

(A) Stalking; or

(B) Violating a court's stalking protective order.

(c) When stalking is a Class C felony pursuant to paragraph (b) of this subsection, stalking shall be classified as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

### **OR. REV. STAT. § 166.065 (2011). HARASSMENT**

(1) A person commits the crime of harassment if the person intentionally:

(a) Harasses or annoys another person by:

(A) Subjecting such other person to offensive physical contact; or

(B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;

(b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

(c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person

or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.

(b) Harassment that is committed under the circumstances described in subsection (1)(c) of this section is committed in either the county in which the communication originated or the county in which the communication was received.

(3) Harassment is a Class B misdemeanor.

(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates:

(a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact and the offensive physical contact consists of touching the sexual or other intimate parts of the other person; or

(b) Subsection (1)(c) of this section and:

(A) The person has a previous conviction under subsection (1)(c) of this section and the victim of the current offense was the victim or a member of the family of the victim of the previous offense;

(B) At the time the offense was committed, the victim was protected by a stalking protective order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person from contacting the victim;

(C) At the time the offense was committed, the person reasonably believed the victim to be under 18 years of age and more than three years younger than the person; or

(D)(i) The person conveyed a threat to kill the other person or any member of the family of the other person;

(ii) The person expressed the intent to carry out the threat; and

(iii) A reasonable person would believe that the threat was likely to be followed by action.

(5) As used in this section, "electronic threat" means a threat conveyed by electronic mail, the Internet, a telephone text message or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means.

## PENNSYLVANIA

### **18 PA. CONS. STAT. ANN. § 2709 (2011). HARASSMENT**

**(a) Offense defined.**--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

- (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;
- (2) follows the other person in or about a public place or places;
- (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;
- (4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;
- (5) communicates repeatedly in an anonymous manner;
- (6) communicates repeatedly at extremely inconvenient hours; or
- (7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

(b) Deleted

#### **(b.1) Venue.--**

- (1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.
- (2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

#### **(c) Grading.--**

- (1) An offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.
- (2) (i) An offense under subsection (a)(4), (5), (6) or (7) shall constitute a misdemeanor of the third degree.

**(d) False reports.**--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

**(e) Application of section.**--This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L. 1198, No. 308), [FN1] known as the Labor Anti-Injunction Act, or to any constitutionally protected activity.

**(f) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Communicates.” Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

“Course of conduct.” A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

### **18 PA. CONS. STAT. ANN. § 2709.1 (2011). STALKING**

**(a) Offense defined.**--A person commits the crime of stalking when the person either:

(1) engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or

(2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

**(b) Venue.**--

(1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.

(2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

**(c) Grading.**--

(1) Except as otherwise provided for in paragraph (2), a first offense under this section shall constitute a misdemeanor of the first degree.

(2) A second or subsequent offense under this section or a first offense under subsection (a) if the person has been previously convicted of a crime of violence involving the same victim, family or household member, including, but not limited to, a violation of section 2701 (relating to simple assault), 2702 (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2901 (relating to kidnapping), 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), an order issued under section 4954 (relating to protective orders) or an order issued under 23 Pa.C.S. § 6108 (relating to relief) shall constitute a felony of the third degree.

**(d) False reports.**--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

**(e) Application of section.**--This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L. 1198, No. 308), [FN1] known as the Labor Anti-Injunction Act, or to any constitutionally protected activity.

**(f) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Communicates.” To convey a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

“Course of conduct.” A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

“Emotional distress.” A temporary or permanent state of mental anguish.

“Family or household member.” Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF PENNSYLVANIA. H.R. 583, 195TH GEN. ASSEM., REG. SESS. (PA. 2011). AN ACT AMENDING TITLE 18 (CRIMES AND OFFENSES) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, FURTHER PROVIDING FOR GRADING THE OFFENSE OF HARASSMENT**

*Bill Status: In House Committee on Judiciary as of 02/09/2011*

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for grading the offense of harassment.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2709(c) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2709. Harassment.

\* \* \*

(c) Grading.--

(1) An offense under subsection (a)(1), (2) or (3) shall constitute a summary offense, **and a second or subsequent offense shall constitute a misdemeanor of the third degree.**

(2) (†) An offense under subsection (a)(4), (5), (6) or (7) shall constitute a misdemeanor of the third degree, **and a second or subsequent offense shall constitute a misdemeanor of the second degree.**

\* \* \*

Section 2. This act shall take effect in 60 days.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF PENNSYLVANIA. H.R. 899, 195TH GEN. ASSEM., REG. SESS. (PA. 2011). AN ACT AMENDING TITLES 18 (CRIMES AND OFFENSES) AND 42 (JUDICIARY AND JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, FURTHER PROVIDING FOR HARASSMENT; AND PROVIDING FOR PEACE ORDERS**

*Bill Status: In House Committee on Judiciary as of 03/02/2011*

AN ACT

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for harassment; and providing for peace orders. The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2709 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2709. Harassment.

(a) Offense defined.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

(1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;

(2) follows the other person in or about a public place or places;

(3) engages in a course of conduct or repeatedly commits

acts which serve no legitimate purpose;

(4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;

(5) communicates repeatedly in an anonymous manner;

(6) communicates repeatedly at extremely inconvenient hours; or

(7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6);

**(8) engages in a course of conduct or repeatedly commits acts which cause a reasonable fear of injury; or**

**(9) damages premises primarily used for religious purposes or maintained for religious instruction and the damage to the premises exceeds \$50.** (b.1) Venue.-- (1)

An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.

(2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

(c) Grading.-- ~~(1) An offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.~~

~~(2) (i) An offense under subsection (a)(4), (5), (6) or (7) shall constitute a misdemeanor of the third degree.~~

**(1) An offense under subsection (a)(2) or (3), when done intentionally and repeatedly, shall constitute harassment in**

**the first degree and shall be punishable as a second degree misdemeanor.**

**(2) An offense under subsection (a)(1), (2) or (3), when done with an intent to harass, annoy or alarm another person, shall constitute harassment in the second degree and shall be punishable as a third degree misdemeanor.**

**(3) An offense shall be graded aggravated harassment in the second degree and punishable as a first degree misdemeanor if one of the following apply:**

**(i) An offense under subsection (a)(4), (5), (6) or (7), when done with the intent to harass, annoy, threaten or alarm another person.**

**(ii) An offense under subsection (a)(1), when committed due to a belief or perception, whether or not accurate, regarding the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.**

**(iii) An offense under paragraph (1), and a previous conviction of the crime of harassment within the preceding ten years.**

**(4) An offense shall be graded as aggravated harassment in the first degree, punishable as a third degree felony, if one of the following apply:**

**(i) An offense under subsection (a)(9), when done with the intent to harass, annoy, threaten or alarm another person because of a belief or perception regarding the victim, whether or not accurate, regarding the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.**

**(ii) A second or subsequent offense under paragraph (3) or (4) within ten years, when done with the intent to harass, annoy, threaten or alarm another person because of a belief or perception regarding the victim, whether or not accurate, regarding the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.**

**(5) A second or subsequent offense under subsection (a) (1), (2), (3), (4), (5), (6), (7), (8) or (9) shall be rebuttable proof of intent as required under paragraph (3) or (4).**

(d) False reports.--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

(e) Application of section.--This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L.1198, No.308), known as the Labor Anti-Injunction Act, or to any constitutionally protected activity.

(f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Communicates.” Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, **texting**, Internet, facsimile, telex, wireless communication or similar transmission.

“Course of conduct.” A pattern of actions composed of more than one act over a period of time, however short, evidencing a



continuity of conduct. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

\*

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF PENNSYLVANIA. H.R. 1535, 195TH GEN. ASSEM., REG. SESS. (PA. 2011). AN ACT AMENDING TITLES 18 (CRIMES AND OFFENSES) AND 42 (JUDICIARY AND JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, IN ASSAULT, FURTHER PROVIDING FOR THE OFFENSE OF HARASSMENT; AND PROVIDING FOR PEACE ORDERS**

*Bill Status: In House Committee on Judiciary as of 05/11/2011*

AN ACT

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in assault, further providing for the offense of harassment; and providing for peace orders.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2709(a), (c) and (f) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 2709. Harassment.

(a) Offense defined.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

(1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;

(2) follows the other person in or about a public place or places;

(3) engages in a course of conduct or repeatedly commits

acts which serve no legitimate purpose;

(4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;

(5) communicates repeatedly in an anonymous manner;

(6) communicates repeatedly at extremely inconvenient hours; ~~or~~

(7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6);

**(8) engages in a course of conduct or repeatedly commits acts which cause a reasonable fear of injury; or**

**(9) damages premises primarily used for religious purposes or maintained for religious instruction and the damage to the premises exceeds \$50. \* \* \* (c) Grading.--**

**(1) An offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.**

**(2) (i) An offense under subsection (a)(4), (5), (6) or (7) shall constitute a misdemeanor of the third degree.**

**(1) An offense under subsection (a)(2) or (3), when done intentionally and repeatedly, shall constitute harassment in the first degree and shall be punishable as a second degree misdemeanor.**

**(2) An offense under subsection (a)(1), (2) or (3), when done with an intent to harass, annoy or alarm another person, shall constitute harassment in the second degree and shall be punishable as a third degree misdemeanor.**

**(3) An offense shall be graded aggravated harassment in the second degree and punishable as a first degree**

**misdemeanor if one of the following apply:**

**(i) An offense under subsection (a)(4), (5), (6) or (7), when done with the intent to harass, annoy, threaten or alarm another person.**

**(ii) An offense under subsection (a)(1), when committed due to a belief or perception, whether or not accurate, regarding the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.**

**(iii) An offense under paragraph (1), and a previous conviction of the crime of harassment within the preceding ten years.**

**(4) An offense shall be graded as aggravated harassment in the first degree, punishable as a third degree felony, if one of the following apply:**

**(i) An offense under subsection (a)(9), when done with the intent to harass, annoy, threaten or alarm another person because of a belief or perception regarding the victim, whether or not accurate, regarding the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.**

**(ii) A second or subsequent offense under paragraph (3) or (4) within ten years, when done with the intent to harass, annoy, threaten or alarm another person because of a belief or perception regarding the victim, whether or not accurate, regarding the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.**

**(5) A second or subsequent offense under subsection (a)**

**(1), (2), (3), (4), (5), (6), (7), (8) or (9) shall be rebuttable proof of intent as required under paragraph (3) or (4).** \* \* \* (f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Communicates.” Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, **texting**, Internet, facsimile, telex, wireless communication or similar transmission.

