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## Bullies in a Wired World: The Impact of Cyberspace Victimization on Adolescent Mental Health and the Need for Cyberbullying Legislation in Ohio

Kelly A. Albin

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# BULLIES IN A WIRED WORLD: THE IMPACT OF CYBERSPACE VICTIMIZATION ON ADOLESCENT MENTAL HEALTH AND THE NEED FOR CYBERBULLYING LEGISLATION IN OHIO

KELLY A. ALBIN\*

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## I. INTRODUCTION

Thirteen-year-old Hope Witsell used her favorite scarves to hang herself from a canopy bed.<sup>1</sup> Thirteen-year-old Megan Meier used a belt to hang herself in a closet.<sup>2</sup> Thirteen-year-old Alex shot himself with his grandfather's antique shotgun.<sup>3</sup> Eighteen-year-old Tyler Clementi jumped off the George Washington Bridge.<sup>4</sup> These teens are among the many victims of cyberbullying and represent bullying's dangerous progression<sup>5</sup> in the digital age. This Note examines cyberbullying's impact on adolescents' mental health and psychological and emotional development and explores the need for Ohio-specific cyberbullying legislation.

Traditionally, bullies' taunts and torments were confined to the schoolyard and halls. Most bullying resembled either a survival of the fittest<sup>6</sup> scenario or psychological warfare;<sup>7</sup> stealing other kids' lunch money and threatening to "punch their lights out," or pouncing on insecurities and spreading viciously false rumors. No matter the type of bully, once the school day ended, bullied victims safely retreated to a peaceful night at home, away from the emotional, physical, and mental abuse. Today, the retreat to home is no longer a retreat to safety.<sup>8</sup> In a wired world,

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<sup>1</sup> Andrew Meacham, *Sexting-related Bullying Cited in Hillsborough Teen's Suicide*, ST. PETERSBURG TIMES, Nov. 29, 2009; see also Randi Kaye, *How a Cell Phone Picture Led to a Girl's Suicide*, CNN.COM (last visited Oct. 7, 2010), <http://www.cnn.com/2010/LIVING/10/07/hope.witsells.story/index.html?hpt=Sbin>.

<sup>2</sup> Jennifer Steinhauer, *Verdict in MySpace Suicide Case*, N.Y. TIMES, Nov. 27, 2008, at A25.

<sup>3</sup> Stacy M. Chaffin, Note & Comment, *The New Playground Bullies of Cyberspace: Online Peer Sexual Harassment*, 51 HOW. L. J. 773, 774 (2008). Alex is a fictional name to protect the privacy of the victim and his family.

<sup>4</sup> Lisa W. Foderaro, *Private Moment Made Public, Then a Fatal Jump*, N.Y. TIMES, Sept. 30, 2010, at A1.

<sup>5</sup> See Lara Rhodes, *A Push Toward Silence: The Progression of Cyberbullying and the Laws to Stop It*, L.J. FOR SOC. JUST. (Jan. 13, 2011), available at <http://ljsj.wordpress.com/2011/01/13/a-push-toward-silence-the-progression-of-cyberbullying-and-the-laws-to-stop-it/#h>; Kate A. Schwartz, Note, *Criminal Liability for Internet Culprits: The Need for Updated State Laws Covering the Full Spectrum of Cyber Victimization*, 87 WASH. U. L. REV. 407, 412 (2009).

<sup>6</sup> D. Brian Burghart, *Reflections of an Ex-Bully*, NEWSREVIEW.COM (Aug. 18, 2011), <http://www.newsreview.com/reno/reflections-of-an-ex-bully/content?oid=3269167> (positing that the bully culture is underpinned by the American culture of the Darwin survival-of-the-fittest theory).

<sup>7</sup> Suzanne SooHoo, *Examining the Invisibility of Girl-to-Girl Bullying in Schools: A Call to Action*, INT'L ELECTRONIC J. FOR LEADERSHIP IN LEARNING, <http://www.uclagary.ca/iejll/soohoo> (last visited Aug. 26, 2011) ("Girl-to-girl bullying is described as psychological warfare characterized by name-calling, gossiping, character assassination, and banishment from social circles or activities.").

<sup>8</sup> See Josephine M. Palmeri, "Cyberbullicide: When Cyberbully Victims Can't Escape," NYU STEINHARDT, <http://steinhardt.nyu.edu/opus/issues/2011/spring/cyberbullicide> (last visited Aug. 26, 2011) (discussing how advancement in modern technology has influenced online victimization and driven traditional bullying to a new extreme).

the schoolyard is now the Internet, allowing students to target and inescapably victimize other students through cyberbullying in the playgrounds of cyberspace.

Cyberbullying is the “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices.”<sup>9</sup> Although this is an imperfect definition, it includes four main components that are important in defining cyberbullying: (1) deliberate behavior, not merely accidental; (2) repeated behavior, more than a one-time incident; (3) harm occurred—from the victim’s perspective; and (4) it is executed through a technological medium.<sup>10</sup> This phenomenon has recently received worldwide attention because of its negative effect on adolescent mental health<sup>11</sup> and the many cases of cyberbullying-induced teen suicide.<sup>12</sup> In 2004,

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<sup>9</sup> Sameer Hinduja & Justin W. Patchin, *Cyberbullying: Identification, Prevention, and Response*, CYBERBULLYING RESEARCH CENTER, [http://www.cyberbullying.us/Cyberbullying\\_Identification\\_Prevention\\_Response\\_Fact\\_Sheet.pdf](http://www.cyberbullying.us/Cyberbullying_Identification_Prevention_Response_Fact_Sheet.pdf) (last visited Oct. 24, 2010). While a universal definition for cyberbullying has not yet developed, this note will use Hinduja and Patchin’s definition. See also Janis Wolak & Kimberly Mitchell, *Does Online Harassment Constitute Bullying? An Exploration of Online Harassment by Known Peers and Online-Only Contacts*, 41 J. ADOLESC. HEALTH S51, S51-52 (2007) (defining cyberbullying as the “use of the Internet, cell phones, or other technology to send or post text or images intended to hurt or embarrass another person”); Karly Zande, Article, *When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying*, 13 BARRY L. REV. 103, 106 (2009) (defining cyberbullying as the “use of technology to humiliate, embarrass, or otherwise bully another”).

<sup>10</sup> Sameer Hinduja & Justin W. Patchin, *Cyberbullying Fact Sheet: What You Need to Know About Online Aggression*, CYBERBULLYING RESEARCH CENTER, 1 [http://www.cyberbullying.us/cyberbullying\\_fact\\_sheet.pdf](http://www.cyberbullying.us/cyberbullying_fact_sheet.pdf) (last visited Oct. 24, 2010).

<sup>11</sup> See Jing Wang et al., *Cyber and Traditional Bullying: Differential Association With Depression*, J. ADOLESC. HEALTH (Sept. 22, 2010) (on file with author), available at <http://www.jahonline.org/article/S1054-139X%2810%2900343-5/abstract> (this article may also be purchased at the provided hyperlink) (concluding that experience with cyberbullying has a negative effect on adolescent development); see also Deborah Goebert et al., *The Impact of Cyberbullying on Substance Use and Mental Health in a Multiethnic Sample*, MATERNAL CHILD HEALTH J. (Sept. 8, 2010), available at [http://www.hasp.org/resources/Goebert\\_article.pdf](http://www.hasp.org/resources/Goebert_article.pdf).

<sup>12</sup> See Marie Hartwell-Walker, *Cyberbullying and Teen Suicide*, PSYCH CENTRAL, <http://psychcentral.com/lib/2010/cyberbullying-and-teen-suicide/all/1/> (last visited Feb. 12, 2011) (noting the blurred boundaries of social connection that enable young people to connect with each other immediately and constantly through Facebook, IM, Twitter, cell phone, and email).

What only a generation ago took days to get around school, now can take minutes. There’s little time to confront a rumor, to clarify a remark, or to stand up to a bully when negative messages get so widespread so fast and when the bully is able to be anonymous. . . . Tragically, this is leading to increasing numbers of suicides among our teens. In 2006, suicide was the third leading cause of death for young people ages 15 to 24, just behind car accidents and homicide. It’s estimated that for every completed suicide, there are 5 or more attempts; attempts that could have been fatal but for the luck of miscalculation about the means or the luck of someone walking in on time.

*Id.*

the Centers for Disease Control and Prevention (“CDC”)<sup>13</sup> identified a significant upward trend in total suicide rates for three of six sex-age groups observed in the study: females aged 10-14 years and 15-19 years and males aged 15-19 years.<sup>14</sup> Females aged 10-14 years represented the greatest percentage increase in suicide rates from 2003 to 2004 (75.9%), followed by females aged 15-19 years (32.3%) and males aged 15-19 years (9.0%).<sup>15</sup> Since then, suicide rates among young adults continue to cause national concern, with cyberbullying as a driving force.<sup>16</sup> The nationwide rise in teen suicide and cyberbullying victimization compelled thirty-four states to pass specific cyberbullying laws or to amend state bullying statutes to include cyberbullying or electronic harassment scenarios.<sup>17</sup>

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<sup>13</sup> The Centers for Disease Control and Prevention (CDC), is part of the U.S. Department of Health and Human Services and the primary Federal agency for conducting and supporting public health activities in the United States. *CDC Fact Sheet*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/about/resources/facts.htm> (last visited Feb. 13, 2011). CDC serves as the national focus for developing and applying disease prevention and control, environmental health, and health education activities designed to improve the health of the United States. CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/maso/pdf/cdmiss.pdf> (last visited Feb. 13, 2011). CDC is responsible for controlling the introduction and spread of infectious diseases, and it provides consultation and assistance to other nations and international agencies to assist in improving disease prevention and control, environmental health, and health promotion activities. *Id.* CDC also administers the Preventive Health and Health Services Block Grant and specific preventive health categorical grant programs while providing program expertise and assistance in responding to Federal, State, local, and private organizations on matters related to disease prevention and control activities. *Id.*

<sup>14</sup> Centers for Disease Control and Prevention, *Suicide Trends Among Youths and Young Adults Aged 10-24 Years-United States, 1990-2004*, 56(35) MORBIDITY & MORTALITY WKLY. REP. 905, 905-08 (2007). “In absolute numbers, from 2003 to 2004, suicides rates increased from 56 to 94 among females aged 10-14 years, from 265 to 355 among females aged 15-19 years, and from 1,222 to 1,345 among males aged 15-19 years.” *Id.* at 906-07. The rate of suicide among young adults has likely further increased since 2004, given the recent rush of teen suicides that have received national attention. *See* Hartwell-Walker, *supra* note 12.

<sup>15</sup> Centers for Disease Control and Prevention, *supra* note 14, at 906.

<sup>16</sup> Sameer Hinduja & Justin W. Patchin, *Bullying, Cyberbullying, and Suicide*, 14(3) ARCHIVES OF SUICIDE RES. 206, 214-16 (2010). “The data for this study [came] from a survey distributed in the spring of 2007 to approximately 2,000 students in [thirty] middle schools ([sixth] through [eighth] grades) in one of the largest school districts in the United States.” *Id.* at 210. With a ninety-six percent completion rate from students, the study reported that: twenty percent of students reported seriously thinking about attempting suicide; all forms of bullying were significantly associated with increases in suicidal ideation; and cyberbullying victims were almost twice as likely to have attempted suicide compared to youth who had not experienced cyberbullying. *Id.* at 210-16.

<sup>17</sup> Sameer Hinduja & Justin W. Patchin, *State Cyberbullying Laws: A Brief Review of State Cyberbullying Laws and Policies*, CYBERBULLYING RESEARCH CENTER 1, [http://www.cyberbullying.us/Bullying\\_and\\_Cyberbullying\\_Laws.pdf](http://www.cyberbullying.us/Bullying_and_Cyberbullying_Laws.pdf) (last updated Jan. 2011). Some states have preferred to adopt electronic harassment statutes, as opposed to specific cyberbullying legislation. *See* Harassment Through Electronic Communications, 720 ILL. COMP. STAT. 135/1-2 (LexisNexis 2010). Although it is a step in the right direction, general electronic or telecommunications harassment statutes can be ill-fit to many cyberbullying scenarios and may result in severe penalties for juveniles. *See infra* II.B.2 (discussing the risk of over-

Ohio is not exempt from the nationwide epidemic of cyberbullying-induced teen suicide. In the past five years alone, four teens from Mentor High School took their lives after being tormented and teased for extended periods of time.<sup>18</sup> Each victim endured relentless bullying at school, retreated to a cyberbullying-filled night at home, and developed severe depression and social withdrawal.<sup>19</sup> A similar incident occurred in Cincinnati, Ohio.<sup>20</sup> Jessica Logan was a beautiful high school senior with blonde hair and blue eyes, who aspired to study graphic design at the University of Cincinnati.<sup>21</sup> Unfortunately, a nude photo of Jessica was reportedly sent to her boyfriend, and when the relationship ended, the image soon went viral to four high schools.<sup>22</sup> Students harassed Jessica for months, calling her a “slut” and a “whore” and even throwing objects at her.<sup>23</sup> Although the local resource officer, school officials, and local prosecutor’s office were aware of Jessica’s bullying, each said they could not press charges against or discipline the teens.<sup>24</sup> The resource officer stated that he only help her by asking the students to delete the video and encouraged Jessica to go public with her story, without consulting Jessica’s mother.<sup>25</sup> Shortly after the interview aired, however, the abuse intensified.<sup>26</sup> After months of feeling miserable, depressed, and afraid to go to school, Jessica ended her life by hanging herself in her bedroom.<sup>27</sup> This scenario alone warrants the attention of Ohio legislators. Ohio should follow the majority of other states by recognizing cyberbullying’s detrimental effect on adolescents’ mental health<sup>28</sup> and the exigent need to enact specific cyberbullying legislation.

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criminalizing cyberbullies by attempting to prosecute juveniles under Ohio’s menacing by stalking or telecommunications harassment statutes).

