



Cyberbullying and Impersonating Individuals on Social Media Websites

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Study Authorization



- Delegate Robert Bell sent a letter to the Crime Commission requesting a study of cyberbullying, with an emphasis on impersonation on social media websites.

Background



- Bullying is defined by Webster's as “to affect by means of force or coercion” or “to treat abusively.”
- There is no real working definition of “cyberbullying.” However, the National Conference of State Legislatures defines “cyberbullying/cyber harassment” as:
 - “sending threatening or harassing email messages, instant messages, or blog entries or websites dedicated solely to tormenting an individual.”

Background



- There have been some very high profile incidents involving cyberbullying:
 - “Myspace Mom” – Lori Drew posed as a 16 year old boy and faked a romance with a 13 year girl. Four weeks later, she broke off the “romance.” The girl committed suicide as a result.
 - Tyler Clementi committed suicide after his roommate uploaded a video of him having sexual relations with a man.

Background



- It is difficult to determine the prevalence of cyberbullying, since it is a relatively new phenomenon.
 - Academic studies on bullying in the last 10 years estimate that anywhere from 10-30% of students reported being bullied.
 - Surveys conducted by the Cyberbullying Research Center suggest that anywhere from 20-40% of the students surveyed reported being cyberbullied.

Background



- Social media makes it much easier to reach a large number of people.
 - Facebook – there are more than 800 million users worldwide, and roughly 200 million users in the U.S.
 - Myspace – approximately 60 million users worldwide.
 - Twitter – has over 200 million active accounts.
 - Blogs – difficult to determine how many there are, but platforms such as “Blogger,” “Word Press,” or “Tumblr.” make it very easy to create a blog.

Background



- Additionally, teenagers' access to the internet has been made easier by the significant growth in the use of cell phones, smart phones, tablets, gaming consoles, and computers.
- According to Pew Research Studies (2009 & 2010):
 - At least 75% of teens (12-17) own a cell phone;
 - 58% of 12 year olds own a cell phone;
 - 73% of teens use social networking sites; and,
 - 63% of teens go online every day.
 - 80% of these teens use social networking sites daily.

Statutory Approaches to Cyberbullying



- Generally, there are three ways states can address cyberbullying:
 - Existing law (harassment, stalking);
 - Creating specific laws aimed at punishing acts of cyberbullying; and,
 - Requiring schools to develop policies and procedures to address acts of cyberbullying.

Harassment Laws



- Currently, there are at least 30 states that have criminal sanctions for harassment that are broad enough to penalize acts of cyberbullying. Examples:
 - Alabama - “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...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.”
Ala. Code § 13A-11-8 (West 2011).

Harassment Laws



- Kentucky - “A person is guilty of harassing communications when, with intent to intimidate, harass, annoy, or alarm another person, he or she...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.”
Ky. Rev. Stat. Ann. § 525.080 (West 2011).

Harassment Laws



- Va. Code § 18.2-152.7:1 penalizes the following conduct:
 - “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.”
- It could cover some acts of cyberbullying, but would not cover acts that do not involve “obscene, vulgar, profane, lewd, lascivious, or indecent language.”
 - Additionally, Va. Code § 18.2-60(A)(2) would cover electronic threats to persons on school property, which is punished as a Class 6 felony.

Stalking/Cyberstalking



- Laws that punish stalking are another way to address cyberbullying:
 - Florida - “any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking.”
Fla. Stat. Ann. § 784.048 (West 2011).
 - Maine - “the actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person...to suffer serious inconvenience or emotional distress.”
Me. Rev. Stat. tit. 17-A, § 210-A (2011).

Stalking/Cyberstalking



- Mississippi - “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.”

Miss. Code. Ann. § 97-45-15 (West 2011).

Stalking/Cyberstalking



- Rhode Island - “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.”

R.I. Gen. Laws Ann. § 11-52-4.2 (West 2011).

Stalking/Cyberstalking



- Va. Code § 18.2-60.3 (stalking) penalizes the following conduct:
 - “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.”
 - Penalized as a Class 1 misdemeanor.
- Only extreme cases of cyberbullying would be covered under this statute, those involving threats of injury, death, or sexual assault.

Cyberbullying Statutes



- States have recently enacted specific cyberbullying statutes. Currently, there are at least four states that have specific laws targeted at cyberbullying.
- Louisiana - “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.”
 - The penalty for a violation of this section is not more than a \$500 fine or six months in jail.
 - La. Rev. Stat. Ann. § 14:40.7 (2011).