“Course of conduct.” A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

## **RHODE ISLAND**

### **R.I. GEN. LAWS § 11-52-4.2 (2010). CYBERSTALKING AND CYBERHARASSMENT PROHIBITED**

(a) Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his or her family is guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$ 500), by imprisonment for not more than one year, or both. For the purpose of this section, "harassing" means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose. The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(b) A second or subsequent conviction under subsection (a) of this section shall be deemed a felony punishable by imprisonment for not more than two (2) years, by a fine of not more than six thousand dollars (\$ 6,000), or both.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF RHODE ISLAND. H.R. 5808/S. 733, 2011 LEG., JAN. SESS. (R.I. 2011). AN ACT RELATING TO CRIMINAL OFFENSES – COMPUTER CRIME**

*Bill Status: House Judiciary Committee Recommended Measure be Held for Further Study; Placed on Senate Calendar on 06/27/2011*

It is enacted by the General Assembly as follows:

SECTION 1. Section 11-52-4.2 of the General Laws in Chapter 11-52 entitled "Computer Crime" is hereby repealed.

**11-52-4.2. Cyberstalking and cyberharassment prohibited.** -- (a) Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his or her family is guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500), by imprisonment for not more than one year, or both. For the purpose of this section, "harassing" means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose. The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." (b) A second or subsequent conviction under subsection (a) of this section shall be deemed a felony punishable by imprisonment for not more than two (2) years, by a fine of not more than six thousand dollars (\$6,000), or both.

SECTION 2. Chapter 11-52 of the General Laws entitled "Computer Crime" is hereby amended by adding thereto the following sections:

**11-52-3.1. Unauthorized access to confidential information.** -- Whoever intentionally, without authorization, or in excess of one's authorization, directly or indirectly accesses a protected computer, computer program, computer system, or computer network with the intent to either view, obtain, copy, or download any confidential information or data contained in or stored on such computer, computer program, computer system, or computer network, shall be guilty of a felony and shall be subject to the penalties set forth in section 11-52-5.

**11-52-4.4. Cyberstalking and cyberharassment prohibited.** -- (a) As used in this section the following terms shall have the following meanings:

(1) "Conduct" means either:

(i) A single act which causes a person to be repeatedly contacted by others in a manner which seriously alarms, annoys, or bothers the person; or (ii) Two (2) or more acts over a period of time, evidencing a continuity of purpose, which seriously alarms, annoys, or bothers the person.

(2) "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who, within the prior six (6) months, regularly resided in the household.

(3) "Harass" means to engage in intentional conduct that serves no legitimate purpose that would cause a reasonable person to suffer substantial emotional

distress, or be in fear of bodily injury. The term does not include constitutionally protected activity.

(4) "Computer" has the meaning given to that term in section 11-52-1.

(5) "Telecommunication device" means an analog or digital electronic device that processes data, telephony, video, or sound transmission as part of any system involved in the sending and/or receiving at a distance of voice, sound, data, and/or video transmissions.

(b) Whoever, by computer or telecommunication device, harasses another person or causes any person to be contacted for the purpose of harassing that person or his or her immediate family is guilty of a misdemeanor and may be subject to imprisonment for not more than one year or fined not more than five hundred dollars (\$500), or both.

(c) A second or subsequent conviction under subsection (b) of this section shall be deemed a felony subject to imprisonment for not more than two (2) years, or a fine of not more than six thousand dollars (\$6,000), or both.

(d) If a person accused under this section claims to have been engaged in constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

**11-52-7.1. Online impersonation.** -- (a) As used in this section the following terms shall have the following meanings:

(1) "Commercial social networking site" means a business, organization or other similar entity that operates a website and permits persons to become registered users for the purpose of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users.

(2) "Electronic mail" means an electronic mail message sent through the use of an electronic mail program or a message board program.

(3) "Identifying information" means information that alone or in conjunction with other information identifies a person, including a person's:

(i) Name, social security number, date of birth, or government-issued identification number;

(ii) Unique biometric data, including the person's fingerprint, voice print or retina or iris image;

(iii) Unique electronic identification number, electronic mail address, routing code or financial institution account number; and

**(iv) Telecommunication identifying information or access device.**

**(4) “Public official” means a person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative, or judicial branch of the state or any political subdivision thereof.**

**(b) A person commits the crime of online impersonation if the person:**

**(1) Uses the name or persona of another person to create a web page on or to post one or more messages on a commercial social networking site or sends an electronic mail, instant message, text message or similar communication without obtaining the other person's consent and with the intent to harm, defraud, intimidate or threaten any person;**

**(2) Sends an electronic mail, instant message, text message or similar communication that references a name, domain address, telephone number or other item of identifying information belonging to any person without obtaining the other person's consent, with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication and with the intent to harm or defraud any person; or (3) Uses the name or persona of a public official to create a web page on or to post one or more messages on a commercial social networking site or sends an electronic mail, instant message, text message or similar communication without obtaining the public official's consent and with the intent to induce another to submit to such pretended official authority, to solicit funds or otherwise to act in reliance upon that pretense to the other person's detriment.**

**(c) Whoever violates this section shall be guilty of a felony and subject to imprisonment for not more than three (3) years or fined not more than two thousand dollars (\$2,000), or both.**

SECTION 3. Section 11-64-1 of the General Laws in Chapter 11-64 entitled “Electronic Imaging Devices” is hereby amended to read as follows:

**11-64-1. Definitions.** -- (1) For the purposes of this section the following definitions apply:

(a) “Disseminate” means to make available by any means to any person.

(b) “Imaging Device” means any electronic instrument capable of capturing, recording, storing or transmitting visual images.

(c) “Intimate areas” means the naked or undergarment clad genitals, pubic area, buttocks, or any portion of the female breast below the top of the areola of a person which the person intended to be protected from public view.

(d) “Legal entity” means any partnership, firm, association, corporation or any agent or servant thereof.

(e) "Publish" means to:

(i) Disseminate with the intent that such image or images be made available by any means to any person or other legal entity;

(ii) Disseminate with the intent such images be sold by another person or legal entity;

(iii) Post, present, display, exhibit, circulate, advertise or allow access by any means, so as to make an image or images available to the public; or (iv) Disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means, and to make such images available to the public.

(f) "Sell" means to disseminate to another person, or to publish, in exchange for something of value.

**(g) "Sexually explicit conduct" means actual:**

**(i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, or lascivious sexual intercourse where the genitals, or pubic area of any person is exhibited;**

**(ii) Bestiality;**

**(iii) Masturbation; or (iv) Sadistic or masochistic abuse.**

SECTION 4. Chapter 11-9 of the General Laws entitled "Children" is hereby amended by adding thereto the following sections:

**11-9-1.4. Minor electronically disseminating indecent material to another person "Sexting" prohibited. '1 (a) As used in this section the following terms shall have the following meanings:**

**(1) "Minor" means any person not having reached eighteen (18) years of age;**

**(2) "Computer" has the meaning given to that term in section 11-52-1;**

**(3) "Telecommunication device" means an analog or digital electronic device that processes data, telephony, video, or sound transmission as part of any system involved in the sending and/or receiving at a distance of voice, sound, data, and/or video transmissions;**

**(4) "Indecent visual depiction" means any digital image or digital video of the minor engaging in sexually explicit conduct, and includes data stored on any computer, telecommunication device, or other electronic storage media that is capable of conversion into a visual image;**

**(5) “Sexually explicit conduct” means actual masturbation or graphic focus on or lascivious exhibition of the nude genitals or pubic area of the minor or the nude breast or breasts of the minor, if the minor is a female.**

**(b) No minor shall knowingly and voluntarily and without threat or coercion use a computer or telecommunication device to transmit an indecent visual depiction of himself or herself to another person.**

**(c) A violation of this section shall be a status offense and referred to the family court.**

**(d) Any minor adjudicated under subsection (b) shall not be charged under section 11-9-1.3 and, further, shall not be subject to sex offender registration requirements set forth in section 11-37.1-1 et seq., entitled “Sexual Offender Registration and Community Notification Act.” 11-9-1.5. Electronically disseminating indecent material to minors prohibited. -- (a) As used in this section the following terms shall have the following meanings:**

**(1) “Minor” means any person not having reached eighteen (18) years of age.**

**(2) “Computer” has the meaning given to that term in section 11-52-1.**

**(3) “Telecommunication device” means an analog or digital electronic device that processes data, telephony, video, or sound transmission as part of any system involved in the sending and/or receiving at a distance of voice, sound, data, and/or video transmissions.**

**(4) “Indecent visual depiction” means any digital image or digital video depicting one or more persons engaging in sexually explicit conduct, and includes:**

**(i) Data stored on any computer, telecommunication device, or other electronic storage media that is capable of conversion into a visual image; or (ii) Digital video depicting sexually explicit conduct transmitted live over a computer online service, Internet service, or local electronic bulletin board service.**

**(5) “Sexually explicit conduct” means actual:**

**(i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, or lascivious sexual intercourse where the genitals or pubic area of any person is exhibited;**

**(ii) Bestiality;**

**(iii) Masturbation;**

**(iv) Sadistic or masochistic abuse; or (v) Graphic or lascivious exhibition of the genitals or pubic area of any person.**



**(b) No person shall knowingly and intentionally use a computer or telecommunication device to transmit an indecent visual depiction to a person he or she knows is, or believes to be, a minor.**