<sup>18</sup> Meghan Barr, *4 Bullied Teen Deaths at Ohio School*, THE HUFFINGTON POST (Oct. 8, 2010, 4:01 PM), [http://www.huffingtonpost.com/2010/10/08/4-bullied-teen-deaths-at-\\_n\\_755461.html](http://www.huffingtonpost.com/2010/10/08/4-bullied-teen-deaths-at-_n_755461.html).

<sup>19</sup> *Id.*

<sup>20</sup> Mike Celizic, *Her Teen Committed Suicide Over “Sexting”*, MSNBC.COM (Mar. 6, 2009, 9:26:11 AM), <http://today.msnbc.msn.com/id/29546030/ns/today-parenting/>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See Bullying: Words Can Kill*, CBSNEWS.COM 15:30-18:10 (Sept. 16, 2011), <http://www.cbsnews.com/video/watch/?id=7381364n&tag=segmentExtraScroller;housing> (Cynthia Logan discusses the school resource officer’s failure to make good faith efforts to help alleviate the harm to Jessica as a result of the released picture).

<sup>25</sup> *Id.* The resource officer gave Jessica the business card of a local reporter without discussing it with Jessica’s mother, Cynthia Logan. *Id.* Luckily, Cynthia learned of the interview shortly before it was scheduled to occur; she made sure that Jessica’s identity would be concealed during the interview. *Id.* Despite Cynthia’s attempts to protect her daughter, however, the abuse intensified. *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Celizic, *supra* note 20.

<sup>28</sup> *See* Hinduja & Patchin, *supra* note 16, at 214-16 (discussing cyberbullying victimization as a catalyst to teen suicide).

Cyberbullying-induced suicide and online victimization calls for an immediate response by Ohio legislators. But, Ohio courts should avoid the temptation to prosecute cyberbullies under ill-fit statutes, and the Ohio legislature should avoid enacting knee-jerk legislation that may create unintended consequences that substantially restrict free speech.<sup>29</sup> The Ohio General Assembly should instead respond to this digital trend by amending its current anti-bullying educational statutes<sup>30</sup> to include cyberbullying or telecommunications harassment awareness and prevention within schools.<sup>31</sup> Ohio should also either adopt a specific criminal cyberbullying statute or amend the current telecommunications harassment statute<sup>32</sup> to more closely fit a cyberbullying-type scenario that focuses on conduct between juveniles.<sup>33</sup>

This Note examines cyberbullying's impact on adolescents' mental health and psychological development and explores an Ohio-specific legislative response to the problem. Part II addresses the urgent need for cyberbullying legislation, the inadequacy of Ohio law, and the detrimental effects that may result when juveniles are targeted by cyberbullies. Part III demonstrates how other states have reacted to the cyberbullying problem by amending already enacted bullying statutes or by creating new and specific cyberbullying laws. Part IV proposes a new cyberbullying statute that criminalizes the more extreme cases of cyberbullying, incorporates age as a sentencing factor, and introduces school-employee liability for any reckless or knowing disregard for cyberbullying instances. This section also proposes amending the current bullying statutes applicable to state boards of education.<sup>34</sup> Finally, Part V provides forward-looking recommendations about how legislators, parents, and schools should respond to cyberbullying and includes concluding remarks on cyberbullying and the current legal landscape.

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<sup>29</sup> Although this Note does not focus on First Amendment concerns, a school's ability to regulate student conduct that occurs off campus is a heavily litigated and controversial topic. See generally Jacob Tabor, Note, *Students' First Amendment Rights in the Age of the Internet: Off-Campus Cyberspeech and School Regulation*, 50 B.C. L. REV. 561, 564 (2009) (noting that the U.S. Supreme Court has only decided four cases that deal with students' First Amendment right to free speech within the public school context, and in each case, the Court applied a different test to determine whether the "on-campus" speech was entitled to First Amendment protection); Susan Hartung, *When Cyberspeech Knocks at the Schoolhouse Gate*, ASS'N FOR CAREER AND TECHNICAL EDUC. (Apr. 2008), [http://www.acteonline.org/uploadedFiles/Publications\\_and\\_Online\\_Media/files/files-techniques-2008/When-Cyberspeech-Knocks-at-the-Schoolhouse.pdf](http://www.acteonline.org/uploadedFiles/Publications_and_Online_Media/files/files-techniques-2008/When-Cyberspeech-Knocks-at-the-Schoolhouse.pdf) ("[S]chools cannot punish students for speech that occurs off school grounds unless it materially disrupts class, involves a substantial interference or an invasion of the rights of others.").

<sup>30</sup> See Policy Prohibiting Harassment, Intimidation, or Bullying, OHIO REV. CODE ANN. § 3313.666 (LexisNexis 2010); Bullying Prevention Initiatives, OHIO REV. CODE ANN. § 3313.667 (LexisNexis 2010).

<sup>31</sup> See *infra* Part V (proposing legislative responses to cyberbullying for Ohio).

<sup>32</sup> See Telecommunications Harassment, OHIO REV. CODE ANN. § 2917.21 (LexisNexis 2010).

<sup>33</sup> See *infra* Part V (discussing proposed legislative responses to cyberbullying in Ohio).

<sup>34</sup> See § 3313.666; § 3313.667.

## II. THE NEED FOR CYBERBULLYING LEGISLATION

Cyberbullying continues to escalate with the proliferation of Internet use and social networking sites.<sup>35</sup> According to the CDC, cyberbullying has evolved into a “public health problem”<sup>36</sup> that cannot be ignored.<sup>37</sup> Because cyberbullies can target victims through a variety of mediums, at any time, cyberbullying is not only more severe than traditional bullying,<sup>38</sup> but has also proven to frustrate adolescents’ emotional, psychological, and sociological development.<sup>39</sup> Yet in Ohio, cyberbullying victims lack a specific legal remedy, and cyberbullies may be prosecuted under ill-fit criminal statutes. Criminal laws, such as telecommunications harassment<sup>40</sup> or menacing by stalking,<sup>41</sup> provide harsh sentences for juvenile offenders and do not account for the typical cyberbullying scenario.<sup>42</sup> The Ohio General Assembly should pass specific cyberbullying legislation to address this unique and growing problem.

### A. *The Negative Effects of Cyberbullying*

Before the Internet, bullies dominated the schoolyard. Now, bullies of the twenty-first century release their aggressions online, as cyberspace becomes the “high-tech playground for intimidation.”<sup>43</sup> In a study funded by the U.S. Department of Justice, the National Crime Prevention Council<sup>44</sup> (“NCPC”) reported that the

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<sup>35</sup> See Amanda Lenhart et al., *Social Media & Mobile Internet Use Among Teens and Young Adults*, THE PEW INTERNET & AMERICAN LIFE PROJECT 4 (Feb. 3, 2010), [http://pewinternet.org/~media/Files/Reports/2010/PIP\\_Social\\_Media\\_and\\_Young\\_Adults\\_Report\\_Final\\_with\\_toplines.pdf](http://pewinternet.org/~media/Files/Reports/2010/PIP_Social_Media_and_Young_Adults_Report_Final_with_toplines.pdf) (noting that as of fall 2009, 73% of teens between the ages of twelve and seventeen used online social networking sites, an increase from 58% in 2007).

<sup>36</sup> Corinne David-Ferdon & Marci Feldman Hertz, *Electronic Media, Violence, and Adolescents: An Emerging Public Health Problem*, 41 J. ADOLESC. HEALTH S1, S5 (2007) (noting that many risks accompany the “tremendous positive social and learning opportunities” created by electronic media).

<sup>37</sup> Alison Virginia King, Note, *Constitutionality of Cyberbullying Laws: Keeping the Online Playground Safe for Both Teens and Free Speech*, 63 VAND. L. REV. 845, 848 (2010).

<sup>38</sup> See generally *infra* Part II.A.1 (discussing the differences between traditional bullying and cyberbullying).

<sup>39</sup> See generally *infra* Part II.A.2 (examining cyberbullying’s negative influence on adolescents’ identity formation process and sociological development).

<sup>40</sup> See § 2917.21.

<sup>41</sup> See Menacing by Stalking, OHIO REV. CODE ANN. § 2903.211 (LexisNexis 2010).

<sup>42</sup> See *infra* Part II.B.2 (discussing the inadequacy of Ohio criminal statutes to punish and to deter cyberbullying).

<sup>43</sup> Chaffin, *supra* note 3, at 784.

<sup>44</sup> The National Crime Prevention Council (NCPC) was founded in 1982 to manage the National Citizens’ Crime Prevention Campaign, to administer the Crime Prevention Coalition of America, and to promote crime prevention through trainings, technical assistance, and publications. *History*, NATIONAL CRIME PREVENTION COUNCIL, <http://www.ncpc.org/about/history> (last visited Feb. 13, 2011). The NCPC has grown to be the nation’s premiere crime prevention agency, recognized for its knowledge, ability, and expertise. *Id.* The NCPC’s mission is to be the nation’s leader in helping people to keep themselves, their families, and



percentage of children who recounted being physically bullied over the past year declined by seven percent from 2003 to 2008.<sup>45</sup> The NCPC believes the numbers are encouraging, but notes that cyberbullying has eclipsed physical bullying. Currently, more than forty-three percent of teens report being victimized by cyberbullying.<sup>46</sup> Michelle Boykins, Director of Communications for the NCPC, stated, “[w]e are worried about the pervasive growth of cyberbullying among our young people. The online assault of our kids through cyberbullying hurts every bit as much as a fist and can be equally damaging.”<sup>47</sup> With the alarming number of teen suicides recently receiving national attention, cyberbullying can result in even deadlier consequences.<sup>48</sup>

### 1. The Differences Between Cyberbullying and Traditional Bullying

Cyberbullying shares three common characteristics with traditional bullying: (1) malicious and aggressive behavior; (2) an imbalance of power between two players; and (3) repetitive behavior over a period of time.<sup>49</sup> Thus, the electronic medium seems to be the key difference between traditional bullying and its digital counterpart.<sup>50</sup> This difference makes cyberbullying more difficult to regulate and creates advantages for the cyberbully that do not exist for traditional bullies.<sup>51</sup>

Cyber-communications free cyberbullies from normative and social constraints on their behavior that exist in traditional bullying scenarios. Temporary email

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their communities safe from crime. *About Us*, NATIONAL CRIME PREVENTION COUNCIL, <http://www.ncpc.org/about> (last visited Feb. 13, 2011). It provides communities with tools to learn crime prevention strategies, engage community members, and coordinate with local agencies. *Id.* Cyberbullying has been a key campaign for the NCPC over the past decade, providing important information on victims’ reactions, how to prevent cyberbullying, how to stop cyberbullying, and how to keep families and friends cyber-safe. *See Cyberbullying*, NATIONAL CRIME PREVENTION COUNCIL, <http://www.ncpc.org/newsroom/current-campaigns/cyberbullying> (last visited Feb. 13, 2011).

<sup>45</sup> Mary Winter, *Phoebe Prince: Victim of Bullycide -- or of a Deeper Problem?*, POL. DAILY, <http://www.politicsdaily.com/2010/04/20/phoebe-prince-victim-of-bullycide-or-of-a-deeper-problem/> (last visited Oct. 25, 2010).

<sup>46</sup> *Teens and Cyberbullying: Executive Summary of a Report on Research*, NATIONAL CRIME PREVENTION COUNCIL 8 (Feb. 28, 2007), <http://www.ncpc.org/resources/files/pdf/bullying/Teens%20and%20Cyberbullying%20Research%20Study.pdf>.

<sup>47</sup> Winter, *supra* note 45.

<sup>48</sup> *See* Chaffin, *supra* note 3; Foderaro, *supra* note 4; Kaye, *supra* note 1; Steinhauer, *supra* note 2. Each of these sources represent cyberbullying-induced teen suicide cases that have recently received national attention. *See also, supra* Part I (highlighting the recent rise of teen suicide over the past decade); *infra* Part II.A.1-2 (discussing cyberbullying’s detrimental effects on teen mental health and addressing specific instances of cyberbullying-induced suicide).

<sup>49</sup> *See* ROBIN M. KOWALSKI ET AL., CYBER BULLYING: BULLYING IN THE DIGITAL AGE 3 (2008) (referencing the Internet as the “digital communication backbone of teens’ daily lives”).

<sup>50</sup> *See* Hinduja & Patchin, *supra* note 10, at 1 (noting that “computers, cell phones, and other electronic devices” differentiates cyberbullying from traditional bullying).

<sup>51</sup> Zande, *supra* note 9, at 109 (citing KOWALSKI, *supra* note 49, at 61-62).

accounts, pseudonyms in chat rooms, instant messaging programs, and other Internet venues often obstruct a victim's ability to determine an aggressor's identity.<sup>52</sup> Similarly, many wireless phone providers allow privacy options to prevent a caller's phone number from displaying on a caller ID device.<sup>53</sup> Cloaked by this virtual anonymity, the cyberbully may be emboldened, posting harsher and more destructive material as a result of being physically removed from the situation.<sup>54</sup> Also, because tone, inflection, and facial expression are usually absent from online conversations, a cyberbully may not know or realize the harm being inflicted upon a victim.<sup>55</sup> In cyberspace, there is not always a swift or certain response that informs an adolescent of the inappropriateness of his or her harmful words or expressions.<sup>56</sup> Such feedback in face-to-face conversations can "send a message to bullies that 'enough is enough' or that their behavior is inappropriate."<sup>57</sup> By exploiting new technology to harm others, cyberbullies cause substantial damage to victims.<sup>58</sup>

Another unique problem that differentiates cyberbullying from traditional bullying is cyberbullying's ability to instantly send hurtful and humiliating content to thousands of people.<sup>59</sup> Degrading or cruel comments posted online or text messages sent from electronic devices can be viewed by people around the globe, including family, friends, and future employers; thus, embarrassing or harming the victim's reputation.<sup>60</sup> While spoken rumors and tangible photos may seem to spread around a school like wildfire, technology greatly expedites and magnifies the harm.<sup>61</sup>

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<sup>52</sup> Hinduja & Patchin, *supra* note 10, at 1; *see also* KOWALSKI, *supra* note 46, at 51-57, 65 (discussing the communication modalities cyberbullies use to harass victims, including instant messaging, e-mail, text messaging, social networking sites, chat rooms, and blogs).