Cyberbullying Statutes



- North Carolina recently passed a cyberbullying provision, aimed at punishing acts against minors. It covers the following:
 - building a fake “profile or website” to:
 - either pose as a minor in a electronic message; or,
 - encourage others to post the “private or personal” information of the minor on the internet.
 - with the intent to intimidate or torment a minor “post a real or doctored image of a minor.”
 - “plant any statement, whether true or false, tending to provoke or that actually provokes any third party to stalk or harass a minor.”
 - violations are punishable as a Class 1 misdemeanor.
 - N.C. Gen. Stat. Ann. § 14-458.1 (West 2011).

Cyberbullying Statutes



- Effective September 2011, Texas penalizes acts of cyberbullying through impersonation.
- Specifically, it is a crime when a person without consent uses another's name with the intent to harm, defraud, intimidate, or threaten any person:
 - Sets up a website on the internet or on a social networking site (a third degree felony); or,
 - Send emails, instant or text messages, with the intent to harm or defraud someone (a Class A misdemeanor).
 - Tex. Penal Code Ann. § 33.07 (West 2011).

Cyberbullying Statutes



- Utah penalizes electronic communications “with intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, or disrupt the electronic communications of another.”
 - First offense is a misdemeanor. With subsequent offenses, against minors, the penalty is increased to a third degree felony.
 - Utah Code Ann. § 76-9-201 (West 2011).

School Policies



- States have also been addressing cyberbullying with anti-bullying school policies.
- Currently, there are at least 26 states that have some form of a school bullying or cyberbullying policy requirement.
 - This is advantageous because the U.S. Supreme Court has granted schools significant leeway in restraining speech normally protected by the First Amendment.

Va. School Policy



- Virginia’s statutory requirements are very similar to what most other states prescribe for schools. In 2009 language was added to Va. Code § 22.1-279.6 requiring the Board of Education to adopt guidelines that include provisions addressing:
 - “bullying, the use of electronic means for purposes of bullying, harassment, and intimidation, and dissemination of such policies to students, their parents, and school personnel.”
- Under this statute, school boards shall adopt codes of student conduct commensurate with the guidelines of the Board of Education.



- In response to the requirement in Va. Code § 22.1-279.6, the Board of Education updated its guidelines in 2009 to include provisions addressing cyberbullying.
- According to the DOE's 2010 Annual Report to the Governor, only one school was not up to date with all school board policies.
- DOE was required by HJR 625 to study the nature and effectiveness of school divisions' anti-bullying policies. The report is due before the start of the 2012 General Assembly Session.
 - Part of the study entails collecting information on every school divisions' policies on bullying and determining the general effectiveness of the policies.



- In Tinker v. Des Moines Independent School District, 393 U.S. 503 (1968), the U.S. Supreme Court laid out its standard for student speech. It held that a school may restrict speech protected by the First Amendment if that speech would:
 - “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.”



- In Bethel School District v. Frasier, 478 U.S. 675 (1986) the Court refined the rule to say that speech in school, or at school sponsored events can be restricted if it is inconsistent with the “fundamental values” of public school education.
- Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988) held that educators do not violate the First Amendment by exercising editorial control of school sponsored activities, as long as it is related to teaching purposes.

Constitutional Standard for Student Speech



- In Morse v. Frederick, 551 U.S. 393 (2007), the Court extended a school's ability to restrict speech at school sponsored or authorized activities, to include speech outside or off school property.



- Recently, the 4th Circuit Court of Appeals upheld the disciplining of a student for creating a Myspace chat group that targeted a specific student with false and derogatory statements from the host and other posters. The court ruled that the punishment was justified because “the speech interfered with the work and discipline of the school.” Kowalski v. Berkeley County Sch., 652 F.3d 565 (4th Cir. 2011).

Constitutional Standard for Student Speech



- However, a recent case in the 3rd Circuit limited the reach of a school's policy in a case where a student created a fake Myspace profile of his principal. The court held that there was no evidence of substantial disruption in the school, so the Tinker standard did not apply. Additionally, while the court conceded that parts of the fake profile were vulgar, they reasoned that the activity occurred outside of school, and it was not proper for the school to restrict the student's speech. Layshock ex rel. Layshock v. Hermitage Sch. Dist., 650 F.3d 205 (3d Cir. 2011).

First Amendment Considerations



- First Amendment considerations when punishing speech:
 - “Fighting” words, true threats, and obscene speech, receive no constitutional protection;
 - With false statements or libelous speech, the government’s ability to punish this speech depends upon whether the object of the speech is a public or private person and whether the speech concerns a private or public matter; and,
 - Pure political speech is considered by the Supreme Court to be within the “central meaning” of the First Amendment and any restrictions of such speech are met with strict scrutiny by the courts.

Policy Considerations



- Should language be added to the Code of Virginia to penalize the impersonation of an individual to intentionally harass or inflict serious emotional stress on that person or other persons?
 - Should it be limited to victims who are minors?
 - Should it cover all individuals?
- Is it necessary to review the definition of “computer” in Va. Code § 18.2-152.2?



Discussion