**(c) No minor shall be charged under this section if his or her conduct falls within section 11-9-1.4, "Minor Electronically Disseminating Indecent Material to Another Person "Sexting" Prohibited." (d) The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.**

**(e) Any person who violates the provisions of this section shall be subject to sex offender registration requirements set forth in section 11-37.1-1 et seq., entitled "Sexual Offender Registration and Community Notification Act." (f) Any person who violates the provisions of this section shall be guilty of a felony and may be imprisoned for not more than five (5) years or fined not more than five thousand dollars (\$5,000), or both.**

SECTION 5. Chapter 11-64 of the General Laws entitled "Electronic Imaging Devices" is hereby amended by adding thereto the following section:

**11-64-3. Unauthorized dissemination of indecent material. -- (a) A person is guilty of unauthorized dissemination of indecent material when such person uses an imaging device to capture, record, or store visual images of another person engaged in sexually explicit conduct or of the intimate areas of another person, with or without that other person's knowledge and consent under circumstances in which that other person would have a reasonable expectation of privacy and, thereafter, without the consent of the person or all persons depicted in the visual image, intentionally disseminates, publishes, or sells such visual image or images.**

**(b) Constitutionally protected activity is not subject to the provisions of this section.**

**(c) Any person who violates the provisions of this section shall not be subject to sex offender registration requirements set forth in section 11-37.1-1 et seq., entitled "Sexual Offender Registration and Community Notification Act." (d) Any person who violates the provisions of this section shall be subject to imprisonment for not more than three (3) years or fined not more than five thousand dollars (\$5,000), or both.**

SECTION 6. This act shall take effect upon passage.

## **SOUTH CAROLINA**

### **S.C. CODE ANN. § 16-3-1700 (2010). DEFINITIONS**

As used in this article:

(A) "Harassment in the first degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:

(1) following the targeted person as he moves from location to location;

(2) visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;

(3) surveillance of or the maintenance of a presence near the targeted person's:

(a) residence;

(b) place of work;

(c) school; or

(d) another place regularly occupied or visited by the targeted person; and

(4) vandalism and property damage.

(B) "Harassment in the second degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

(C) "Stalking" means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear:

(1) death of the person or a member of his family;

(2) assault upon the person or a member of his family;

(3) bodily injury to the person or a member of his family;

(4) criminal sexual contact on the person or a member of his family;

(5) kidnapping of the person or a member of his family; or

(6) damage to the property of the person or a member of his family.

(D) "Pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.

(E) "Family" means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.

(F) "Electronic contact" means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(G) This section does not apply to words or conduct protected by the Constitution of this State or the United States, a law enforcement officer or a process server performing official duties, or a licensed private investigator performing services or an investigation as described in detail in a contract signed by the client and the private investigator pursuant to Section 40-18-70.

#### **S.C. CODE ANN. § 16-17-430 (2010). UNLAWFUL COMMUNICATION**

(A) It is unlawful for a person to:

(1) use in a telephonic communication or any other electronic means, any words or language of a profane, vulgar, lewd, lascivious, or an indecent nature, or to communicate or convey by telephonic or other electronic means an obscene, vulgar, indecent, profane, suggestive, or immoral message to another person;

(2) threaten in a telephonic communication or any other electronic means an unlawful act with the intent to coerce, intimidate, or harass another person;

(3) telephone or electronically contact another repeatedly, whether or not conversation ensues, for the purpose of annoying or harassing another person or his family;

(4) make a telephone call and intentionally fail to hang up or disengage the connection for the purpose of interfering with the telephone service of another;

(5) telephone or contact by electronic means another and make false statements concerning either the death or injury of a member of the family of the person who is telephoned or electronically contacted, with the intent to annoy, frighten, or terrify that person; or

(6) knowingly permit a telephone under his control to be used for any purpose prohibited by this section.

(B) A person who violates any provision of subsection (A) is guilty of a misdemeanor

and, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned not more than thirty days.

## **SOUTH DAKOTA**

### **S.D. CODIFIED LAWS § 22-19A-1 (2010). STALKING AS A MISDEMEANOR-- SECOND OFFENSE A FELONY**

No person may:

- (1) Willfully, maliciously, and repeatedly follow or harass another person;
- (2) Make a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury; or
- (3) Willfully, maliciously, and repeatedly harass another person by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication.

A violation of this section constitutes the crime of stalking. Stalking is a Class 1 misdemeanor. However, any second or subsequent conviction occurring within ten years of a prior conviction under this section is a Class 6 felony.

### **S.D. CODIFIED LAWS § 22-19A-7 (2010). STALKING A CHILD TWELVE OR YOUNGER--FELONY**

Any person who willfully, maliciously, and repeatedly follows or harasses a child twelve years of age or younger or who makes a credible threat to a child twelve years of age or younger with the intent to place that child in reasonable fear of death or great bodily injury or with the intent to cause the child to reasonably fear for the child's safety is guilty of the crime of felony stalking. Felonious stalking is a Class 6 felony.

### **S.D. CODIFIED LAWS § 49-31-31 (2010). THREATENING OR HARASSING TELEPHONE CALLS AS MISDEMEANOR**

It is a Class 1 misdemeanor for a person to use a telephone or other electronic communication device for any of the following purposes:

- (1) To contact another person with intent to terrorize, intimidate, threaten, harass, or annoy such person by using obscene or lewd language or by suggesting a lewd or lascivious act;
- (2) To contact another person with intent to threaten to inflict physical harm or injury to any person or property;
- (3) To contact another person with intent to extort money or other things of value;

(4) To contact another person with intent to disturb that person by repeated anonymous telephone calls or intentionally failing to replace the receiver or disengage the telephone connection.

It is a Class 1 misdemeanor for a person to knowingly permit a telephone or other electronic communication device under his or her control to be used for a purpose prohibited by this section.

## **TENNESSEE**

### **TENN. CODE ANN. § 39-17-308 (2011). HARASSMENT**

(a) A person commits an offense who intentionally:

(1) Threatens, by telephone, in writing or by electronic communication, including, but not limited to, text messaging, facsimile transmissions, electronic mail or Internet services, to take action known to be unlawful against any person and by this action knowingly annoys or alarms the recipient;

(2) Places one (1) or more telephone calls anonymously, or at an hour or hours known to be inconvenient to the victim, or in an offensively repetitious manner, or without a legitimate purpose of communication, and by this action knowingly annoys or alarms the recipient;

(3) Communicates by telephone to another that a relative or other person has been injured, killed or is ill when the communication is known to be false; or

(4) Communicates with another person by any method described in subdivision (a)(1), without legitimate purpose:

(A)(i) With the malicious intent to frighten, intimidate or cause emotional distress; or

(ii) In a manner the defendant knows, or reasonably should know, would frighten, intimidate or cause emotional distress to a similarly situated person of reasonable sensibilities; and

(B) As the result of the communication, the person is frightened, intimidated or emotionally distressed.

(b)(1) A person convicted of a criminal offense commits an offense if, while incarcerated, on pre-trial diversion, probation, community correction or parole, the person intentionally communicates in person with the victim of the person's crime if the communication is:

(A) Anonymous or threatening or made in an offensively repetitious manner or at hours known to be inconvenient to the victim;

(B) Made for no legitimate purpose; and

(C) Made knowing that it will alarm or annoy the victim.

(2) If the victim of the person's offense died as the result of the offense, the provisions of this subsection (b) shall apply to the deceased victim's next-of-kin.

(c) A violation of subsection (a) is a Class A misdemeanor. A violation of subsection (b) is a Class E felony.

**TENN. CODE ANN. § 39-17-315 (2011). STALKING**

(a) As used in this section, unless the context otherwise requires:

(1) “Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate noncontinuous acts evidencing a continuity of purpose;

(2) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling;

(3) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

(4) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested;

(5) “Unconsented contact” means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(A) Following or appearing within the sight of that person;

(B) Approaching or confronting that person in a public place or on private property;

(C) Appearing at that person's workplace or residence;

(D) Entering onto or remaining on property owned, leased, or occupied by that person;

(E) Contacting that person by telephone;

(F) Sending mail or electronic communications to that person; or

(G) Placing an object on, or delivering an object to, property owned, leased, or occupied by that person; and

(6) “Victim” means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(b)(1) A person commits an offense who intentionally engages in stalking.

(2) Stalking is a Class A misdemeanor.

(c)(1) A person commits aggravated stalking who commits the offense of stalking as prohibited by subsection (b), and:

(A) In the course and furtherance of stalking, displays a deadly weapon;

(B) The victim of the offense was less than eighteen (18) years of age at any time during the person's course of conduct, and the person is five (5) or more years older than the victim;

(C) Has previously been convicted of stalking within seven (7) years of the instant offense;

(D) Makes a credible threat to the victim, the victim's child, sibling, spouse, parent or dependents with the intent to place any such person in reasonable fear of death or bodily injury; or

(E) At the time of the offense, was prohibited from making contact with the victim under a restraining order or injunction for protection, an order of protection, or any other court-imposed prohibition of conduct toward the victim or the victim's property, and the person knowingly violates the injunction, order or court-imposed prohibition.

(2) Aggravated stalking is a Class E felony.

(d)(1) A person commits especially aggravated stalking who:

(A) Commits the offense of stalking or aggravated stalking, and has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense; or

(B) Commits the offense of aggravated stalking, and intentionally or recklessly causes serious bodily injury to the victim of the offense or to the victim's child, sibling, spouse, parent or dependent.

(2) Especially aggravated stalking is a Class C felony.

(e) Notwithstanding any other provision of law, if the court grants probation to a person convicted of stalking, aggravated stalking or especially aggravated stalking, the court may keep the person on probation for a period not to exceed the maximum punishment for the appropriate classification of offense. Regardless of whether a term of probation is ordered, the court may, in addition to any other punishment otherwise authorized by law, order the defendant to do the following:

(1) Refrain from stalking any individual during the term of probation;

(2) Refrain from having any contact with the victim of the offense or the victim's child, sibling, spouse, parent or dependent;

(3) Be evaluated to determine the need for psychiatric, psychological, or social counseling, and, if determined appropriate by the court, to receive psychiatric, psychological or social counseling at the defendant's own expense;

(4) If, as the result of such treatment or otherwise, the defendant is required to take medication, order that the defendant submit to drug testing or some other method by which the court can monitor whether the defendant is taking the required medication; and

(5) Submit to the use of an electronic tracking device, with the cost of the device and monitoring the defendant's whereabouts, to be paid by the defendant.