<sup>53</sup> *See Privacy Policy: Privacy Options*, VERIZON, <http://www22.verizon.com/about/privacy/ohio/> (last visited Oct. 25, 2010) (providing customers with the option of total anonymity either per call or for all calls made depending on the privacy service used); *see also AT&T All In One: Call Screening Features: Caller ID Blocking*, AT&T, [http://www.corp.att.com/smbcc/aio/aio\\_callscreen.html](http://www.corp.att.com/smbcc/aio/aio_callscreen.html) (last visited Oct. 25, 2010) (providing callers with two privacy options for outgoing calls: per call or per line).

<sup>54</sup> *See* KOWALSKI, *supra* note 49, at 64-65 (referring to this behavior as "the phenomenon of disinhibition"); *see also* Hinduja & Patchin, *supra* note 10, at 1 (highlighting that a cyberbully is "virtually anonymous").

<sup>55</sup> *See* KOWALSKI, *supra* note 49, at 65-66 (describing how children can become an accidental cyberbully by making comments that the child thinks are a joke, but the joke is inadvertently hurting another child's feelings, absent the intended tone and expression).

<sup>56</sup> Hinduja & Patchin, *supra* note 10, at 1.

<sup>57</sup> *Id.* at 1-2.

<sup>58</sup> *Id.* at 1; *see also* Sameer Hinduja & Justin W. Patchin, *Offline Consequences of Online Victimization*, 6 J. SCH. VIOLENCE 89, 89-90 (2007) (utilizing the general strain theory to identify the emotional and behavioral effects of cyberbullying victimization).

<sup>59</sup> *Id.* at 2; *see also* King, *supra* note 37, at 849-51 (discussing why the negative effects of cyberbullying are often more serious and long-lasting than those of traditional bullying because of the internet's ability to veil anonymity and to widely distribute information for an indefinite period of time).

<sup>60</sup> Zande, *supra* note 9, at 110-11.

<sup>61</sup> Hinduja & Patchin, *supra* note 10, at 2.

A tragic example of cyberbullying's viral effects involves Hope Witsell, a thirteen-year-old from Ruskin, Florida. Her story emphasizes the seemingly inescapable and suffocating consequences of cyberbullying.<sup>62</sup> Hope experienced cyberbullying when a fellow student discovered a partially nude picture of her and sent it to students at six different schools in the area.<sup>63</sup> Hope's friend, Kyla Stich, told CNN that fellow students would "walk up to her and call her 'slut,' 'whore,' and . . . 'skank' and just be really cruel to her."<sup>64</sup> The mass text not only caused students to verbally bully Hope, but students also wrote hurtful comments on a Myspace<sup>65</sup> page called the "Shields Middle School Burn Book" and started a "Hope Hater Page."<sup>66</sup> After months of humiliation and inescapable cyberbullying, as well as traditional bullying, Hope took her life by hanging herself in her bedroom.<sup>67</sup>

Additionally, cyberspace lacks supervision that is available in many traditional bullying settings. While chat hosts and social network providers sometimes observe chat dialog and posted comments in an effort to police conversations and evict offensive material, "personal messages sent between users are viewable only by the sender and the recipient," and they are usually outside regulatory reach.<sup>68</sup> Computers and laptops in adolescents' private bedrooms often prevent or deter parents from actively monitoring Internet use. This allows many teenagers to operate technologies without worry that a probing parent will discover their cyberbullying or victimization.<sup>69</sup> Further, there are typically no individuals to monitor offensive content in electronic mail or text messages sent via computer or cell phone.<sup>70</sup>

While some critics may argue that a victim could escape cyberbullying by turning off a cell phone or remaining offline, this is not the reality of today's students and society at large.<sup>71</sup> The majority of people nationwide are constantly connected to their cell phones or the Internet for social use.<sup>72</sup> Even educators are

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<sup>62</sup> Kaye, *supra* note 1.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*; Michael Inbar, "'Sexting' Bullying Cited in Teen's Suicide," MSNBC.COM (Dec. 2, 2009, 10:26 AM), [http://today.msnbc.msn.com/id/34236377/ns/today-today\\_people/t/sexting-bullying-cited-teens-suicide/](http://today.msnbc.msn.com/id/34236377/ns/today-today_people/t/sexting-bullying-cited-teens-suicide/).

<sup>65</sup> Myspace, Inc. is a leading social entertainment website powered by fans, headquartered in Beverly Hills, California. *About Us*, MYSPACE.COM, <http://www.myspace.com/Help/AboutUs> (last visited Feb. 13, 2011). It drives social interaction by providing a highly personalized experience around entertainment and connecting people to music, celebrities, TV, movies, and games. *Id.* Myspace is also the home of Myspace Music, which offers an ever-growing catalogue of freely stream-able audio and video content to users and provides major, independent, and unsigned artists alike with the tools to reach new audiences. *Id.*

<sup>66</sup> Kaye, *supra* note 1.

<sup>67</sup> *Id.*

<sup>68</sup> Hinduja & Patchin, *supra* note 10, at 2.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Zande, *supra* note 9, at 111.

<sup>72</sup> *Internet Usage Statistics: World Internet Users and Population Stats*, INTERNET WORLD STATS. (Mar. 31, 2011), <http://www.internetworldstats.com/stats.htm>. Although only 30.2% of

incorporating more technology into the schools' curriculum.<sup>73</sup> Being inseparable from technology and the Internet makes a person a "perpetual target for victimization,"<sup>74</sup> and converts the "virtual reality" of cyberspace into a reality. In April, 2010, the Pew Research Center<sup>75</sup> found that cell phone texting has become the preferred channel of basic communication between teens and their peers: approximately seventy-five percent of twelve- to seventeen-year-olds now own cell phones (up from forty-five percent in 2004); fifty percent of teens send at least fifty text messages a day; and approximately thirty-three percent send more than 100 texts a day (amounting to more than 3,000 texts a month).<sup>76</sup> In a separate study, the Pew Center found that Internet use is nearly ubiquitous among teens and young adults today.<sup>77</sup> Ninety-three percent of teens between the ages of twelve to seventeen go online for extensive periods each day, as do ninety-three percent of young adults ages eighteen to twenty-nine.<sup>78</sup> According to the Cyberbullying Research Center,<sup>79</sup>

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the world population uses the Internet, an astonishing 78.3% of the North American population uses the Internet. *Id.*

<sup>73</sup> Maya T. Prabhu, *Panel: Cell Phones Have Much Potential in Classrooms*, ESCHOOL NEWS (Apr. 22, 2010), <http://www.eschoolnews.com/2010/04/22/panel-cell-phones-have-much-potential-in-classrooms/>.

<sup>74</sup> Hinduja & Patchin, *supra* note 10, at 2.

<sup>75</sup> The Pew Research Center is a non-profit, tax-exempt corporation that was established in 2004 as a subsidiary of The Pew Charitable Trusts, a Philadelphia-based public charity. *About the Center*, PEW RESEARCH CENTER, <http://pewresearch.org/about/> (last updated Sept. 8, 2011). As a nonpartisan corporation, it provides information on the issues, attitudes, and trends shaping the United States and the world by: conducting public opinion polling and social science research; analyzing news coverage; and holding forums and briefings. *Id.* It does not, however, take positions on policy issues and conducts its work through various projects. *Id.* The Pew Internet and American Life Project conducts original research that explores the impact of the internet on children, families, communities, and schools, which includes cyberbullying research. *The Center & Its Projects*, PEW RESEARCH CENTER, <http://pewresearch.org/about/projects/> (last updated Sept. 8, 2011).

<sup>76</sup> Amanda Lenhart et al., *Teens and Mobile Phones: Text Messaging Explodes As Teens Embrace It As the Centerpiece of Their Communication Strategies with Friends*, THE PEW INTERNET & AMERICAN LIFE PROJECT 2 (Apr. 20, 2010), <http://pewinternet.org/~media/Files/Reports/2010/PIP-Teens-and-Mobile-2010-with-topline.pdf>.

<sup>77</sup> Lenhart, *supra* note 35, at 4.

<sup>78</sup> *Id.*

<sup>79</sup> The Cyberbullying Research Center is dedicated to providing up-to-date information about the nature, extent, causes, and consequences of cyberbullying among adolescents. Sameer Hinduja & Justin W. Patchin, *About Us*, CYBERBULLYING RESEARCH CENTER, <http://www.cyberbullying.us/aboutus.php> (last visited Feb. 13, 2011). The Center is directed by Dr. Sameer Hinduja and Dr. Justin Patchin, who have studied cyberbullying since 2002 and first launched the Cyberbullying Research Center in 2005. *Id.* They founded the Center as a means to further their mission of bringing sound research about cyberbullying to those who can benefit most from it. *Id.* Its website is intended to be a resource for parents, educators, law enforcement officers, counselors, and others who work with youth. *Id.* Drs. Hinduja and Patchin frequently communicate with youth and adults on the front lines and formally survey students on a regular basis to gather facts, figures, and detailed stories from those who have been directly impacted by online aggression. *Id.*

adolescents have also completely embraced online social networking. As of the fall of 2009, seventy-three percent of teens between the ages of twelve and seventeen use such sites, an increase from fifty-eight percent in 2007.<sup>80</sup> Adolescents' constant connection contributes to the destructive nature of cyberbullying.<sup>81</sup>

## 2. The Mental and the Psychological Health Effects of Cyberbullying

Adolescence is a particularly important time for identity development.<sup>82</sup> During this period, a youth's social environment and social interactions with peers largely influence the identity formation process.<sup>83</sup> Thus, adolescents seek behaviors, situations, and social environments that help value themselves positively and avoid those that affect them negatively.<sup>84</sup> Overall, this affects a child's perceptions and acceptance of his or her changing self, and it plays a "critical role in directing his or her personal and even professional growth trajectory."<sup>85</sup>

The Journal of Adolescent Health<sup>86</sup> recently released a study that examined the association between depression and frequency of involvement in cyberbullying.<sup>87</sup> It

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<sup>80</sup> Sameer Hinduja & Justin W. Patchin, *Cyberbullying Research Summary: The Changing Nature of Online Social Networking*, CYBERBULLYING RESEARCH CENTER 1 (last visited Oct. 26, 2010), [http://www.cyberbullying.us/changes\\_in\\_teens\\_online\\_social\\_networking\\_2006\\_2009.pdf](http://www.cyberbullying.us/changes_in_teens_online_social_networking_2006_2009.pdf). Specifically, eighty-two percent of teens between the ages of fourteen and seventeen, and fifty-five percent of twelve and thirteen-year-old youths have a social networking page. *Id.*

<sup>81</sup> Hinduja & Patchin, *supra* note 10, at 2.

<sup>82</sup> Sameer Hinduja & Justin W. Patchin, *Cyberbullying and Self-Esteem*, 80 AM. SCH. HEALTH ASS'N 616, 617 (Dec. 2010); *see also* Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 PSYCHOL. BULL. 497, 497-529 (1995) (noting that the abundance of evidence shows individuals' basic desire to form social attachments and feel a sense of "belongingness," and that deficits in belongingness tend to lead to both psychological and physical health problems, ranging from eating disorders to suicide); CHILDREN IN THE DIGITAL AGE: INFLUENCES OF ELECTRONIC MEDIA ON DEVELOPMENT 57-70 (Sandra L. Calvert et al. eds., 2002) (examining children's unlimited access to digital technologies and the effect of media experiences on children's social, cognitive, familial, and consumerist experiences).

<sup>83</sup> *See* Hinduja & Patchin, *supra* note 82, at 617.

<sup>84</sup> *Id.* at 615-16.

<sup>85</sup> *Id.* at 616; *see also* Jean M. Twenge & W. Keith Campbell, *Age and Birth Cohort Differences in Self-Esteem: A Cross-Temporal Meta-Analysis*, 5 PERSONALITY & SOC. PSYCHOL. REV. 321, 323 (2001) (noting that the social acceptance models is one of the three main models of self-esteem, arising from others' acceptance).

<sup>86</sup> The Journal of Adolescent Health is a multidisciplinary, scientific Journal that seeks to publish new research findings in the field of Adolescent Medicine and Health, ranging from the basic biological and behavioral sciences to public health and policy. J. ADOLESC. HEALTH, <http://www.jahonline.org/aims> (last updated Feb. 13, 2011). The Journal seeks original manuscripts, review articles, letters to the editor, commentaries, and case reports from its colleagues in Education, Health Services Research, International Health, Law, Medicine, Mental Health, Psychology, Public Health and Policy, Youth Development, and other disciplines that work with or are committed to improving the lives of adolescents and young adults. *Id.* The Journal was established in 1980 by the Society for Adolescent Health and Medicine to enhance the development, synthesis, and dissemination of scientific and scholarly knowledge unique to the health needs of adolescents. *Id.*

concluded that experience with cyberbullying has a more negative effect on adolescent development<sup>88</sup> than traditional bullying, and victims may suffer long term sociological and psychological consequences.<sup>89</sup> Although cyberbullying does not involve personal contact between an offender and a victim, it can cause serious psychological harm, including depression, low self-esteem, anxiety, alienation, suicidal intentions,<sup>90</sup> concentration and behavioral problems, and even physical harm, such as stress-induced headaches and nausea.<sup>91</sup> Some victims even bring bullying-induced psychological, mental, and sociological issues into adulthood.<sup>92</sup> Researchers consistently report higher rates of depression and poor self-esteem in adults who experienced bullying as an adolescent.<sup>93</sup>

The most recent cyberbullying concern stems from several high-profile cases involving teenagers that took their own lives to escape harassment and mistreatment over the Internet.<sup>94</sup> Researchers have termed the phenomenon “cyberbullicide”—

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<sup>87</sup> Wang, *supra* note 11.