(f) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the conduct or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, is prima facie evidence that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(g)(1) If a person is convicted of aggravated or especially aggravated stalking, or another felony offense arising out of a charge based on this section, the court may order an independent professional mental health assessment of the defendant's need for mental health treatment. The court may waive the assessment, if an adequate assessment was conducted prior to the conviction.

(2) If the assessment indicates that the defendant is in need of and amenable to mental health treatment, the court may include in the sentence a requirement that the offender undergo treatment, and that the drug intake of the defendant be monitored in the manner best suited to the particular situation. Monitoring may include periodic determinations as to whether the defendant is ingesting any illegal controlled substances, as well as determinations as to whether the defendant is complying with any required or recommended course of treatment that includes the taking of medications.



(3) The court shall order the offender to pay the costs of assessment under this subsection (g), unless the offender is indigent under § 40-14-202.

(h) Any person who reasonably believes they are a victim of an offense under this section, regardless of whether the alleged perpetrator has been arrested, charged or convicted of a stalking-related offense, shall be entitled to seek and obtain an order of protection in the same manner, and under the same circumstances, as is provided for victims of domestic abuse by the provisions of title 36, chapter 3, part 6.

(i) When a person is charged and arrested for the offense of stalking, aggravated stalking or especially aggravated stalking, the arresting law enforcement officer shall inform the victim that the person arrested may be eligible to post bail for the offense and to be released until the date of trial for the offense.

(j) If a law enforcement officer or district attorney general believes that the life of a possible victim of stalking is in immediate danger, unless and until sufficient evidence can be processed linking a particular person to the offense, the district attorney general may petition the judge of a court of record having criminal jurisdiction in that district to enter an order expediting the processing of any evidence in a particular stalking case. If, after hearing the petition, the court is of the opinion that the life of the victim may be in immediate danger if the alleged perpetrator is not apprehended, the court may enter such an order, directed to the Tennessee bureau of investigation, or any other agency or laboratory that may be in the process of analyzing evidence for that particular investigation.

(k)(1) For purposes of determining if a course of conduct amounting to stalking is a single offense or multiple offenses, the occurrence of any of the following events breaks the continuous course of conduct, with respect to the same victim, that constitutes the offense:

(A) The defendant is arrested and charged with stalking, aggravated stalking or especially aggravated stalking;

(B) The defendant is found by a court of competent jurisdiction to have violated an order of protection issued to prohibit the defendant from engaging in the conduct of stalking; or

(C) The defendant is convicted of the offense of stalking, aggravated stalking or especially aggravated stalking.

(2) If a continuing course of conduct amounting to stalking engaged in by a defendant against the same victim is broken by any of the events set out in subdivision (k)(1), any such conduct that occurs after that event commences a new and separate offense.

**2011 TENN. PUB. ACTS, CHAP. 362 (H.R. 300). AN ACT TO AMEND  
TENNESSEE CODE ANNOTATED, TITLE 39, CHAPTER 17, PART 3, RELATIVE  
TO THE OFFENSE OF HARASSMENT**

*Effective 07/01/2011*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
TENNESSEE:

<< TN ST § 39–17–308 >>

SECTION 1. Tennessee Code Annotated, Section 39–17–308(a)(4), is amended by deleting the language “Communicates with another person” and by substituting instead the language “Communicates with another person or transmits or displays an image in a manner in which there is a reasonable expectation that the image will be viewed by the victim.”

SECTION 2. Tennessee Code Annotated, Section 39–17–308, is amended by adding the following as new appropriately designated subsection:

<< TN ST § 39–17–308 >>

( ) As used in this section:

- (1) “Electronic communications service” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system;
- (2) “Image” includes, but is not limited to, a visual depiction, video clip or photograph of another person;
- (3) “Log files” mean computer-generated lists that contain various types of information regarding the activities of a computer, including, but not limited to, time of access to certain records, processes running on a computer or the usage of certain computer resources; and
- (4) “Social network” means any online community of people who share interests and activities, or who are interested in exploring the interests and activities of others, and which provides ways for users to interact.

SECTION 3. Tennessee Code Annotated, Section 39–17–308(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

<< TN ST § 39–17–308 >>

(c) Except as provided in subdivision (d), a violation of subsection (a) is a Class A misdemeanor. A violation of subsection (b) is a Class E felony.

SECTION 4. Tennessee Code Annotated, Section 39–17–308, is further amended by adding the following as new subsection (d):

<< TN ST § 39–17–308 >>

(d)(1) A violation by a minor of subdivision (a)(4) is a delinquent act and shall be punishable only by up to thirty (30) hours of community service, without compensation, for charitable or governmental agencies as determined by the court.

(2) The offense described in subdivision (a)(4) shall not apply to an entity providing an electronic communications service to the public acting in the normal course of providing that service.

(3)(A) The service providers described in subdivision (d)(2) shall not be required to maintain any record not otherwise kept in the ordinary course of that service provider's business; provided, however, that if any electronic communications service provider operates a web site that offers a social network service and the electronic communications service provider provides services to consumers in this state, any log files and images or communications that have been sent, posted or displayed on the social network service's web site and maintained by the electronic communications service provider shall be disclosed to any governmental entity responsible for enforcing subdivision (a)(4) only if the governmental entity:

(i) Obtains a warrant issued using this state's warrant procedures by a court of competent jurisdiction;

(ii) Obtains a court order for the disclosure under subdivision (d)(3)(C); or

(iii) Has the consent of the person who sent, posted or displayed any log files and images or communications on the social network service's web site maintained by the electronic communications service provider.

(B) No cause of action shall lie in any court against any provider of an electronic communications service, its officers, employees, agent, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or warrant.

(C) A court order for disclosure under subdivision (d)(3)(A)(ii) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of an electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. A court order shall not issue if prohibited by the law of this state. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with the order otherwise would cause an undue burden on the provider.

SECTION 5. This act shall take effect July 1, 2011, the public welfare requiring it.

## TEXAS

### TEX. PENAL CODE ANN. § 33.07 (2011). ONLINE HARASSMENT

(a) A person commits an offense if the person uses the name or persona of another person to create a web page on or to post one or more messages on a commercial social networking site:

- (1) without obtaining the other person's consent; and
- (2) with the intent to harm, defraud, intimidate, or threaten any person.

(b) A person commits an offense if the person sends an electronic mail, instant message, text message, or similar communication that references a name, domain address, phone number, or other item of identifying information belonging to any person:

- (1) without obtaining the other person's consent;
- (2) with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication; and
- (3) with the intent to harm or defraud any person.

(c) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor commits the offense with the intent to solicit a response by emergency personnel.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(e) It is a defense to prosecution under this section that the actor is any of the following entities or that the actor's conduct consisted solely of action taken as an employee of any of the following entities:

- (1) a commercial social networking site;
- (2) an Internet service provider;
- (3) an interactive computer service, as defined by 47 U.S.C. Section 230;
- (4) a telecommunications provider, as defined by Section 51.002, Utilities Code; or
- (5) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code.

(f) In this section:

(1) “Commercial social networking site” means any business, organization, or other similar entity operating a website that permits persons to become registered users for the purpose of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users. The term does not include an electronic mail program or a message board program.

(2) “Identifying information” has the meaning assigned by Section 32.51.

**TEX. PENAL CODE ANN. § 42.07 (2011). HARASSMENT**

(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he:

(1) initiates communication by telephone, in writing, or by electronic communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, by telephone, in writing, or by electronic communication, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection;

(6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section; or

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

(b) In this section:

(1) “Electronic communication” means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes:

(A) a communication initiated by electronic mail, instant message, network call, or facsimile machine; and

(B) a communication made to a pager.

(2) “Family” and “household” have the meaning assigned by Chapter 71, Family Code.

(3) “Obscene” means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function.

(c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted under this section.

**TEX. PENAL CODE ANN. § 42.072 (2011). STALKING**

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that:

(1) the actor knows or reasonably believes the other person will regard as threatening:

(A) bodily injury or death for the other person;

(B) bodily injury or death for a member of the other person's family or household; or

(C) that an offense will be committed against the other person's property;

(2) causes the other person or a member of the other person's family or household to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property; and

(3) would cause a reasonable person to fear:

(A) bodily injury or death for himself or herself;

(B) bodily injury or death for a member of the person's family or household; or

(C) that an offense will be committed against the person's property.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted under this section.

(c) In this section, “family,” “household,” and “member of a household” have the meanings assigned by Chapter 71, Family Code.

**H.R. 1666/S. 1329, 82ND LEG., REG. SESS. (TEX. 2011). RELATING TO THE PROSECUTION OF THE OFFENSE OF ONLINE IMPERSONATION**

*Bill Status: Signed by Governor – Effective 09/01/2011*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 33.07, Penal Code, is amended to read as follows:

Sec. 33.07. ONLINE **IMPERSONATION** [HARASSMENT].

SECTION 2. Section 33.07(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person, **without obtaining the other person's consent and with the intent to harm, defraud, intimidate, or threaten any person,** uses the name or persona of another person to:

**(1)** create a web page on **a commercial social networking site or other Internet website;** or

**(2)** [tø] post **or send** one or more messages on **or through** a commercial social networking site **or other Internet website, other than on or through an electronic mail program or message board program** [÷] [(1) without obtaining the other person's consent; and]

[~~(2) with the intent to harm, defraud, intimidate, or threaten any person~~].

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. This Act takes effect September 1, 2011.

**S. 82, 82ND LEG., REG. SESS. (TEX. 2011). AN ACT RELATING TO THE PROSECUTION OF THE OFFENSE OF STALKING**

*Bill Status: Signed by Governor – Effective 09/01/2011*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 42.072, Penal Code, is amended to read as follows:

Sec. 42.072. STALKING.

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct~~[, including following the other person,]~~ that:

(1) the actor knows or reasonably believes the other person will regard as threatening:

(A) bodily injury or death for the other person;

(B) bodily injury or death for a member of the other person's family or household **or for an individual with whom the other person has a dating relationship**; or

(C) that an offense will be committed against the other person's property;

(2) causes the other person, ~~[or]~~ a member of the other person's family or household, **or an individual with whom the other person has a dating relationship** to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property; and

(3) would cause a reasonable person to fear:

(A) bodily injury or death for himself or herself;

(B) bodily injury or death for a member of the person's family or household **or for an individual with whom the person has a dating relationship**; or

(C) that an offense will be committed against the person's property.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted **of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:**

**(1) the laws of another state;**

**(2) the laws of a federally recognized Indian tribe;**

**(3) the laws of a territory of the United States; or**

**(4) federal law.**

(c) **For purposes of this section, a trier of fact may find that different types of conduct described by Subsection (a), if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.**

(d) In this section, **“dating relationship,”** “family,” “household,” and “member of a household” have the meanings assigned by Chapter 71, Family Code.



SECTION 2. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.36 to read as follows:

**Art. 13.36. STALKING. The offense of stalking may be prosecuted in any county in which an element of the offense occurred.**

SECTION 3. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.46 to read as follows:

**Art. 38.46. EVIDENCE IN PROSECUTIONS FOR STALKING.**

**(a) In a prosecution for stalking, each party may offer testimony as to all relevant facts and circumstances that would aid the trier of fact in determining whether the actor's conduct would cause a reasonable person to experience a fear described by Section 42.072(a)(3)(A), (B), or (C), Penal Code, including the facts and circumstances surrounding any existing or previous relationship between the actor and the alleged victim, a member of the alleged victim's family or household, or an individual with whom the alleged victim has a dating relationship.**

**(b) This article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.**

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. This Act takes effect September 1, 2011.

## UTAH

### UTAH CODE ANN. § 76-5-106.5 (2010). STALKING--DEFINITIONS-- INJUNCTION--PENALTIES

(1) As used in this section:

(a) "Conviction" means:

(i) a verdict or conviction;

(ii) a plea of guilty or guilty and mentally ill;

(iii) a plea of no contest; or

(iv) the acceptance by the court of a plea in abeyance.

(b) “Course of conduct” means two or more acts directed at or toward a specific person, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

(A) directly, indirectly, or through any third party; and

(B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

(A) approaches or confronts a person;

(B) appears at the person's workplace or contacts the person's employer or coworkers;

(C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;

(D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;

(E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or

(F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(c) “Immediate family” means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(d) “Emotional distress” means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(e) “Reasonable person” means a reasonable person in the victim's circumstances.

(f) “Stalking” means an offense as described in Subsection (2) or (3).

(g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

(a) to fear for the person's own safety or the safety of a third person; or

(b) to suffer other emotional distress.

(3) A person is guilty of stalking who intentionally or knowingly violates:

(a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or

(b) a permanent criminal stalking injunction issued pursuant to this section.

(4) In any prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted; or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of

the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9); or

(e) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

(8) Stalking is a second degree felony if the offender:

(a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

(f) has been previously convicted of an offense under Subsection (7)(d), (e), or (f).

(9)(a) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time serves as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim.

(b) A permanent criminal stalking injunction shall be issued by the court without a hearing unless the defendant requests a hearing at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.

(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.

(d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction may grant the following relief:

(a) an order:

(i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim and members of the victim's immediate family or household and to stay away from any specified place that is named in the order and is frequented regularly by the victim; and

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(11) A permanent criminal stalking injunction may be dissolved or dismissed only upon application of the victim to the court which granted the injunction.

(12) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(13) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(14)(a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection (7).

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(15) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.

**UTAH CODE ANN. § 76-9-201 (2010). ELECTRONIC COMMUNICATION HARASSMENT -- DEFINITIONS -- PENALTIES**

(1) As used in this section:

(a) "Adult" means a person 18 years of age or older.

(b) "Electronic communication" means any communication by electronic, electro-mechanical, or electro-optical communication device for the transmission and reception

of audio, image, or text but does not include broadcast transmissions or similar communications that are not targeted at any specific individual.

(c) “Electronic communication device” includes telephone, facsimile, electronic mail, or pager.

(d) “Minor” means a person who is younger than 18 years of age.

(2) A person is guilty of electronic communication harassment and subject to prosecution in the jurisdiction where the communication originated or was received if with intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

(a)(i) makes repeated contact by means of electronic communications, whether or not a conversation ensues; or

(ii) after the recipient has requested or informed the person not to contact the recipient, and the person repeatedly or continuously:

(A) contacts the electronic communication device of the recipient; or

(B) causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication;

(b) makes contact by means of electronic communication and insults, taunts, or challenges the recipient of the communication or any person at the receiving location in a manner likely to provoke a violent or disorderly response;

(c) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person; or

(d) causes disruption, jamming, or overload of an electronic communication system through excessive message traffic or other means utilizing an electronic communication device.

(3)(a)(i) Electronic communication harassment committed against an adult is a class B misdemeanor , except under Subsection (3)(a)(ii).

(ii) A second or subsequent offense under Subsection (3)(a)(i) is a:

(A) class A misdemeanor if all prior violations of this section were committed against adults; and

(B) a third degree felony if any prior violation of this section was committed against a minor.

(b)(i) Electronic communication harassment committed against a minor is a class A misdemeanor, except under Subsection (3)(b)(ii).

(ii) A second or subsequent offense under Subsection (3)(b)(i) is a third degree felony, regardless of whether any prior violation of this section was committed against a minor or an adult.

(4)(a) Except under Subsection (4)(b), criminal prosecution under this section does not affect an individual's right to bring a civil action for damages suffered as a result of the commission of any of the offenses under this section.

(b) This section does not create any civil cause of action based on electronic communications made for legitimate business purposes.

## **VERMONT**

### **VT. STAT. ANN. tit. 13, § 1027 (2011). DISTURBING PEACE BY USE OF TELEPHONE OR OTHER ELECTRONIC COMMUNICATIONS**

(a) A person who, with intent to terrify, intimidate, threaten, harass or annoy, makes contact by means of a telephonic or other electronic communication with another and (i) makes any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; (ii) threatens to inflict injury or physical harm to the person or property of any person; or (iii) disturbs, or attempts to disturb, by repeated anonymous telephone calls or other electronic communications, whether or not conversation ensues, the peace, quiet or right of privacy of any person at the place where the communication or communications are received shall be fined not more than \$ 250.00 or be imprisoned not more than three months or both. If the defendant has previously been convicted of a violation of this section or of an offense under the laws of another state or of the United States which would have been an offense under this act if committed in this state, the defendant shall be fined not more than \$ 500.00 or imprisoned for not more than six months, or both.

(b) An intent to terrify, threaten, harass or annoy may be inferred by the trier of fact from the use of obscene, lewd, lascivious or indecent language or the making of a threat or statement or repeated anonymous telephone calls or other electronic communications as set forth in this section and any trial court may in its discretion include a statement to this effect in its jury charge.

(c) An offense committed by use of a telephone or other electronic communication device as set forth in this section shall be considered to have been committed at either the place where the telephone call or calls originated or at the place where the communication or communications or calls were received.

### **VT. STAT. ANN. tit. 13, § 1061 (2011). DEFINITIONS**

As used in this subchapter:

(1) “Stalk” means to engage in a course of conduct which consists of following, lying in wait for, or harassing, and:

(A) serves no legitimate purpose; and

(B) would cause a reasonable person to fear for his or her physical safety or would cause a reasonable person substantial emotional distress.

(2) “Course of conduct” means a pattern of conduct composed of two or more acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(3) “Following” means maintaining over a period of time a visual or physical proximity to another person in such manner as would cause a reasonable person to have a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death.

(4) “Harassing” means actions directed at a specific person, or a member of the person's family, which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including but not limited to verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent.

(5) “Lying in wait” means hiding or being concealed for the purpose of attacking or harming another person.

(5) "Lying in wait" means hiding or being concealed for the purpose of attacking or harming another person.

**VT. STAT. ANN. tit. 13, § 1062 (2011). STALKING**

Any person who intentionally stalks another person shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

**VT. STAT. ANN. tit. 13, § 1063 (2011). AGGRAVATED STALKING**

(a) A person commits the crime of aggravated stalking if the person intentionally stalks another person, and:

(1) such conduct violates a court order that prohibits stalking and is in effect at the time of the offense; or

(2) has been previously convicted of stalking or aggravated stalking; or

(3) has been previously convicted of an offense an element of which involves an act of violence against the same person; or

(4) the person being stalked is under the age of 16 years; or



(5) had a deadly weapon, as defined in section 1021 of this title, in his or her possession while engaged in the act of stalking.

(b) A person who commits the crime of aggravated stalking shall be imprisoned not more than five years or be fined not more than \$25,000.00, or both.

(c) Conduct constituting the offense of aggravated stalking shall be considered a violent act for the purposes of determining bail.

**THE FOLLOWING BILL HAS NOT BEEN ENACTED AND IS CURRENTLY NOT THE LAW OF VERMONT. H.R. 16, 2011-12 LEG. SESS. (VT. 2011). AN ACT RELATING TO HARASSMENT AND DISTURBING THE PEACE THROUGH FALSE AND DEFAMATORY INTERNET WEBSITE POSTINGS**

*Bill Status: In House Committee on Judiciary as of 01/11/2011*

Statement of purpose: This bill proposes to permit a person to be charged with a violation of Vermont's disturbing the peace statute if the person, with the intent to terrify, intimidate, threaten, harass, or annoy another person, knowingly and intentionally uses false and defamatory Internet website postings to disturb the other person's peace, quiet, or right of privacy.