<sup>88</sup> *Id.* This article concluded that cyberbullying victims reported higher depression than bullies or bully-victims, a result not observed in other forms of bullying. *Id.* This study also affirms the finding that bullying negatively influences adolescent development, but further emphasizes the importance of distinguishing cyberbullying because of its heightened association with depression. See Tonja R. Nansel et al., *Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, 285(16) JAMA 2094, 2094-2100 (2001) (concluding that the prevalence of bullying among American youths is substantial and may cause concurrent behavioral and emotional difficulties, as well as long-term negative outcomes for youth); Louise Arseneault et al., *Being Bullied as an Environmentally Mediated Contributing Factor to Children's Internalizing Problems: A Study of Twins Discordant for Victimization*, 162(2) ARCHIVES PEDIATRICS & ADOLESC. MED. 145, 147 (2008) (finding that children who were victimized by bullies experienced significantly more internalizing problems, than did children who were not, and experienced elevated anxiety, depression, social isolation, and suicidal thoughts).

<sup>89</sup> Howard Spivak, *Bullying: Why All the Fuss?*, 112 PEDIATRICS 1421, 1421 (Aug. 22, 2003); see also Elizabeth Landau, *When a Bullied Kid Grows Up*, CNN.COM (Oct. 8, 2010, 8:12 AM), <http://www.cnn.com/2010/HEALTH/10/08/bullying.health.effects/index.html> (Mike Sarkany, 57, demonstrates how being bullied as a child can substantially affect an individual's social life and self-esteem as an adult).

<sup>90</sup> See King, *supra* note 37, at 851 (referencing the psychological harms and negative impacts of cyberbullying that are listed in the federally proposed Megan Meier Cyberbullying Prevention Act, H.R. 6123, 110th Cong. (2008)); see also Darby Dickerson, *Essay, Cyberbullies on Campus*, 37 U. TOL. L. REV. 51, 60-61 (Fall 2005) (discussing the effects of cyberbullying compared to those of traditional bullying).

<sup>91</sup> Tyler Woods, *Cyberbullying Linked to Mental Health*, EMAX HEALTH (July 7, 2007), <http://www.emaxhealth.com/1357/cyberbullying-linked-mental-health>.

<sup>92</sup> See Spivak, *supra* note 89, at 1421; see also Dan Olweus, *Bullying Among Schoolchildren: Intervention and Prevention*, AGGRESSION AND VIOLENCE THROUGHOUT THE LIFE SPAN 100-25 (Ray DeV. Peters et al. eds., 1992) (demonstrating that typical bullies demonstrate an aggressive reaction and rule-breaking behavior pattern combined with physical strength); Nansel, *supra* note 88.

<sup>93</sup> Spivak, *supra* note 89.

<sup>94</sup> See Barr, *supra* note 18 (four teens from Mentor High School); Celizic, *supra* note 21 (Jessica Logan); Chaffin, *supra* note 3 (Alex); Foderaro, *supra* note 4 (Tyler Clementi); Kaye,

suicide indirectly or directly influenced by experiences with online aggression.<sup>95</sup> One of the most recent and highly publicized cases involved eighteen-year-old Tyler Clementi from Ridgewood, New Jersey.<sup>96</sup> While a freshman at Rutgers University in fall 2010, Tyler's roommate, Dharun Ravi, placed a video camera in his dorm room, without Tyler's knowledge.<sup>97</sup> Dharun twice recorded Tyler's private sexual encounters with another male student, and essentially "outed" him on the Internet by broadcasting the videos.<sup>98</sup> As a result of the videos, other students in the dorm began insulting and harassing Tyler.<sup>99</sup> Despite Tyler's repeated complaints to university administrators, no one addressed the incidents.<sup>100</sup> For a shy, studious, college freshman, the viral broadcast was too much. Shortly after his roommate posted the videos, Tyler jumped from the George Washington Bridge into the Hudson River in an apparent suicide.<sup>101</sup> While this incident represents one of the more extreme consequences of cyberbullying, its severity demands deeper inquiry with immediate preventative and enforcement action.

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*supra* note 1 (Hope Witsell); Steinhauer, *supra* note 2 (Megan Meier). Each of the preceding sources represent recent cyberbullying induced teen suicide cases.

<sup>95</sup> Hinduja & Patchin, *supra* note 16, at 207; *see also* Palmeri, *supra* note 8 (noting that advancement in modern technology has influenced online victimization and driven traditional bullying to a new extreme); Sameer Hinduja & Justin W. Patchin, *Cyberbullicide: Suicidal Ideation and Online Aggression among Adolescents*, Paper presented at the annual meeting of the ASC Annual Meeting, St. Louis Adam's Mark, St. Louis, Missouri (Nov. 12, 2008), available at [http://convention3.allacademic.com/one/www/www/index.php?cmd=www\\_search&offset=0&limit=5&multi\\_search\\_search\\_mode=publication&multi\\_search\\_publication\\_fulltext\\_mod=fulltext&textfield\\_submit=true&search\\_module=multi\\_search&search=Search&search\\_field=title\\_idx&fulltext\\_search=Cyberbullicide%3A+Suicidal+Ideation+and+Online+Aggression+among+Adolescents](http://convention3.allacademic.com/one/www/www/index.php?cmd=www_search&offset=0&limit=5&multi_search_search_mode=publication&multi_search_publication_fulltext_mod=fulltext&textfield_submit=true&search_module=multi_search&search=Search&search_field=title_idx&fulltext_search=Cyberbullicide%3A+Suicidal+Ideation+and+Online+Aggression+among+Adolescents).

<sup>96</sup> Foderaro, *supra* note 4.

<sup>97</sup> *Id.*

<sup>98</sup> David Hechler, *In the Aftermath of a Suicide, Questions About What Rutgers Could Have Done*, CORPORATE COUNSEL (Oct. 5, 2010), <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202472906841>. Dharun's Twitter account spelled out his role in the incident. *Id.* During the first live streaming of Clementi's private encounter, Ravi posted, "Roommate asked for the room till midnight. . . . I went into molly's room and turned on my webcam. I saw him making out with a dude. Yay." *Id.* Two nights later Dharun posted, "Anyone with iChat, I dare you to video chat me between the hours of 9:30 and 12. Yes it's happening again." *Id.*

<sup>99</sup> *Id.* Enforcement authorities discovered the events through Clementi's perspective expressed in his multiple postings on a gay web site called JustUsBoys.com, writing under a pseudonym that has since been confirmed as him. *Id.* Clementi asked others on the site for advice on how to handle the situation, discussed other students teasing him about the scenario, and stated his intentions to meet with his resident advisor. *Id.* The total time between the initial video and Tyler's suicide was five to seven days. Foderaro, *supra* note 4. This short time period highlights the severe emotion, mental, and psychological effects that cyberbullying may have on a victim; so drastic, that it is crucial for authorities to take immediate action if they know of the cyberbullying incident(s).

<sup>100</sup> Hechler, *supra* note 98.

<sup>101</sup> *Id.*

As with traditional bullying, both victims and perpetrators of cyberbullying are more likely to engage in future criminal conduct.<sup>102</sup> Researchers have reported that individuals with a history of bullying are four times more likely to engage in criminal behavior by their mid-twenties; the majority of these individuals have at least one criminal conviction and more than one-third have multiple convictions.<sup>103</sup> On the victim's end of the bullying spectrum, when online victimization goes unpunished and unaddressed, it can generate a self-perpetuating cyberbullying culture that provokes victims to seek revenge and become cyberbullies themselves.<sup>104</sup> Traditional bullying's correlation to violence was brought to national attention in the 1990s by a significant number of highly publicized school shootings, after which bullying became of great interest to United States policymakers.<sup>105</sup> Many of the school shooters were associated with bullying, either as victims or perpetrators.<sup>106</sup> Today, teen cyberbullicides should serve as the driving force behind a legislative response to cyberbullying.

### B. *The Inadequacy of Existing Legal Remedies for Ohio Victims*

Without specific cyberbullying laws in Ohio, victims can resort only to tort law and certain criminal laws aimed at related offenses such as aggravated menacing, or telecommunications harassment. But, legislators did not design these legal remedies to address the unique problem of cyberbullying. Consequently, current laws are insufficient to deter cyberbullies or to protect and compensate their victims.<sup>107</sup> Such laws fail to provide a direct means of thwarting cyberbullying.<sup>108</sup>

#### 1. Ohio Civil Remedies Related to Cyberbullying

Ohio provides three possible tort remedies to cyberbullying victims: defamation,<sup>109</sup> false light,<sup>110</sup> and intentional infliction of emotional distress (IIED).<sup>111</sup>

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<sup>102</sup> See Cara J. Ottenweller, Note, *Cyberbullying: The Interactive Playground Cries for Clarification of the Communications Decency Act*, 41 VAL. U. L. REV. 1285, 1293 (2007) (noting that being bullied is a predictor of later criminal behavior and that this phenomenon applies to online as well as traditional bullying).

<sup>103</sup> Spivak, *supra* note 89.

<sup>104</sup> King, *supra* note 37, at 852.

<sup>105</sup> *Id.*; King, *supra* note 37, at 852.

<sup>106</sup> *Id.*; Mark R. Leary et al., *Teasing, Rejection, and Violence: Case Studies of the School Shootings*, 29 AGGRESSIVE BEHAV. 202, 202 (2003) (finding that "acute or chronic rejection—in the form of ostracism, bullying, and/or romantic rejection—was present in all but two" school shooting incidents); KATHERINE S. NEWMAN, RAMPAGE: THE SOCIAL ROOTS OF SCHOOL SHOOTINGS 287 (2004) (emphasizing the link between school shooters and victims of various forms of bullying).

<sup>107</sup> *Id.*; see M. STUART MADDEN, EXPLORING TORT LAW 123, 129 (2005) (explaining why tort liability is an insufficient deterrent for insolvent parties and that "insolvency is likely to be the rule rather than the exception" in many tort cases).

<sup>108</sup> *Id.*

<sup>109</sup> *Harris v. Bornhorst*, 513 F.3d 503 (6th Cir. 2008) (Under Ohio law, the elements of a defamation claim, whether libel or slander, are: "(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement



It is difficult, however, for cyberbullying victims to prevail under these causes of action.<sup>112</sup> For example, most cyberbullying seems to logically fit the definition of defamatory material because it “harm[s] the reputation of another by making a false statement to a third person.”<sup>113</sup> Similarly, in a false light action, a plaintiff alleges that the defendant “placed the plaintiff before the public in a highly offensive and untrue manner.”<sup>114</sup> To succeed on either claim, a plaintiff must prove that the statement was false and caused *material* damage, or was *highly* offensive, to the victim’s reputation—two difficult obstacles to overcome.<sup>115</sup> Cyberbullying content often includes opinions, taunts, or sexual innuendos between two juveniles that, although harmful, may be difficult to refute factually.<sup>116</sup> Also, proving a cyberbullying victim’s reputational damage in a defamation action is problematic because adolescents have not yet developed professional reputations in the community.<sup>117</sup>

A cyberbullying victim is also unlikely to prevail on an IIED claim. Under a cause of action for IIED, a cyberbullying victim must prove:

- (1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff, (2) that the actor’s conduct was so *extreme and outrageous as to go beyond all possible bounds of decency* and was such that it must be

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irrespective of special harm or the existence of special harm caused by the publication.”); *see also* Libel and Slander, OHIO REV. CODE ANN. § 2739.01 (LexisNexis 2010).

<sup>110</sup> *Welling v. Weinfeld*, 866 N.E.2d 1051 (Ohio 2007). In Ohio, one who publicizes a matter concerning another that places the other before the public in a false light is liable to the other for invasion of his privacy if: “(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.” *Id.*

<sup>111</sup> *Katterhenrich v. Fed. Hocking Loc. Sch. Dist. Bd. of Educ.*, 700 N.E.2d 626, 633 (Ohio Ct. App. 1997). The elements of the intentional infliction of emotional distress tort are: (1) an intent to cause emotional distress or the actor knew or should have known that actions taken would result in serious emotional distress; (2) the conduct was so extreme and outrageous as to go “beyond all possible bounds of decency” and was utterly intolerable in a civilized community; (3) the actors’ actions were the proximate cause of the plaintiffs’ psychic injury; and (4) that the mental anguish suffered is serious and of the nature that no reasonable person can be expected to endure it. *Id.*

<sup>112</sup> Todd D. Erb, Comment, *A Case for Strengthening School District Jurisdiction to Punish Off-Campus Incidents of Cyberbullying*, 40 ARIZ. ST. L.J. 257, 277 (2008) (addressing the inadequacy of civil remedies for cyberbullying).

<sup>113</sup> BLACK’S LAW DICTIONARY 479 (9th ed. 2009) (defining defamation).

<sup>114</sup> BLACK’S LAW DICTIONARY 678 (9th ed. 2009) (defining false light).

<sup>115</sup> Erb, *supra* note 112, at 277-79 (explaining the difficulty of prevailing on a defamation claim for cyberbullying).

<sup>116</sup> *See id.* at 278-79 (providing several examples of cyberbullying content that evades clear proof of falsity).