An act relating to harassment and disturbing the peace through false and defamatory Internet website postings

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 1027 is amended to read:

**§ 1027. DISTURBING PEACE BY USE OF TELEPHONE OR OTHER ELECTRONIC COMMUNICATIONS**

(a) A person who, with intent to terrify, intimidate, threaten, harass, or annoy, makes contact by means of a telephonic or other electronic communication with another and (i) makes any request, suggestion, or proposal which is obscene, lewd, lascivious, or indecent; (ii) threatens to inflict injury or physical harm to the person or property of any person; or (iii) disturbs, or attempts to disturb, by repeated anonymous telephone calls or other electronic communications, whether or not conversation ensues, the peace, quiet, or right of privacy of any person at the place where the communication or communications are received shall be fined not more than \$250.00 or be imprisoned not more than three months or both. If the defendant has previously been convicted of a violation of this section or of an offense under the laws of another state or of the United States which would have been an offense under this act if committed in this state, the defendant shall be fined not more than \$500.00 or imprisoned for not more than six months, or both.

(b) An intent to terrify, threaten, harass or annoy may be inferred by the trier of fact from the use of obscene, lewd, lascivious, or indecent language or the making of a threat or statement or repeated anonymous telephone calls or other electronic communications as

set forth in this section and any trial court may in its discretion include a statement to this effect in its jury charge.

(c) An offense committed by use of a telephone or other electronic communication device as set forth in this section shall be considered to have been committed at either the place where the telephone call or calls originated or at the place where the communication or communications or calls were received.

**(d) As used in this section:**

**(1) “Disturbing or attempting to disturb the peace, quiet, or right of privacy by electronic communications” may include knowingly and intentionally causing a false and defamatory posting to be made to an Internet website.**

**(2) “Makes contact by means of an electronic communication with another” may include causing a posting to be made to an Internet website.**

Sec. 2. EFFECTIVE DATE

**This act shall take effect on July 1, 2011.**

## VIRGINIA

### VA. CODE ANN. § 18.2-60.3 (2011). STALKING; PENALTY

A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

B. A third or subsequent conviction occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction shall be a Class 6 felony.

C. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least fifteen days prior to release of a person sentenced to a term of incarceration of more than thirty days or, if the person was sentenced to a term of incarceration of at least forty-eight hours but no more than thirty days, twenty-four hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

F. For purposes of this section:

"Family or household member" has the same meaning as provided in § 16.1-228.

**VA. CODE ANN. § 18.2-152.7:1 (2011). HARASSMENT BY COMPUTER;  
PENALTY**

If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he shall be guilty of a Class 1 misdemeanor.

## **WASHINGTON**

### **WASH. REV. CODE § 9.61.260 (2011). CYBERSTALKING**

(1) A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:

(a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

(b) Anonymously or repeatedly whether or not conversation occurs; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

(2) Cyberstalking is a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Cyberstalking is a class C felony if either of the following applies:

(a) The perpetrator has previously been convicted of the crime of harassment, as defined in RCW 9A.46.060, with the same victim or a member of the victim's family or household or any person specifically named in a no-contact order or no-harassment order in this or any other state; or

(b) The perpetrator engages in the behavior prohibited under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

(4) Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

(5) For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.

## **WEST VIRGINIA**

### **W. VA. CODE § 61-2-9a (2011). STALKING; HARASSMENT; PENALTIES; DEFINITIONS**

(a) Any person who repeatedly follows another knowing or having reason to know that

the conduct causes the person followed to reasonably fear for his or her safety or suffer significant emotional distress, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(b) Any person who repeatedly harasses or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court or family court judge, in effect and entered pursuant to part 48-5-501, et seq., part 48-5-601, et seq. or 48-27-403 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county jail for not less than ninety days nor more than one year or fined not less than two thousand dollars nor more than five thousand dollars, or both.

(d) A second or subsequent conviction for a violation of this section occurring within five years of a prior conviction is a felony punishable by incarceration in a state correctional facility for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order for injunctive relief is in effect pursuant to the provisions of section five hundred one, article twenty-seven, chapter forty-eight of this code who has been served with a copy of said order or section six hundred eight, article five, chapter forty-eight of this code who is convicted of a violation of the provisions of this section shall be guilty of a felony and punishable by incarceration in a state correctional facility for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(f) For the purposes of this section:

(1) “Bodily injury” means substantial physical pain, illness or any impairment of physical condition;

(2) “Credible threat” means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

(3) “Harasses” means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress

(4) “Immediate family” means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and

(5) “Repeatedly” means on two or more occasions.

(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, including, but not limited to: Any labor or employment relations issue; demonstration at the seat of federal, state, county or municipal government; activities protected by the West Virginia constitution or the United States Constitution or any statute of this state or the United States.

(h) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended is to have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(i) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(j) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

(k) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

(l) The Governor's Committee on Crime, Delinquency and Correction, after consultation with representatives of labor, licensed domestic violence programs and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to article three, chapter twenty-nine-a of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

**W. VA. CODE § 61-3C-14a (2011). OBSCENE, ANONYMOUS, HARASSING AND THREATENING COMMUNICATIONS BY COMPUTER, CELL PHONES AND ELECTRONIC COMMUNICATION DEVICES; PENALTY**

(a) It is unlawful for any person, with the intent to harass or abuse another person, to use

a computer, mobile phone, personal digital assistant or other electronic communication device to:

- (1) Make contact with another without disclosing his or her identity with the intent to harass or abuse;
- (2) Make contact with a person after being requested by the person to desist from contacting them;
- (3) Threaten to commit a crime against any person or property; or
- (4) Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material.

(b) For purposes of this section:

- (1) “Electronic communication device” means and includes a telephone, wireless phone, computer, pager or any other electronic or wireless device which is capable of transmitting a document, image, voice, e-mail or text message using such device in an electronic, digital or analog form from one person or location so it may be viewed or received by another person or persons at other locations.
- (2) “Use of a computer, mobile phone, personal digital assistant or other electronic communication device” includes, but is not limited to, the transmission of text messages, electronic mail, photographs, videos, images or other nonvoice data by means of an electronic communication system, and includes the transmission of such data, documents, messages and images to another's computer, e-mail account, mobile phone, personal digital assistant or other electronic communication device.
- (3) “Obscene material” means material that:
  - (A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;
  - (B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals, or sadomasochistic sexual abuse; and
  - (C) A reasonable person would find, taken as a whole, lacks literary, artistic, political or scientific value.
- (c) It is unlawful for any person to knowingly permit a computer, mobile phone or personal digital assistant or other electronic communication device under his or her control to be used for any purpose prohibited by this section.

(d) Any offense committed under this section may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than six months, or both fined and confined. For a second or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both fined and confined.

## **WISCONSIN**

### **Wis. Stat. Ann. § 940.32 (2011). STALKING**

(1) In this section:

(a) “Course of conduct” means a series of 2 or more acts carried out over time, however short or long, that show a continuity of purpose, including any of the following:

1. Maintaining a visual or physical proximity to the victim.
2. Approaching or confronting the victim.
3. Appearing at the victim's workplace or contacting the victim's employer or coworkers.
4. Appearing at the victim's home or contacting the victim's neighbors.
5. Entering property owned, leased, or occupied by the victim.
6. Contacting the victim by telephone or causing the victim's telephone or any other person's telephone to ring repeatedly or continuously, regardless of whether a conversation ensues.
- 6m. Photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the victim. This subdivision applies regardless of where the act occurs.
7. Sending material by any means to the victim or, for the purpose of obtaining information about, disseminating information about, or communicating with the victim, to a member of the victim's family or household or an employer, coworker, or friend of the victim.
8. Placing an object on or delivering an object to property owned, leased, or occupied by the victim.



9. Delivering an object to a member of the victim's family or household or an employer, coworker, or friend of the victim or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the victim.

10. Causing a person to engage in any of the acts described in subs. 1. to 9.

(am) "Domestic abuse" has the meaning given in s. 813.12(1)(am).

(ap) "Domestic abuse offense" means an act of domestic abuse that constitutes a crime.

(c) "Labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(cb) "Member of a family" means a spouse, parent, child, sibling, or any other person who is related by blood or adoption to another.

(cd) "Member of a household" means a person who regularly resides in the household of another or who within the previous 6 months regularly resided in the household of another.

(cg) "Personally identifiable information" has the meaning given in s. 19.62(5).

(cr) "Record" has the meaning given in s. 19.32(2).

(d) "Suffer serious emotional distress" means to feel terrified, intimidated, threatened, harassed, or tormented.

(2) Whoever meets all of the following criteria is guilty of a Class I felony:

(a) The actor intentionally engages in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household.

(b) The actor knows or should know that at least one of the acts that constitute the course of conduct will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.

(c) The actor's acts cause the specific person to suffer serious emotional distress or induce fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

(2e) Whoever meets all of the following criteria is guilty of a Class I felony:

(a) After having been convicted of sexual assault under s. 940.225, 948.02, 948.025, or 948.085 or a domestic abuse offense, the actor engages in any of the acts listed in sub. (1)(a)1. to 10., if the act is directed at the victim of the sexual assault or the domestic abuse offense.

(b) The actor knows or should know that the act will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.

(c) The actor's act causes the specific person to suffer serious emotional distress or induces fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

(2m) Whoever violates sub. (2) is guilty of a Class H felony if any of the following applies:

(a) The actor has a previous conviction for a violent crime, as defined in s. 939.632(1)(e)1., or a previous conviction under this section or s. 947.013(1r), (1t), (1v), or (1x).

(b) The actor has a previous conviction for a crime, the victim of that crime is the victim of the present violation of sub. (2), and the present violation occurs within 7 years after the prior conviction.

(c) The actor intentionally gains access or causes another person to gain access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation.

(d) The person violates s. 968.31(1) or 968.34(1) in order to facilitate the violation.

(e) The victim is under the age of 18 years at the time of the violation.

(3) Whoever violates sub. (2) is guilty of a Class F felony if any of the following applies:

(a) The act results in bodily harm to the victim.

(b) The actor has a previous conviction for a violent crime, as defined in s. 939.632(1)(e)1., or a previous conviction under this section or s. 947.013(1r), (1t), (1v) or (1x), the victim of that crime is the victim of the present violation of sub. (2), and the present violation occurs within 7 years after the prior conviction.

(c) The actor uses a dangerous weapon in carrying out any of the acts listed in sub. (1)(a)1. to 9.

(3m) A prosecutor need not show that a victim received or will receive treatment from a mental health professional in order to prove that the victim suffered serious emotional distress under sub. (2)(c) or (2e)(c).

(4)(a) This section does not apply to conduct that is or acts that are protected by the person's right to freedom of speech or to peaceably assemble with others under the state and U.S. constitutions, including, but not limited to, any of the following:

1. Giving publicity to and obtaining or communicating information regarding any subject, whether by advertising, speaking or patrolling any public street or any place where any person or persons may lawfully be.

2. Assembling peaceably.

3. Peaceful picketing or patrolling.

(b) Paragraph (a) does not limit the activities that may be considered to serve a legitimate purpose under this section.

(5) This section does not apply to conduct arising out of or in connection with a labor dispute.

(6) The provisions of this statute are severable. If any provision of this statute is invalid or if any application thereof is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

### **WIS. STAT. ANN. § 947.0125 (2011). UNLAWFUL USE OF COMPUTERIZED COMMUNICATION SYSTEMS**

1) In this section, "message" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature, or any transfer of a computer program, as defined in s. 943.70(1)(c).

(2) Whoever does any of the following is guilty of a Class B misdemeanor:

(a) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message to the person on an electronic mail or other computerized communication system and in that message threatens to inflict injury or physical harm to any person or the property of any person.

(b) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message on an electronic mail or other computerized communication system with the

reasonable expectation that the person will receive the message and in that message threatens to inflict injury or physical harm to any person or the property of any person.

(c) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(d) With intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(e) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.

(f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

(3) Whoever does any of the following is subject to a Class B forfeiture:

(a) With intent to harass, annoy or offend another person, sends a message to the person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(b) With intent to harass, annoy or offend another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(c) With intent solely to harass another person, sends repeated messages to the person on an electronic mail or other computerized communication system.

(d) With intent solely to harass another person, sends repeated messages on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the messages.

(e) With intent to harass or annoy another person, sends a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.

(f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to harass or annoy another person, sends a message on an

electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

(g) Knowingly permits or directs another person to send a message prohibited by this section from any computer terminal or other device that is used to send messages on an electronic mail or other computerized communication system and that is under his or her control.

**WIS. STAT. ANN. § 947.013 (2011). HARASSMENT**

(1) In this section:

(a) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

(b) “Credible threat” means a threat made with the intent and apparent ability to carry out the threat.

(c) “Personally identifiable information” has the meaning given in s. 19.62(5).

(d) “Record” has the meaning given in s. 19.32(2).

(1m) Whoever, with intent to harass or intimidate another person, does any of the following is subject to a Class B forfeiture:

(a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.

(b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

(1r) Whoever violates sub. (1m) under all of the following circumstances is guilty of a Class A misdemeanor:

(a) The act is accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm.

(b) The act occurs while the actor is subject to an order or injunction under s. 813.12, 813.122 or 813.125 that prohibits or limits his or her contact with the victim.

(1t) Whoever violates sub. (1r) is guilty of a Class I felony if the person has a prior conviction under this subsection or sub. (1r), (1v), or (1x) or s. 940.32(2), (2e), (2m), or (3) involving the same victim and the present violation occurs within 7 years of the prior conviction.

(1v) Whoever violates sub. (1r) is guilty of a Class H felony if he or she intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation under sub. (1r).

(1x) Whoever violates sub. (1r) under all of the following circumstances is guilty of a Class H felony:

(a) The person has a prior conviction under sub. (1r), (1t) or (1v) or this subsection or s. 940.32(2), (2e), (2m), or (3).

(b) The person intentionally gains access to a record in order to facilitate the current violation under sub. (1r).

(2) This section does not prohibit any person from participating in lawful conduct in labor disputes under s. 103.53.

## **WYOMING**

### **WYO. STAT. ANN. § 6-2-506 (2010). STALKING; PENALTY**

(a) As used in this section:

(i) “Course of conduct” means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose;

(ii) “Harass” means to engage in a course of conduct, including but not limited to verbal threats, written threats, lewd or obscene statements or images, vandalism or nonconsensual physical contact, directed at a specific person or the family of a specific person, which the defendant knew or should have known would cause a reasonable person to suffer substantial emotional distress, and which does in fact seriously alarm the person toward whom it is directed.

(b) Unless otherwise provided by law, a person commits the crime of stalking if, with intent to harass another person, the person engages in a course of conduct reasonably likely to harass that person, including but not limited to any combination of the following:

(i) Communicating, anonymously or otherwise, or causing a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses;

(ii) Following a person, other than within the residence of the defendant;

(iii) Placing a person under surveillance by remaining present outside his or her school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; or

(iv) Otherwise engaging in a course of conduct that harasses another person.

(c) This section does not apply to an otherwise lawful demonstration, assembly or picketing.

(d) Except as provided under subsection (e) of this section, stalking is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

(e) A person convicted of stalking under subsection (b) of this section is guilty of felony stalking punishable by imprisonment for not more than ten (10) years, if:

(i) The act or acts leading to the conviction occurred within five (5) years of a prior conviction under this subsection, or under subsection (b) of this section, or under a substantially similar law of another jurisdiction;

(ii) The defendant caused serious bodily harm to the victim or another person in conjunction with committing the offense of stalking;

(iii) The defendant committed the offense of stalking in violation of any condition of probation, parole or bail; or

(iv) The defendant committed the offense of stalking in violation of a temporary or permanent order of protection issued pursuant to W.S. 7-3-508 or 7-3-509, or pursuant to a substantially similar law of another jurisdiction.

## **AMERICAN SAMOA**

### **AM. SAMOA CODE ANN. § 46.3524 (2010). HARASSMENT**

(a) A person commits the crime of harassment if, with the purpose to harass, annoy, or alarm another person, he:

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

(2) makes repeated or anonymous telephone calls to another person, whether or not conversation ensues, knowing that he is thereby likely to cause annoyance or alarm; or

(3) knowingly permits any telephone under his control to be used for a purpose prohibited by this section.

(b) Harassment is a class A misdemeanor

**AM. SAMOA CODE ANN. § 46.352 (2010). STALKING**

(a) A person commits the crime of stalking if he purposely or knowingly engages in a course of conduct that is directed toward another person and that conduct:

(1) causes reasonable fear of harm to the physical health, safety, or property of such person, a member of his immediate family, or a third party with whom he is acquainted; or

(2) causes harm to the mental or emotional health of such person after the actor was previously clearly informed to cease that conduct; or

(3) is likely to cause such person to reasonably fear that his employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at his place of employment or business, and the actor was previously clearly informed to cease that conduct.

(b) Stalking is a class B misdemeanor, unless the offense was committed when there is a temporary restraining order or an injunction, or both, or any other court order in effect prohibiting the conduct by the offender, then it is a Class A misdemeanor

**GUAM**

**GUAM CODE ANN. tit. 9, § 19.69 (2010). DEFINITIONS**

Unless otherwise indicated, as used in § 19.70:

(a) *Harasses* or *harassment* means a knowing and willful course of conduct, whether physical, verbal, electronic, telephonic, written, or otherwise, directed at a specific person which alarms, annoys, or distresses the person, and which serves no legitimate purpose. Such course of conduct must be of a nature to cause a reasonable person to suffer substantial emotional distress, and must cause substantial emotional distress.

(b) *Course of conduct* means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Constitutionally and statutorily protected activity, including but not limited to picketing as a result of a labor dispute, is not included in this definition.

(c) *Credible threat* means any threat, physical or verbal, overtly or subtly manifested, constituting a threat with the intent and apparent ability to carry out the threat with the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. Such threatening advance must be against the life of, or a threat to cause bodily injury to, the person threatened or to a member of his or her immediate family.

**GUAM CODE ANN. tit. 9, § 19.70 (2010). STALKING**

(a) A person is guilty of simple stalking if he or she willfully, maliciously, and repeatedly, follows or harasses another person or who makes a credible threat with intent



to place that person or a member of his or her immediate family in fear of death or bodily injury.

(b) A person is guilty of advanced stalking if he or she violates subsection (a) of this section when there is a temporary restraining order or an injunction or both or any other court order in effect prohibiting the behavior described in that subsection against the same party.

(c) A person is guilty of advanced stalking if he or she violates subsection (a) of this section a second or subsequent time against the same victim, within seven (7) years of a prior conviction under that subsection, and involving an harassment or a credible threat of violence, as defined in this § 19.69 of this Chapter.

(d) Simply stalking is a felony of the third degree.

(e) Advanced stalking is a felony of the second degree.

(f) This section shall not apply to conduct which occurs during labor picketing.

## **PUERTO RICO**

### **P.R. LAWS ANN. tit. 33, § 4013 (2010). DEFINITIONS**

For the purposes of §§ 4013-4026 of this title, the following terms shall have the meaning stated below:

(a) *Stalking*.— Means a pattern of behavior of vigilance, over a person; unwanted verbal or written communications are sent repeatedly to a specific person; written, verbal or implicit threats are made against a specific person; repeated acts of vandalism are directed to a specific person; repeated harassment through words, gestures or actions intended to intimidate, threaten or pursue the victim or members of his/her family.

(b) *Persistent behavior pattern*.— Means to make in [sic] two (2) or more occasions acts that show the intentional purpose of intimidating a specific person or his/her family members.

(c)(1) *Family*.— Means: Spouse, son, daughter, father, mother, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, male or female cousin of the victim; or other relative by consanguinity, or affinity who is part of the family nucleus.

(2) A person who lives or has formerly cohabited with the victim as a couple; or has been involved in a relationship as a paramour or lover.