<sup>117</sup> *Id.* (noting that most students will likely not be able to prove damage to reputation).

considered as utterly intolerable in a civilized community, (3) that the actor's actions were the proximate cause of plaintiff's psychic injury, and (4) that the mental anguish suffered by plaintiff is serious and of a nature that no reasonable person could be expected to endure it.<sup>118</sup>

Cyberbullying often involves opinions, taunts, or sexual innuendos between two juveniles that, although harmful, may not rise to the level of "beyond all possible bounds of decency."<sup>119</sup> One Ohio court has specifically held that "serious mental anguish" must mean that the emotional injury is more than just mere upset or hurt feelings.<sup>120</sup> IIED is also an inadequate remedy because the state likely cannot prove the perpetrator had the requisite intent.<sup>121</sup> A large majority of adolescent cyberbullies likely do not intend to cause severe emotional distress to victims and, because of the digital disconnect between many cyberbullies and their victims, may not even realize their actions' impact on the victim's mental, emotional, and psychological health.<sup>122</sup>

At least one state court has recognized the inadequacy of IIED as a civil remedy when parents of a cyberbullicide victim filed suit on behalf of their deceased child's estate. In *Dornfried v. Berlin Board of Education*, the plaintiffs filed suit on behalf of their minor son against the Berlin Board of Education, its former superintendents, the principal, athletic director, and football coach, for intentional infliction of emotion distress, among other claims.<sup>123</sup> The plaintiffs alleged that, while a freshman and sophomore student at the high school and a member of the football team, their son was subjected to "incessant bullying, harassment, intimidation and was the victim of threats and/or acts of violence" by his teammates.<sup>124</sup> The plaintiffs claimed that the defendants' conduct was "intended" to cause their son emotional distress and that it was "extreme and outrageous."<sup>125</sup> The court found that no specific acts were alleged against any defendant, but the plaintiffs instead focused on the recurring allegation that the son was bullied and harassed by his *teammates*.<sup>126</sup> The Court noted:

Such allegations are legal conclusions, they are not facts. They do not even approach the specificity required in order to sustain a cause of action for intentional infliction of emotional distress. . . .

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<sup>118</sup> Katterhenrich, 700 N.E.2d 626 at 633 (emphasis added).

<sup>119</sup> *Id.*; see also Erb, *supra* note 112, at 278-79.

<sup>120</sup> Katterhenrich, 700 N.E.2d 626 at 590.

<sup>121</sup> See e.g., *State v. Ellison*, 900 N.E.2d 228, 231 (Ohio Ct. App. 2008) (holding that the state failed to prove beyond a reasonable doubt that the student's specific intent in posting the statement was to harass the targeted student).

<sup>122</sup> See *infra* Part II.A.2 (discussing cyberbullying's negative effect on adolescents' mental, emotional, and psychological health).

<sup>123</sup> *Dornfried v. Berlin Bd. of Educ.*, No. CV064011497S, 2008 Conn. Super. LEXIS 2944, at \*1-2 (Conn. Super. Ct. Sept. 26, 2008).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at \*18-19.

<sup>126</sup> *Id.*

Without *specific* allegations as to precisely what the defendants did or what the defendants could have done but failed to do, there is simply no gauge by which the court can determine whether or not the defendant's conduct was outrageous or atrocious.<sup>127</sup>

Because the majority of parents do not learn the facts and circumstances that many cyberbullying victims face until it is too late, the specificity required presents a problem for victims' families. In this scenario, bullies are not punished for their conduct, school administrators are not held responsible for their reckless disregard of harassment, and families of cyberbullying or bullying victims are left with nothing but grief.

Independent from the causation challenges accompanying Ohio tort law, individual civil remedies fail to provide a comprehensive solution to the systematic problem of cyberbullying.<sup>128</sup> Because individual civil litigation is often accompanied by high transaction costs, many victims will lack the means to pursue their cyberbullying claim.<sup>129</sup> Civil remedies pose two additional problems for both cyberbullying victims and their juvenile perpetrators. For victims, the possibility that the juvenile tortfeasor may be insolvent, and therefore judgment-proof, creates a risk that the victim will not fully recover even after prevailing in court.<sup>130</sup> For parents of cyberbullying perpetrators, they may ultimately carry the burden of their child's harm by compensating the victim, if the victim prevails in court.<sup>131</sup> Consequently, Ohio civil remedies do not appropriately address cyberbullying victimization.<sup>132</sup>

## 2. Ohio Criminal Laws Related to Cyberbullying

Without cyberbullying-specific criminal laws, prosecutors run the risk of over-criminalizing cyberbullies by attempting to pursue related criminal charges, such as menacing by stalking or telecommunications harassment.<sup>133</sup> Although both offenses address the issue of cyber and electronic communications, neither menacing by stalking nor telecommunications harassment were specifically enacted to address

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<sup>127</sup> *Id.*

<sup>128</sup> King, *supra* note 37, at 853.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Cyberbullying victims could also attempt to recover civil damages under the Communications Decency Act (CDA) in federal court. Communications Decency Act, 47 U.S.C. § 230 (2006). Section 230 of the CDA provides immunity from civil liability for "good faith" efforts made by Internet-service providers and website operators to monitor and restrict illicit content by their users. King, *supra* note 37, at 853. The United States Supreme Court has interpreted this provision as providing absolute immunity to these companies for defamation cases. *Id.* Thus, only individual creators of cyberbullying content may be held liable for defamatory material. *Id.*; see also Shaun B. Spencer, Note, *Cyberslapp Suits and Jon Doe Subpoenas: Balancing Anonymity and Accountability in Cyberspace*, 19 J. MARSHALL J. COMPUTER & INFO. L. 493, 494 (2001) (discussing the limited availability of defendants in online speech cases as a result of the broad immunity for Internet-service providers under the CDA).

<sup>133</sup> See § 2917.21; § 2903.211.

cyberbullying incidents among juveniles.<sup>134</sup> For example, a cyberbully could be guilty of menacing by stalking if he engages in “a pattern of conduct [that the offender knows will] cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.”<sup>135</sup> Although it may be difficult to prove that the perpetrator knew he would cause mental distress, if convicted, the adolescent is guilty of a first degree misdemeanor or a felony of the fourth degree, depending on the surrounding circumstances.<sup>136</sup> In the most serious of cyberbullying situations, a court may mandate that the young cyberbully serve between six to eighteen months in a juvenile corrections facility.<sup>137</sup> Similarly, a telecommunications harassment conviction may result in a six month jail term or a prison term of five years.<sup>138</sup>

An Ohio court recently attempted to apply the telecommunications harassment statute to a cyberbullying incident but ultimately failed. In *State v. Ellison*,<sup>139</sup> the

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<sup>134</sup> See H.B. 536, 119th Gen. Assemb., Reg. Sess. (Ohio 1991) (creating the offense of “menacing by stalking,” to permit a peace officer to make an arrest without a warrant if reasonable cause exists to believe the offense was committed, to make changes in protection order law and bail law relative to the offense, and to create a mechanism for obtaining an anti-stalking protection order); H.B. 565, 122nd Gen. Assemb., Reg. Sess. (Ohio 1997) (enacting computer and telecommunications offenses and providing criminal penalties for violations).

<sup>135</sup> § 2903.211(A)(1).

<sup>136</sup> See § 2903.211(B) (Menacing by stalking is a felony of the fourth degree if: (a) the offender previously plead guilty to or was convicted of menacing by stalking; (b) in committing the offense, the offender made a threat of physical harm to or against the victim, or induced a third party to threaten the victim; (c) in committing the offense, the offender “trespassed on the land or premises where the victim lives, is employed, or attends school,” or induced a third party to do so; (d) the victim is a minor; (e) the offender has a history of violence toward the victim or any other person; (f) while committing the offense, the offender had a deadly weapon on or about the offender’s person or under the offender’s control; (g) when committing the offense, the offender was the subject of a protection order, regardless of whether the person to be protected under the order is the victim; (h) in committing the offense, the offender caused serious physical harm to the premises, real property, or personal property at which the victim resides; or (i) prior to committing the offense, the offender was determined to be a substantial risk of physical harm to others manifested by evidence of then-recent homicidal or violent behavior, or evidence of then-recent threats that placed another in reasonable fear of violent behavior and physical harm).

<sup>137</sup> See Basic Prison Terms, OHIO REV. CODE ANN. § 2929.14(A) (LexisNexis 2010) (noting that a fourth degree felony equates a six to eighteen month prison sentence); see also Definite Jail Terms for Misdemeanor, OHIO REV. CODE ANN. § 2929.24(A) (LexisNexis 2010) (noting that a court shall impose a jail term of no more than 180 days for a first-degree misdemeanor).

<sup>138</sup> See § 2917.21(C)(2) (Telecommunications harassment is a first-degree misdemeanor on a first offense and a fifth-degree felony on each subsequent offense. If in committing the offense, the offender causes economic harm of: \$500 to \$4,999, then it is a fifth-degree felony; \$5,000 to \$99,999, then it is a fourth-degree felony; \$100,000 or more, then it is a felony of the third degree); see also § 2929.14(A)(3)-(5) (A third-degree felony is punishable by one to five years, a fourth-degree felony is punishable by six to eighteen months; and a fifth-degree felony is punishable by six to twelve months.); § 2929.24(A)(1) (A first-degree misdemeanor is punishable by no more than a 180-day prison term.).

<sup>139</sup> *Ellison*, 900 N.E.2d at 228.

Hamilton County Municipal Court convicted high school student Ripley Ellison of one count of telecommunications harassment after she posted a photograph of Savannah Gerhard, a classmate and former best friend, on her Myspace page with the caption “Molested a little boy.”<sup>140</sup> The caption referred to a falling-out the two had after Ripley’s younger brother accused Savannah of molesting him.<sup>141</sup> The Hamilton County Department of Job and Family Services<sup>142</sup> (JFS) investigated the allegation, but found insufficient evidence to substantiate the boy’s claim.<sup>143</sup>

A few months prior, Savannah viewed a similar remark about molestation that Ripley posted on another student’s Myspace page.<sup>144</sup> Savannah admitted that Ripley had never “directly communicated [the] postings” to her, even though she, too, had a Myspace account.<sup>145</sup> When Savannah later learned of the more recent post on Ripley’s Myspace page, she complained to authorities at her school, which led to criminal charges against Ripley.<sup>146</sup>

At the bench trial, Savannah reaffirmed the lack of direct communication and admitted that she had sought out the Myspace postings.<sup>147</sup> Savannah explained that she felt “‘harassed’ by the postings” and overheard Ripley making similar remarks about her at school.<sup>148</sup> Ripley testified that she believed her brother’s accusations and provided the following explanation for posting the offensive material: “I think that other people need to know how she is. . . . And I was told that she did it. And so I think that other people have a right to know.”<sup>149</sup> The court convicted Ripley of one count of telecommunications harassment, and she appealed.<sup>150</sup>

On appeal, the Second District Court of Appeals held that the state failed to prove beyond a reasonable doubt that Ripley’s specific intent in posting the statement was to harass Savannah.<sup>151</sup> Although the telecommunications harassment

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<sup>140</sup> *Id.* at 229.

<sup>141</sup> *Id.*

<sup>142</sup> The Hamilton County Department of Job and Family Services administer state, federal and local programs designed to help those in need. *About Us: Overview*, HAMILTON COUNTY JOB & FAMILY SERVICES, [http://www.hcjfs.hamilton-co.org/Buttons/about\\_us.htm](http://www.hcjfs.hamilton-co.org/Buttons/about_us.htm) (last visited Feb. 13, 2011). Its mission is to be the center of a collaborative effort that: draws together and leads social service agencies, businesses, governments, families and other community stakeholders in the fight against social issues; guides, supports and values those who have chosen to make a difference in the lives of Hamilton County’s families and children; and delivers cost-effective services in a compassionate, caring and non-judgmental manner to Hamilton County’s families and children. *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Ellison, 900 N.E.2d at 229.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 231.

statute requires that the defendant have “made a telecommunication . . . with [the] purpose to abuse, threaten, or harass another person,”<sup>152</sup> the court declined to hold that direct contact was required to establish a telecommunication under the statute. The court noted that the statute creates a specific-intent crime, and the state must prove the defendant’s specific purpose to harass.<sup>153</sup> This burden is not met by establishing only that the defendant knew or should have known that her conduct would probably cause harassment,<sup>154</sup> and Ripley argued that the “lack of a direct communication” negated any inference that she had the specific intent to harass.<sup>155</sup>

At trial, the prosecutor argued that posting the allegation after the JFS could not substantiate the accusation proved that Ripley purposely harassed Savannah.<sup>156</sup> The Second District found that JFS’s finding did not mean the “dissemination of the allegation could not serve the legitimate purpose of warning others of what [Ripley] Ellison believed to be criminal behavior,” and restated its finding that Ripley never directly communicated with Savannah despite the opportunity to do so.<sup>157</sup> Because the state failed to prove beyond a reasonable doubt that Ripley’s specific intent in posting the statement was to harass Savannah, the court reversed the conviction and discharged Ripley from further prosecution based on this incident.<sup>158</sup>

The facts of the *Ellison* case suggest that Ripley’s posting was accessible to other students at the high school she and Savannah attended. Ripley posted the comment on her Myspace page, posted a similar comment about the alleged molestation on another student’s Myspace page, and Savannah was able to view these comments.<sup>159</sup> Because the court did not address the accessibility of this comment, it is impossible to know its potential reach.<sup>160</sup> Most Myspace users, however, “leave their profiles open to the public.”<sup>161</sup> Thus, it is reasonable to assume that Ripley’s comment was widely available. Although the facts do not establish that Ripley made an intentional, focused effort to broadcast her claim to the broadest

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<sup>152</sup> § 2917.21(B).

<sup>153</sup> *Ellison*, 900 N.E.2d at 230.

<sup>154</sup> *Id.* The court did not establish whether Ellison was liable for defamation, and this was not addressed in the civil proceedings. *Id.* at 231; *see also* *State v. Harshbarger*, 2010-Ohio-4413 (Ohio Ct. App., Auglaize County, Sept. 20, 2010). The legislature has created this substantial burden to limit the statute’s scope to criminal conduct, not the expression of offensive speech.

<sup>155</sup> *Ellison*, 900 N.E.2d at 231.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 230.

<sup>159</sup> Symposium, “*Kiddie Crime*”? *The Utility of Criminal Law in Controlling Cyberbullying*, 8 FIRST AMENDMENT L. REV. 1, 32-33 (Fall 2009) (interpreting the Second District Court of Appeals’ decision in *State v. Ellison*); *see also* *Ellison*, 900 N.E.2d at 229 (the court’s general facts and findings of evidence).

<sup>160</sup> Symposium, *supra* note 159, at 34-35.

<sup>161</sup> *MySpace Privacy Settings and Safer Social Networking*, ILL. ST. U. COMPUTER HELPDESK, <http://www.helpdesk.ilstu.edu/kb/index.phtml?kbid=1320> (last visited Nov. 29, 2010).

audience possible, they do not negate the inference that her purpose was informational.<sup>162</sup> Although, under Ohio's Telecommunications Harassment statute, that is enough to prevent the imposition of criminal liability because, as the Second District noted, for a specific intent crime, it is not enough to show that the defendant knew or should have known her conduct could constitute harassment.<sup>163</sup>

A more recent cyberbullying incident occurred in Massillon, Ohio where a female victim was standing in the lunch line when a seventeen-year-old girl slapped her in the jaw and pushed her head against a wall several times.<sup>164</sup> During the assault, another seventeen-year-old girl recorded the incident with her cell phone.<sup>165</sup> The video was later passed around to other students via text messaging.<sup>166</sup> County prosecutors expect one juvenile to be charged with misdemeanor assault and the other with telecommunications harassment, also a misdemeanor, in Stark County Family Court.<sup>167</sup> Ben Barrett, the School Resource Officer, estimated that he has received between twenty to twenty-five reports of cyberbullying since the beginning of the 2010-2011 school year.<sup>168</sup> Michelle Cordova, director of the county juvenile prosecutor's office noted, however, that "[t]here is no such thing as a bullying charge . . . It is sort of a catch-all (harassment charge). You are making a transmission with purpose to abuse or harass another person. That would have to take into account the intent and effect of it."<sup>169</sup> Officer Barrett expressed concern over prosecuting juveniles for cyberbullying under ill-fit statutes. He noted that legislative changes could help authorities address the issue more effectively.<sup>170</sup> Officer Barrett stated, "I think criminal charges could be justifiable in a lot of these (incidents). Until I have a criminal offense, there is not a whole lot I can do with it."<sup>171</sup> Massillon prosecutors have yet to file charges against the cyberbullying perpetrators.<sup>172</sup>

Even if an Ohio court finds that an individual's cyberbullying conduct falls within current criminal statutes, policymakers and judges are likely to be reluctant to sentence a juvenile offender to such extreme correctional terms. Does it seem proper to sentence a child to a minimum of six months and a maximum of five years for cyberbullying content that included opinions, taunts, or sexual innuendos to another

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<sup>162</sup> Symposium, *supra* note 159, at 35.

<sup>163</sup> *Id.*

<sup>164</sup> Doug Staley, *Charges Expected in Cyberbullying Incident at Drage*, THE INDEPENDENT, <http://www.indeonline.com/crime/x2115309918/Student-assault-at-Drage-was-taped-shared-with-others> (last updated Nov. 2, 2010, 11:24 AM).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*; see *Spread of Videotaped Assault May Send Teen to Jail*, INTERNET SAFETY NEWS (Oct. 18, 2010), <http://www.internetsafetynews.com/cyberbullying/spread-of-videotaped-assault-may-send-teen-to-jail/>.

juvenile? No; this scenario more likely represents a parent's worst nightmare. School-age children and teens often make foolish decisions that will influence the course of their adult lives,<sup>173</sup> and likely do not anticipate the consequences of their actions. For this reason, society has embraced the juvenile justice system, with the underlying theory that children should be granted some leeway and a chance at rehabilitation before facing the full force of the law.<sup>174</sup>

Society also recognizes that the stakes are much higher for children in criminal proceedings.<sup>175</sup> Substantial convictions show up on criminal records and affect a student's chances of attending college or enlisting in the military.<sup>176</sup> Because judges and policymakers are hesitant to subject juveniles to extraordinarily harsh penalties, cyberbullying victims will once again be stripped of a proper remedy. Just as society recognizes the importance of the juvenile criminal justice system, the Ohio General Assembly should recognize the danger of over-criminalizing juvenile's conduct with current statutes, and should enact a separate cyberbullying statute to specifically address the unique interaction of juveniles.

### III. CYBERBULLYING LEGISLATION IN OTHER STATES

Although most states have enacted a bullying statute, and many have added or proposed separate statutes or supplemental provisions that directly address electronic harassment, very few of these statutes specifically address all of the unique aspects of cyberbullying and provide an adequate remedy for its victims.<sup>177</sup> Each state that has addressed cyberbullying defines it in different ways. Only Kansas offers a direct definition of cyberbullying: "bullying by use of any electronic device through means including, but not limited to, e-mail, instant messaging, text messages, blogs, mobile phones, pagers, online games and websites."<sup>178</sup> Other states, such as Indiana<sup>179</sup> and Oregon,<sup>180</sup> explicitly mention the term "cyberbullying" within the laws, but do not define it.<sup>181</sup> Other state laws simply include considerations for electronic media within the definitions of bullying, harassment, and stalking.<sup>182</sup>

Allowing school boards to set cyberbullying policies enables the most directly affected and best positioned institutions to develop a solution.<sup>183</sup> For example, the

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<sup>173</sup> Erb, *supra* note 112, at 282.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 284.

<sup>176</sup> *Id.*

<sup>177</sup> Hinduja & Patchin, *supra* note 17, at 1.

<sup>178</sup> Bullying, School District Policies, KAN. STAT. ANN. § 72-8256(a)(2) (West 2010).

<sup>179</sup> Guidelines and Rules Must Cover Certain Subjects, IND. CODE ANN. § 20-30-5.5-3 (LexisNexis 2010).

<sup>180</sup> Equal Educational Opportunities, OR. ADMIN. R. 581-022-1140 (2010).

<sup>181</sup> King, *supra* note 37, at 858.

<sup>182</sup> *Id.*; see also S.C. CODE ANN. § 59-63-120 (2010) ("Harassment, intimidation, or bullying means a gesture, an electronic communication, or a written, verbal, physical, or sexual act."); King, *supra* note 37, at 858.

<sup>183</sup> King, *supra* note 37, at 859.



Washington cyberbullying statute requires that school districts set harassment and cyberbullying policies “through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.”<sup>184</sup> This collaborative system not only allows school districts to create policies that reflect the interests of a variety of stakeholders, but also suggests that the policies are more likely to be followed and enforced.<sup>185</sup> The Oregon statute mandates that “[e]ach district school board shall adopt a policy . . . prohibiting harassment, intimidation or bullying and prohibiting cyberbullying.”<sup>186</sup> The underlying principle for these laws rests in every student’s right to attend classes and enjoy a safe, civil, and harassment-free school environment.<sup>187</sup>

Although public schools, equipped with trained guidance counselors, seem best-suited to address cyberbullying among youth through preventative and educational programs, academic institutions have obvious limits—school boards may only address cyberbullying when it is within its jurisdiction.<sup>188</sup> The First Amendment of the United States Constitution curbs the ability of school districts to regulate student speech and punish students for off-campus activity.<sup>189</sup> Thus, these laws capture only limited incidents of cyberbullying and leave a large portion of cyberbullying unregulated when an incident occurs off-campus and after school hours.<sup>190</sup> Once again, cyberbullying victims are left without a remedy. Additionally, states may lack uniformity among school districts because these laws enable each school district to set their own anti-cyberbullying policies.<sup>191</sup> Thus, schools remain uncertain as to the limits of their authority regarding student cyber speech.<sup>192</sup>

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<sup>184</sup> Harassment, Intimidation, and Bullying Prevention Policies, WASH. REV. CODE ANN. § 28A.300.285(1) (LexisNexis 2010); King, *supra* note 37, at 859.

<sup>185</sup> King, *supra* note 37, at 859.

<sup>186</sup> OR. ADMIN. R. 581-022-1140 (2010).

<sup>187</sup> See Antibullying Policies, ARK. CODE ANN. § 6-18-514(a)(1) (2010) (asserting that “every public school student . . . has the right to receive his or her public education in a public school educational environment that is reasonably free from substantial intimidation, harassment, or harm or threat of harm by another student.”); Legislative Findings, CAL. EDUC. CODE § 32261(a) (Deering 2010) (averring that “all pupils enrolled in the state public schools have the inalienable right to attend classes on school campuses that are safe, secure, and peaceful.”); Harassment and Bullying Prohibited, IOWA CODE § 280.28(1) (West 2010) (noting Iowa’s commitment “to providing all students with a safe and civil school environment . . . that . . . is necessary for students to learn and achieve at high academic levels.”); OR. ADMIN. R. 581-022-1140(1) (2010) (basing anti-cyberbullying policies on the principle of “assur[ing] equity, opportunity and access for all students”).

<sup>188</sup> King, *supra* note 37, at 860.

<sup>189</sup> S.B. 126, 128th Gen. Assemb., Reg. Sess. (Ohio 2009), available at [http://www.legislature.state.oh.us/bills.cfm?ID=128\\_SB\\_126](http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_126); see also U.S. CONST. amend. I.

<sup>190</sup> King, *supra* note 37, at 860; see also Kara D. Williams, Comment & Note, *Public Schools vs. MySpace and Facebook: The Newest Challenge to Student Speech Rights*, 76 U. CIN. L. REV. 707, 722-23 (2008) (noting that schools acknowledge their uncertain authority to punish student speech within First Amendment bounds).

<sup>191</sup> King, *supra* note 37, at 860.

<sup>192</sup> *Id.*; see Williams, *supra* note 190, at 722-23.

Some states have incorporated criminal sanctions into their cyberbullying or electronic communications statutes.<sup>193</sup> Although not constrained to the public-school setting, Kentucky's Harassing Communications statute includes a provision that explicitly applies to juvenile and student cyberbullying behavior:

A person is guilty of harassing communications when, with intent to intimidate, harass, annoy, or alarm another person, he or she . . . [c]ommunicates, while enrolled as a student in a local school district, with or about another school student, anonymously or

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<sup>193</sup> Hinduja & Patchin, *supra* note 177, at 1 (noting that Idaho, Kentucky, Missouri, Nevada, North Carolina, North Dakota, Tennessee, and Wisconsin have included criminal sanctions into education, cyberbullying, or electronic communications statutes); *see* Student Harassment, IDAHO CODE ANN. § 18-917A (2010) (A person who violates the student harassment statute is guilty of a misdemeanor, possible school suspension, or denial of school acceptance); Harassing Communications, KY. REV. STAT. ANN. § 525.080(1)(c) (LexisNexis 2010) (“[a student who], 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 is guilty of Harassing Communications, a Class B misdemeanor); Harassment, MO. REV. STAT. § 565.090 (West 2010) (“harassment is a Class A misdemeanor . . . unless (1) [c]ommitted 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 committed the crime of harassment. In such cases, harassment is a class D felony.”); Harassment, NEV. REV. STAT. ANN. § 200.571 (LexisNexis 2010) (“A person is guilty of harassment[, generally a misdemeanor,] if: (a) Without lawful authority, the person knowingly threatens: (1) [t]o cause bodily injury in the future to the person threatened or to any other person; (2) [t]o cause physical damage to the property of another person; (3) [t]o subject the person threatened or any other person to physical confinement or restraint; or (4) [t]o 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) [t]he person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.”); N.C. GEN. STAT. § 14-458.1 (2010) (“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.”); Harassment, N.D. CENT. CODE § 12.1-17-07 (2010) (“A person is guilty of [harassment, which is either a class A or class B misdemeanor,] if, with intent to frighten or harass another, the person: (a) [c]ommunicates in writing or by telephone a threat to inflict injury on any person, to any person's reputation, or to any property; (b) [m]akes a telephone call anonymously or in offensively coarse language; (c) [m]akes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or (d) [c]ommunicates a falsehood in writing or by telephone and causes mental anguish. . . . Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means.”); Harassment, TENN. CODE ANN. § 39-17-308 (2010) (“A person commits [harassment] who intentionally: (1) [t]hreatens, 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; . . . a violation of [this subsection] is a Class A misdemeanor.”); Unlawful Use of Computerized Communication Systems, WIS. STAT. ANN. § 947.0125 (West 2010) (providing various scenarios that may qualify as an unlawful use of computerized communications systems, and guilty of a Class B misdemeanor or Class B forfeiture).

otherwise, by telephone, the Internet, telegraph, mail, or any other form of electronic or written communications 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.<sup>194</sup>

Kentucky has classified Harassing Communications as a Class B misdemeanor, punishable by a sentence of imprisonment not exceeding ninety days.<sup>195</sup> This statute would apply directly to cases like Hope Witsell or Tyler Clementi.<sup>196</sup>

The Illinois statute also provides special terms for young victims, but includes an age limitation.<sup>197</sup> Specifically, the statute prohibits electronic communications that intend to harass someone under the age of thirteen, or the knowing inducement of another to transmit such messages.<sup>198</sup> Hope Witsell and Tyler Clementi demonstrate the statute's age insufficiency because the specific facts of their cases do not satisfy the provision.<sup>199</sup> North Carolina, however, enacted a specific cyberbullying statute that focuses solely on perpetrators who electronically harass minors.<sup>200</sup> There are several unique features of this statute: (1) it addresses specific cyberbullying activities such as building a fake profile or website, posting a real or doctored image of a minor on the Internet, and posing as a minor in an Internet chat room, an "electronic mail message," or an instant message; (2) it does *not* mention repetitive conduct as a requirement to commit the cyberbullying offense; (3) it criminalizes indirect cyberbullying if a perpetrator "plants any statement, whether true or false, tending to provoke . . . any third party to stalk or harass" a minor; and (4) it differentiates punishment depending on whether the perpetrator is eighteen years of age or older at the time the cyberbullying offense occurred.<sup>201</sup> North Carolina's cyberbullying statute adequately addresses several different kinds of cyberbullying and, most importantly, accounts for juvenile offenders' diminished culpability. Other states that have incorporated criminal sanctions into cyberbullying laws include: Idaho,<sup>202</sup> Missouri,<sup>203</sup> Nevada,<sup>204</sup> North Dakota,<sup>205</sup> Tennessee,<sup>206</sup> and Wisconsin.<sup>207</sup>

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<sup>194</sup> KY. REV. STAT. ANN. § 525.080(1)(c) (LexisNexis 2010).

<sup>195</sup> Sentence of Imprisonment for Misdemeanor, KY. REV. STAT. ANN. § 532.090(2) (LexisNexis 2010).