(3) A person who resides or has resided in the same dwelling as the victim, for at least six (6) months before the acts constituting stalking are evident.

(d) *Intimidate*.— Means any repeated action or word that instills terror in the animus of a prudent and reasonable person, to the effect that [he/]she, or any member of the family could suffer harm, personally, or of [his/]her property, and/or exert moral pressure on the animus of the person to perform an act against [his/]her will.

(e) *Restraining order*.— Means any written order under the seal of a court whereby the measures are dictated to an offender to abstain from incurring or performing certain acts that constitute stalking.

(f) *Respondent*.— Means any person against whom an order of protection is requested.

(g) *Petitioner*.— Means any person who requests a restraining order.

(h) *Court*.— Means the Trial Court of the General Court of Justice.

(i) *Police officer*.— Means any member or officer of the Police of Puerto Rico; or a municipal policeman duly trained and accredited by the Police of Puerto Rico.

**P.R. LAWS ANN. tit. 33, § 4014 (2010). DELINQUENT CONDUCT; PENALTIES**

(a) Any person who intentionally demonstrates a constant or repetitive pattern of stalking addressed to intimidate a specific person to the effect that said person or any member of his/her family could suffer personal or property damage; or that maintains said type of conduct, knowing that a certain person could reasonably feel intimidated, shall incur a misdemeanor.

The court may impose the penalty of restitution, in addition to the penalty of imprisonment thus established.

(b) Stalking, as typified in §§ 4013-4026 of this title, shall be charged as a fourth degree felony, if one or more of the following circumstances exist:

(1) The dwelling of a certain person or a member of his/her family is entered, thus instilling fear of suffering physical injury, and/or exerting moral pressure on the person's animus to perform an act that is against his/her will; or

(2) grave bodily injury is inflicted on a certain person or a member of his/her family; or

(3) it is committed with a deadly weapon in circumstances not intended to kill or mutilate; or

(4) it is committed after a restraining order has been issued against the offender, in aid of the victim of stalking or other person who is also stalked by the offender; or

(5) an act of vandalism is committed that destroys property in the places that are adjacent or relatively close to the home, residence, school, workplace, or vehicle of a certain person or member of the family; or

(6) is committed by an adult against a child, or

(7) is committed against a pregnant woman.

The court may impose the penalty of restitution in addition to the established term of imprisonment. The prosecution and punishment of any person for the crime defined and

punished in §§ 4013-4026 of this title, shall not prevent the prosecution and punishment of the same person for any other act or omission in violation of any of the other provisions of §§ 4013-4026 of this title, or any other act.

## **U.S. VIRGIN ISLANDS**

### **V.I. CODE ANN. tit. 14, § 706 (2010). HARASSMENT BY TELEPHONE, TELEGRAPH, OR WRITTEN COMMUNICATION**

Whoever, with intent to harass or alarm another person--

(1) communicates with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to harass or alarm; or

(2) makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication, is guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than 1 year, or both.

## **FEDERAL**

### **THE FOLLOWING IS A BILL IN THE HOUSE OF REPRESENTATIVES AND IS NOT THE LAW OF THE UNITED STATES OF AMERICA. H.R. 975, 112TH CONG. (2011). ANTI-BULLYING AND HARASSMENT ACT OF 2011**

*Bill Status: In House Committee on Education and the Workforce - Subcommittee on Early Childhood, Elementary, and Secondary Education as of 03/21/2011*

A BILL

To amend the Safe and Drug-Free Schools and Communities Act to include bullying and harassment prevention programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE.

This Act may be cited as the 'Anti-Bullying and Harassment Act of 2011'.

#### SEC. 2. BULLYING AND HARASSMENT PREVENTION POLICIES, PROGRAMS, AND STATISTICS.

(a) State Reporting Requirements. Section 4112(c)(3)(B)(iv) of the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7112(c)(3)(B)(iv)) is amended by inserting ', including bullying and harassment,' after 'violence'.

(b) State Application. Section 4113(a) of such Act (20 U.S.C. 7113(a)) is amended-

(1) in paragraph (9)-

(A) in subparagraph (C), by striking 'and' at the end; and

(B) by adding at the end the following:

'(E) the incidence and prevalence of reported incidents of bullying and harassment; and

'(F) the perception of students regarding their school environment, including with respect to the prevalence and seriousness of incidents of bullying and harassment and the responsiveness of the school to those incidents;';

(2) in paragraph (18), by striking 'and' at the end;

(3) in paragraph (19), by striking the period at the end and inserting '; and'; and

(4) by adding at the end the following:

'(20) provides an assurance that the State educational agency will provide assistance to districts and schools in their efforts to prevent and appropriately respond to incidents of bullying and harassment and describes how the agency will meet this requirement.'

(c) Local Educational Agency Program Application. Section 4114(d) of such Act (20 U.S.C. 7114(d)) is amended-

(1) in paragraph (2)(B)(i)-

(A) in the matter preceding subclause (I), by striking the semicolon and inserting a comma;

(B) in subclause (I), by striking 'and' at the end; and

(C) by adding at the end the following:

'(III) performance indicators for bullying and harassment prevention programs and activities; and'; and

(2) in paragraph (7)-

(A) in subparagraph (A), by inserting ', including bullying and harassment' after 'disorderly conduct';

(B) in subparagraph (D), by striking 'and' at the end; and

(C) by adding at the end the following:

'(F) annual notice to parents and students describing the full range of prohibited conduct contained in the discipline policies described in subparagraph (A); and

'(G) complaint procedures for students or parents that seek to register complaints regarding the prohibited conduct contained in the discipline policies described in subparagraph (A), including-

'(i) the name of the school or district officials who are designated as responsible for receiving such complaints; and

'(ii) timelines that the school or district will follow in the resolution of such complaints;'

(d) Authorized Activities. Section 4115(b)(2) of such Act (20 U.S.C. 7115(b)(2)) is amended-

(1) in subparagraph (A)-

(A) in clause (vi), by striking 'and' at the end;

(B) in clause (vii), by striking the period at the end and inserting '; and'; and

(C) by adding at the end the following:

'(viii) teach students about the consequences of bullying and harassment.'; and

(2) in subparagraph (E), by adding at the end the following:

'(xxiii) Programs that address the causes of bullying and harassment and that train teachers, administrators, and counselors regarding strategies to prevent bullying and harassment and to effectively intervene when such incidents occur.'

(e) Reporting. Section 4116(a)(2)(B) of such Act (20 U.S.C. 7116(a)(2)(B)) is amended by inserting ', including bullying and harassment,' after 'drug use and violence'.

(f) Impact Evaluation. Section 4122 of such Act (20 U.S.C. 7132) is amended-

(1) in subsection (a)(2), by striking 'and school violence' and inserting 'school violence, including bullying and harassment,'; and

(2) in the first sentence of subsection (b), by inserting ', including bullying and harassment,' after 'drug use and violence'.

(g) Definitions.-

(1) Drug and violence prevention. Paragraph (3)(B) of section 4151 of such Act (20 U.S.C. 7151) is amended by inserting ', bullying, and other harassment' after 'sexual harassment and abuse'.

(2) Protective factor, buffer, or asset. Paragraph (6) of such section is amended by inserting ', including bullying and harassment' after 'violent behavior'.

(3) Risk factor. Paragraph (7) of such section is amended by inserting ', including bullying and harassment' after 'violent behavior'.

(4) Bullying, harassment, and violence. Such section is further amended by adding at the end the following:

'(12) Bullying.-

'(A) In general. The term 'bullying' means conduct, including conduct that is based on a student's actual or perceived identity with regard to race, color, national origin, gender identity, disability, sexual orientation, religion, or any other distinguishing characteristics that may be defined by a State or local educational agency that-

'(i) is directed at one or more students;  
'(ii) substantially interferes with educational opportunities or educational programs of such students; and  
'(iii) adversely affects the ability of a student to participate in or benefit from the school's educational programs or activities by placing a student in reasonable fear of physical harm.

'(B) Association. Such term includes conduct described in clauses (i), (ii), and (iii) of subparagraph (A) that is based on-

'(i) a student's association with another individual; and

'(ii) a characteristic of the other individual that is referred to in subparagraph (A).

'(C) Cyberbullying.-

'(i) In general. Such term includes conduct described in subparagraph (A) that is undertaken, in whole or in part, through use of technology or electronic communications (including electronic mail, internet communications, instant messages, or facsimile communications) to transmit images, text, sounds, or other data.

'(ii) Sexting. Such term includes transmitting a nude picture by a means described in clause (i) if such transmission constitutes conduct described in subparagraph (A).

'(iii) False identity. Such term includes knowingly impersonating another person as the author of posted content or messages on the Internet in order to trick, tease, harass, or spread rumors about the other person.

'(13) Harassment. The term 'harassment' means conduct, including conduct that is based on a student's actual or perceived identity with regard to race, color, national origin, gender identity, disability, sexual orientation, religion, or any other distinguishing characteristics that may be defined by a State or local educational agency, that-

'(A) is directed at one or more students;

'(B) substantially interferes with educational opportunities or educational programs of such students; and

'(C) adversely affects the ability of a student to participate in or benefit from the school's educational programs or activities because the conduct as reasonably perceived by the student is so severe, persistent, or pervasive.

'(14) Violence. The term 'violence' includes bullying and harassment.'

(h) Effect on Other Laws.-

(1) Amendment. The Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 et seq.) is amended by adding at the end the following:

'SEC. 4156. EFFECT ON OTHER LAWS.

'(a) Federal and State Nondiscrimination Laws. Nothing in this part shall be construed to alter legal standards regarding, or limit rights available to victims of, bullying or harassment under other Federal or State laws, including title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

'(b) Free Speech and Expression Laws. Nothing in this part shall be construed to alter legal standards regarding, or affect the rights available to individuals under, other Federal laws that establish protections for freedom of speech and expression.'

(2) Clerical amendment. The table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended by adding after the item relating to section 4155 the following:

'Sec 4156 Effect on other laws.