<sup>196</sup> See Foderaro, *supra* note 4, at A1; Meacham, *supra* note 1.

<sup>197</sup> Harassment Through Electronic Communications, 720 ILL. COMP. STAT. ANN. 135/1-2 (LexisNexis 2010).

<sup>198</sup> *Id.*

<sup>199</sup> See Foderaro, *supra* note 4, at A1; Meacham, *supra* note 1.

<sup>200</sup> Cyber-bullying, N.C. GEN. STAT. § 14-458.1 (2010).

<sup>201</sup> *Id.* (Cyber-bullying is punishable as a Class 1 misdemeanor if the defendant is eighteen years of age or older at the time the offense is committed, and a Class 2 misdemeanor if the defendant is under the age of eighteen.)

<sup>202</sup> IDAHO CODE ANN. § 18-917A (2010).

<sup>203</sup> MO. REV. STAT. § 565.090 (West 2010).

## IV. PROPOSED FEDERAL CYBERBULLYING LEGISLATION

In April 2009, California Representative Linda Sanchez introduced the Megan Meier Cyberbullying Prevention Act.<sup>208</sup> This proposed legislation would amend the federal criminal code to impose criminal penalties on anyone who “transmits in interstate or foreign commerce a communication intended to coerce, intimidate, harass, or cause substantial emotional distress to another person, using electronic means to support severe, repeated, and hostile behavior.”<sup>209</sup> The bill resulted from a cyberbullying incident involving Megan Meier, a thirteen-year-old girl from Dardenne Prairie, Missouri.<sup>210</sup>

Megan befriended a sixteen-year-old boy, Josh Evans, through the cloaked world of Internet social networking after he contacted her on Myspace.<sup>211</sup> But when, after a month of flirtation, Josh inexplicably became cruel, Megan grew distraught.<sup>212</sup> Josh began publicly posting her private messages, as well as his own harsh comments calling her “fat” and a “slut” for others to read and laugh at.<sup>213</sup> One message from Josh was particularly cruel, “[e]verybody in O’Fallon knows how you are. You are a bad person and everybody hates you. Have a shitty rest of your life. The world would be a better place without you.”<sup>214</sup> Shortly after Megan received the message, she responded, “You’re the kind of boy a girl would kill herself over.”<sup>215</sup> The sudden rejection pushed Megan to her unexpected suicide; later that afternoon, she hung herself with a belt inside her bedroom closet.<sup>216</sup>

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<sup>204</sup> NEV. REV. STAT. ANN. § 200.571 (LexisNexis 2010); *see also* Bullying, Cyber-bullying, Harassment and Intimidation Prohibited, NEV. REV. STAT. ANN. § 388.135 (LexisNexis 2010) (“A member of the board of trustees of a school district, any employee of the board of trustees, including, without limitation, an administrator, principal, teacher or other staff member, or any pupil shall not engage in bullying, cyber-bullying, harassment or intimidation on the premises of any public school, at an activity sponsored by a public school or on any school bus.”).

<sup>205</sup> N.D. CENT. CODE § 12.1-17-07 (2010).

<sup>206</sup> TENN. CODE ANN. § 39-17-308 (2010).

<sup>207</sup> WIS. STAT. ANN. § 947.0125 (West 2010).

<sup>208</sup> Megan Meier Cyberbullying Prevention Act, H.R. 1966, 111th Cong. (2009), *available at* <http://www.govtrack.us/congress/billtext.xpd?bill=h111-1966>.

<sup>209</sup> *Id.*

<sup>210</sup> Steinhauer, *supra* note 2, at A25.

<sup>211</sup> Kate E. Schwartz, Note, *Criminal Liability for Internet Culprits: The Need for Updated State Laws Covering the Full Spectrum of Cyber Victimization*, 87 WASH. U. L. REV. 407, 407 (2009).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> Steinhauer, *supra* note 2, at A25.

<sup>216</sup> *Id.*

Six weeks after Megan's death, her parents learned that Josh Evans was actually a fictitious boy created to "mess with Megan," not by a sixteen-year-old at all, but rather, by a forty-seven-year-old woman, Lori Drew, who lived four houses away from the Meiers.<sup>217</sup> Ms. Drew, accompanied by her then thirteen-year-old daughter, Sarah,<sup>218</sup> deliberately participated in the Internet ploy, and knew of Megan's emotional fragility and past issues with depression.<sup>219</sup> Unfortunately, Ms. Drew has yet to be punished for her conduct because no adequate remedy currently exists under federal law.<sup>220</sup> The Megan Meier Cyberbullying Act seeks to punish conduct similar to Ms. Drew's behavior by imposing a fine, mandating imprisonment for up to two years, or both.<sup>221</sup> The current version of the bill, however, does not distinguish cyberbullying as committed by juveniles or adults.<sup>222</sup>

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<sup>217</sup> Schwartz, *supra* note 211, at 407-08.

<sup>218</sup> Steinhauer, *supra* note 2, at A25.

<sup>219</sup> Schwartz, *supra* note 211, at 407-08.

<sup>220</sup> After Missouri law enforcement officials determined that Ms. Drew had broken no local laws, Thomas O'Brien, the United States attorney in Los Angeles, decided to prosecute the case himself in federal court. Kim Zetter, *Judge Acquits Lori Drew in Cyberbullying Case, Overrules Jury*, WIRED (July 2, 2009), [http://www.wired.com/threatlevel/2009/07/drew\\_court/](http://www.wired.com/threatlevel/2009/07/drew_court/). He asserted federal jurisdiction on that ground that Myspace is based in Los Angeles and prosecuted Ms. Drew under the Computer Fraud and Abuse Act: a federal statute designed to combat computer crimes. *Id.* To convict Ms. Drew of the felonies, O'Brien needed to prove two things: that Drew accessed Myspace "without authorization," and did it to purposely commit a tortious act—to intentionally cause harm to Megan Meier." *Id.* Although the jury convicted Ms. Drew in 2008 of three misdemeanor charges under the Act, she was acquitted less than a year later in decision decided by Judge George Wu for the United States District Court for the Central District of California. *Id.*; *see generally* United States v. Drew, 259 F.R.D. 449 (C.D. Cal. 2009) (Judge Wu's opinion granted Ms. Drew's motion for a judgment of acquittal). Judge Wu noted, "It basically leaves it up to a website owner to determine what is a crime . . . And therefore it criminalizes what would be a breach of contract." *Id.* Because Ms. Drew was prosecuted under an ill-fit statute, she has never been punished for her role in Megan Meier's demise.

<sup>221</sup> H.R. 1966 (noting that "youth who create Internet content and use social networking sites are more likely to be targets of cyberbullying").

<sup>222</sup> H.R. 1966. The bill also lists the following Congressional findings:

- (1) four out of five children aged two to seventeen live in a home with Internet access;
- (2) youth who create Internet content and use social networking sites are more likely to be targets of cyberbullying;
- (3) electronic communications provide anonymity to the perpetrator and the potential for widespread public distribution, potentially making them severely dangerous and cruel to youth;
- (4) online victimizations are associated with emotional distress and other psychological problems, including depression;
- (5) cyberbullying can cause psychological harm, can negatively impact academic performance, safety, and the well-being of children in school, can force children to change schools, and can lead to extreme violent behavior, including murder and suicide; and
- (6) sixty percent of mental health professionals who responded to the Survey of Internet Mental Health Issues report having treated at least one patient with a problematic Internet experience in the previous five years, fifty-four percent of which were clients eighteen years of age or younger.

## V. PROPOSED LEGISLATIVE RESPONSES TO CYBERBULLYING FOR OHIO

In a fall 2010 interview on Cleveland Public Radio's weekly program *The Sound of Ideas*, Frankie Goldberg, Assistant Prosecutor at the Cuyahoga County Prosecutor's Office and Director of the Ohio Internet Crimes Against Children (ICAC) Task Force,<sup>223</sup> and David Frattare, Lead Investigator for the Ohio ICAC Task Force, discussed the urgent need to take action against adolescent cyberbullying.<sup>224</sup> When the broadcaster asked Mr. Frattare whether enacting specific cyberbullying legislation would be appropriate, he immediately responded in the affirmative.<sup>225</sup> Without cyberbullying-specific legislation, adolescents face harsh, ill-fit criminal sentences and penalties,<sup>226</sup> and cyberbullying victims are left without an adequate remedy.<sup>227</sup> To address the cyberbullying quandary, the Ohio General Assembly should amend Ohio educational statutes to require cyberbullying awareness and prevention within schools and adopt a specific cyberbullying criminal statute that focuses on conduct between juveniles. Or, the General Assembly should propose an amendment to Ohio's Telecommunications Harassment statute to include statutory language specific to cyberbullying incidents.

## A. Amendments to Ohio's Current Bullying Statutes

Currently, Ohio's educational bullying statutes consist of three separate statutes: section 3301.22 provides a model policy for state boards of education to adopt that prohibits harassment, intimidation, and bullying;<sup>228</sup> section 3313.666 constitutes Ohio's current policy prohibiting harassment, intimidation, and bullying on school property or in academic environments;<sup>229</sup> and section 3313.667 permits school districts to form bullying prevention task forces, programs, or other initiatives involving volunteers, parents, law enforcement, and community members.<sup>230</sup> But,

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*Id.* These findings are consistent with the research cited in this Note.

<sup>223</sup> In 1999, Cuyahoga County Prosecutor Bill Mason applied for specialized grant funding from the United States Department of Justice to launch the Ohio Internet Crimes Against Children (ICAC) Task Force. *About Ohio ICAC*, OHIO INTERNET CRIMES AGAINST CHILDREN TASK FORCE, <http://www.ohioicac.org/aboutICAC.aspx> (last visited Feb. 13, 2011). The taskforce is an alliance of city, county, state, and federal law enforcement authorities across Ohio "whose mission is to identify, arrest and prosecute individuals who: (1) use the Internet to lure minors into illicit sexual relationships; or (2) use the Internet to produce, distribute or solicit child pornography." *Ohio ICAC.Org*, OHIO INTERNET CRIMES AGAINST CHILDREN TASK FORCE, <http://www.ohioicac.org/> (last visited Feb. 13, 2011). It also seeks to educate parents and children about Internet safety and the very real dangers of Internet child sexual exploitation. *Id.*

<sup>224</sup> *The Sound of Ideas: Bullies in Cyberspace*, CLEVELAND PUBLIC RADIO: WCPN 90.3 (Oct. 18, 2010), <http://www.wcpn.org/index.php/WCPN/soi/32526/>.

<sup>225</sup> *Id.*

<sup>226</sup> See *infra* Part II.B.2 (discussion of the inadequacy of Ohio criminal statutes to punish and to deter cyberbullying).

<sup>227</sup> See *infra* Part II.B.1 (discussion of the inadequacy of Ohio civil remedies).

<sup>228</sup> OHIO REV. CODE ANN. § 3301.22 (LexisNexis 2011).

<sup>229</sup> OHIO REV. CODE ANN. § 3313.666 (LexisNexis 2011).

<sup>230</sup> OHIO REV. CODE ANN. § 3313.667 (LexisNexis 2011).

none of these statutes prohibit cyberbullying or electronic harassment. Although Ohio legislators have introduced several proposed amendments to sections 3313.666 and 3313.667 in recent years to accommodate cyberbullying, and assigned the bills to the Education Committee,<sup>231</sup> the General Assembly has made no attempt to pass the law since its introduction.<sup>232</sup>

The proposed legislation, S.B. 126, seeks to amend current bullying statutes by prohibiting school administrators from “knowingly failing to report . . . menacing by stalking or telecommunications harassment that occurs on school grounds.”<sup>233</sup> It also requires each board of education to adopt policies that prohibit electronic bullying and to provide mandatory training programs for all district employees and volunteers.<sup>234</sup> The amendment seeks to require that a school district’s harassment policy “address acts that occur off school property but materially disrupt the educational environment of the school.”<sup>235</sup>

The text of S.B. 126 appears to adequately address cyberbullying within schools. It focuses on cyberbullying training for district employees and volunteers to prevent future issues, and imposes a duty on school administrators to report severe instances of electronic bullying.<sup>236</sup> Additionally, by only addressing electronic bullying that occurs on campus and only acts that occur off campus, but that materially disrupt the school’s educational environment, S.B. 126 likely does not impede students’ First Amendment rights.<sup>237</sup> Although not directly stated, the amendment also allows victims to pursue school administrators, employees, volunteers, and cyberbullies for reckless or purposeful conduct: “nothing in this section prohibits a victim from seeking redress under any other provision of the Revised Code or common law that may apply.”<sup>238</sup> Under current law, however, there is not a cyberbullying-specific law for victims to pursue.

Although appropriate and effective in many respects, S.B. 126 improperly incorporates menacing by stalking and telecommunications harassment.<sup>239</sup> These

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<sup>231</sup> See S.B. 126, 128th Gen. Assemb., Reg. Sess. (Ohio 2010), available at [http://www.legislature.state.oh.us/BillText128/128\\_SB\\_126\\_I\\_Y.pdf](http://www.legislature.state.oh.us/BillText128/128_SB_126_I_Y.pdf); S.B. 127, 129th Gen. Assemb., Reg. Sess. (Ohio 2011), available at [http://www.legislature.state.oh.us/bills.cfm?ID=129\\_SB\\_127](http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_127); H.B. 155, 129th Gen. Assemb., Reg. Sess. (Ohio 2011), available at [http://www.legislature.state.oh.us/bills.cfm?ID=129\\_HB\\_155](http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_155); *Status Report of Legislation: 128th General Assembly – Senate Bill 126*, THE 128TH GENERAL ASSEMBLY OF THE STATE OF OHIO, <http://lsc.state.oh.us/coderev/sen128.nsf/Senate+Bill+Number/0126?OpenDocument> (last visited Aug. 26, 2011). For purposes of the educational bullying statutes proposed in S.B. 127 and H.B. 155, the changes to sections 3313.66 and 3313.667 are identical. See S.B. 126; H.B. 155.

<sup>232</sup> See S.B. 126; *Status Report of Legislation*, *supra* note 231.

<sup>233</sup> S.B. 126.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*; see also *infra* Part III (noting that First Amendment considerations curb schools’ ability to regulate student speech and punish students for off-campus activity).

<sup>238</sup> S.B. 126.

<sup>239</sup> *Id.*

statutes do not adequately address the fact-specific circumstances of adolescent cyberbullying.<sup>240</sup> The General Assembly should recognize the importance of juvenile rehabilitation and stray from over-criminalizing students under current statutes. The National Conference of State Legislatures has reported a loss of faith in the rehabilitative model of the juvenile justice system, and a shift away from juvenile justice policy toward more stringent “criminalization” of delinquency in the last two decades.<sup>241</sup> Most juveniles abstain from crime during adolescence, and even among juveniles that do engage in criminal behavior that continues into early adulthood, very few become chronic offenders.<sup>242</sup> “Adolescents over-criminalized in the adult system, however, re-offend far more quickly, at higher rates, and for more serious crimes.”<sup>243</sup>

The General Assembly should enact a separate cyberbullying statute that focuses on the unique interaction of juveniles and prevents over-criminalization. If a separate cyberbullying statute is created, it should be referenced in the educational bullying statutes. For example, it may include a provision such as: “If an administrator, employee, or faculty member of any primary, secondary, or post-secondary school or of any other educational institution, public or private, recklessly permit the harassment, intimidation, bullying, or cyberbullying of any person, the individual(s) may be guilty of cyberbullying or any other provision of the Revised Code or common law that may apply.” This specific provision provides notice to school officials that reckless disregard for cyberbullying incidents will not be tolerated.

The story of Cincinnati teen Jessica Logan, inspired Ohio legislators to propose S.B. 127, appropriately entitled the “Jessica Logan Act.”<sup>244</sup> The bill makes minor additions to the existing education statutes by adding the definition of an “electronic act” to school anti-harassment policies, expanding existing harassment policies to include cyberbullying, and providing teachers and administrators with a clear set of guidelines to “punish acts of cyber-bullying that distract from a positive learning environment.”<sup>245</sup> Although the Jessica Logan Act seems to provide adequate solutions in the academic setting, Ohio would still benefit from a specific criminal cyberbullying statute, not only to deter extreme cyberbullying incidents, but to ensure that cyberbullies are not subject to prosecution under ill-fit statutes.

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<sup>240</sup> See *infra* Part II.B.2 (discussion of the inadequacy of Ohio criminal statutes to punish and to deter cyberbullying).

<sup>241</sup> Sarah Hammond, *The Over-Criminalization of Juvenile Offenders and the Rise of Recidivism and Certification*, NATIONAL CONFERENCE OF STATE LEGISLATURES 4 (2009), <http://www.juvenilelaw.org/Education/2009/Presentations/Hammond.pdf>.

<sup>242</sup> *Id.* at 8.

<sup>243</sup> *Id.*

<sup>244</sup> See Press Release, State Senator Joe Schiavoni, Senator Schiavoni Calls for Protection Against Cyber Bullying in Schools, (Apr. 5, 2011), *available at* [http://www.ohiosenate.gov/senateImages/129/media/33/349\\_Schiavoni%20-%20Cyber%20Bullying%20-%202004%2005%2011.pdf](http://www.ohiosenate.gov/senateImages/129/media/33/349_Schiavoni%20-%20Cyber%20Bullying%20-%202004%2005%2011.pdf).

<sup>245</sup> *Id.*



*B. Model Cyberbullying Criminal Statute or Amendments  
to the Current Telecommunications Harassment Statute*

The Ohio General Assembly should directly address the issue of cyberbullying by either enacting an individual cyberbullying statute, or by amending the Telecommunications Harassment statute to include cyberbullying. Cyberbullying has devastating effects on a juvenile's emotional, mental, and psychological health.<sup>246</sup> This digital phenomenon has caused multiple cyberbullying-induced teen suicides in Ohio, and the General Assembly should create specific cyberbullying laws and prevention programs to protect Ohio's children, academic institutions and communities.

1. Model Cyberbullying Statute

By enacting a specific criminal cyberbullying statute, the General Assembly can focus on the specific circumstances of cyberbullying incidents and impose appropriate penalties on offenders. If the General Assembly enacts a separate statute, it should adopt a statute substantially similar to the following model:

Cyberbullying.

- A. As used in this section, "cyberbullying" means willful harm inflicted by the use of any electronic device through means including, but not limited to, e-mail, instant messaging, text messages, blogs, mobile phones, pagers, online games and websites. This also includes the following:
- 1) Posing as a minor online or in an electronic mail;
  - 2) Building a fake profile or website;
  - 3) Following a minor online or into an Internet chat room;
  - 4) Posting or encouraging others to post on the Internet private, personal, or sexual information pertaining to a minor;
  - 5) Sending repeated electronic communications, including electronic mail or other transmissions, to a minor; and
  - 6) Planting any statement, whether true or false, or posting any picture tending to provoke or that actually provokes any third party to stalk or harass a minor.
- B. (1) No person shall recklessly, or with the purpose to, harass, intimidate, or torment, cyberbully a minor.  
(2) No administrator, employee, or faculty member of any primary, secondary, or post-secondary school or of any other educational institution, public or private, shall recklessly permit the cyberbullying of any person.
- C. Any person who violates this section is guilty of cyberbullying, an offense which is punishable as a first-degree 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 is punishable as second-degree misdemeanor. If the defendant had prior

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<sup>246</sup> See *infra* II.A.2 (discussing cyberbullying's negative impact on adolescents' mental, emotional, and psychological development).

knowledge of a minor's mental, emotional, or psychological issues, the offense is punishable as a fifth degree felony.

- D. 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 Section 2151.358.

This statute follows the format of Ohio's Hazing statute, but also incorporates key language from cyberbullying and electronic harassment statutes from other states, including Kansas and North Carolina.<sup>247</sup> It follows the language of Ohio's Hazing statute for two reasons: (1) cyberbullying and hazing are offenses that generally relate to juveniles, and conduct between two juveniles and (2) the hazing statute criminalizes school administrators for reckless behavior.<sup>248</sup> Also similar to the Hazing statute, the model statute includes a definition of the cyberbullying offense, formulated from definitions provided by researchers,<sup>249</sup> the Kansas statute,<sup>250</sup> and the North Carolina statute.<sup>251</sup>

#### i. Definitional Provision

Along with the comprehensive definition, the model cyberbullying statute first sets forth a comprehensive definition of cyberbullying and provides detailed examples of unlawful cyberbullying conduct. The definition borrows key language from the definition provided by the Cyberbullying Research Center,<sup>252</sup> and accounts for every digital medium through which a cyberbully may attempt target its victim. Because cyberbullying can arise in a variety of electronic scenarios, the definitional section includes specific cyberbullying fact patterns. Specifically, "[p]lanting any statement, whether true or false, or posting any picture tending to provoke or that actually provokes any third party to stalk or harass a minor," closely parallels the actions demonstrated by Ripley in *State v. Ellison*.<sup>253</sup> Ripley posted the molestation

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<sup>247</sup> See KAN. STAT. ANN. § 72-8256(a)(2); Hazing, OHIO REV. CODE ANN. § 2903.31 (LexisNexis 2010); N.C. GEN. STAT. § 14-458.1.

<sup>248</sup> OHIO REV. CODE ANN. § 2903.31; see KAN. STAT. ANN. § 72-8256(a)(2); N.C. GEN. STAT. § 14-458.1.

<sup>249</sup> See Hinduja & Patchin, *supra* note 10, at 1.

<sup>250</sup> See KAN. STAT. ANN. § 72-8256(a)(2).

<sup>251</sup> See N.C. GEN. STAT. § 14-458.1.

<sup>252</sup> See Hinduja & Patchin, *supra* note 9 (Cyberbullying is "willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices.").

<sup>253</sup> See *supra* Part II.B.2 (discussing and interpreting the court's rationale in *Ellison*, 900 N.E.2d at 229-31).

accusations on her Myspace page and another student's Myspace page, and because it could likely be viewed by other students from Ripley and Savannah's school, Ripley's post elicited harassment from other students.<sup>254</sup> Under the model statute, Ripley exhibited unlawful conduct. The same provision also criminalizes the cyberbullying act of posting or sending pictures of a person, as suffered by both Hope Witsell and Jessica Logan.<sup>255</sup> Cyberbullying attacks unexpected victims from every angle of the Internet and electronic media, and an appropriately broad definitional provision in the statute is appropriate to cover all aspects of cyberbullying.

ii. Direct and Indirect Liability

The model statute also addresses the "direct communication" and "specific intent" problems encountered in *Ellison*.<sup>256</sup> Under this statute, "[n]o person shall recklessly, or with the purpose to, harass, intimidate, or torment, cyberbully a minor." According to Ohio law, a person acts recklessly when, "with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature."<sup>257</sup> Thus, if the Second District had prosecuted Ripley under a similar statute, and if the state proved beyond a reasonable doubt that she perversely disregarded "a known risk" that her conduct would likely result in harassment toward Savannah, Ripley would have been convicted of the cyberbullying offense.<sup>258</sup> Recklessness as a vehicle for liability enables many victims to avoid the "purposeful" trap because many cyberbullies do not fully contemplate the results of their conduct.

The model statute also punishes the reckless conduct of school administrators. This provision is particularly important considering the circumstances surrounding Jessica Logan's death.<sup>259</sup> Jessica repeatedly asked the school resource officer and other school officials to help alleviate the bullying, but to no avail.<sup>260</sup> Similarly, one of the Mentor High School students to commit suicide, sixteen-year-old Sladjana Vidovic, faced the same scenario.<sup>261</sup> Sladjana suffered physical and verbal abuse at school, such as a boy pushing her down the stairs at school, and often received nasty calls and messages on her cell phone at night.<sup>262</sup> Sladjana's parents knew of their

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<sup>254</sup> *Ellison*, 900 N.E.2d at 229-31.

<sup>255</sup> See *Celizic*, *supra* note 21 (article describing Jessica Logan's cyberbullying-induced suicide); *Kaye*, *supra* note 1 (article about Hope Witsell's cyberbullying-induced suicide).

<sup>256</sup> *Ellison*, 900 N.E.2d at 228.

<sup>257</sup> OHIO REV. CODE ANN. § 2901.22(C).

<sup>258</sup> *Ellison*, 900 N.E.2d at 229-31.

<sup>259</sup> See *Bullying: Words Can Kill*, *supra* note 26, at 16:30-18:10 (discussing the facts and circumstances surrounding Jessica's death, as well as the school's failure to help alleviate the bullying).

<sup>260</sup> *Id.*

<sup>261</sup> Peter Krouse, *5 Student Suicides Put Focus on Bullying Issue in Mentor*, THE PLAIN DEALER (Sept. 20, 2010, 11:58 PM), [http://blog.cleveland.com/metro/2010/09/5\\_student\\_suicides\\_put\\_focus\\_o.html](http://blog.cleveland.com/metro/2010/09/5_student_suicides_put_focus_o.html) (although this Note reports that a previous article recorded 4 suicides in Mentor, this article proffers that 5 actually occurred).

<sup>262</sup> *Id.*

daughter's problems and repeatedly pleaded with school officials to act on the repeated harassment and hazing.<sup>263</sup> After years of repeated instances of bullying, cyberbullying, and verbal and physical abuse, Sladjana hung herself from a bedroom window.<sup>264</sup> The model statute ensures that, in the most extreme cases—much like Tyler and Sladjana—school administrators, employees, or faculty members who “recklessly permit the cyberbullying of any person” on the campus of any educational institution, will be charged with violating the cyberbullying offense. Many times cyberbullying stems from bullying incidents at school, and school administrators should be punished for recklessly turning a blind eye to such conduct.<sup>265</sup>

### iii. Degree of Punishment and Expungement

The juvenile criminal justice system is particularly focused on the rehabilitation of minor delinquents.<sup>266</sup> To uphold these principles, the model statute appropriately distinguishes between minority and majority perpetrators, and also allows for the potential expungement of the perpetrators' recorded offense. With the age distinction, more severe penalties are imposed on adult perpetrators, such as Lori Drew,<sup>267</sup> who are better able to understand the severe consequences of cyberbullying conduct. If the perpetrator is older than eighteen, the offense is punishable as a first-degree misdemeanor, the same punishment as an individual's first offense of Telecommunications Harassment.<sup>268</sup> If the defendant is under the age of eighteen at the time the offense is committed, the offense is punishable as a second-degree misdemeanor.<sup>269</sup> When crafting legislation directly geared toward juvenile behavior, the General Assembly should consider the established principles of leniency and diminished culpability for adolescent offenders.

## 2. Amendments to the Telecommunications Harassment Statute

If the Ohio General Assembly were to amend the Telecommunications Harassment statute, they should adopt an amendment substantially similar to the

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<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> Although both Jessica Logan and Tyler Clementi were both eighteen years old at the time of their deaths, the statute may extend to those above the age of majority if the individual is in high school and a dependent when the bullying occurred,

<sup>266</sup> Julianne P. Sheffer, Note, *Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation within the Juvenile Justice System*, 48 VAND. L. REV. 479, 482-84 (1995).

<sup>267</sup> Schwartz, *supra* note 211, at 407-08.

<sup>268</sup> See § 2917.21 (“A violation of [telecommunications harassment] is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.”). It is reasonable to make the punishment the same because Telecommunications Harassment applies to adults that harass other adults through an electronic medium, and does not provide a special consideration or higher penalty when the victim is a minor. *See id.*

<sup>269</sup> The punishment was chosen by looking to other statute statutes. *See generally* Hinduja & Patchin, *supra* note 193 (reporting various states' criminal sanctions imposed for cyberbullying).

model statute provided in this Note. Specifically, the current statute does not include specific examples of conduct that qualifies as telecommunications harassment, and does not distinguish between juveniles and adults, whether the individual is a perpetrator or victim.<sup>270</sup> The Telecommunications Harassment statute also does not account for a school employee's knowing or reckless disregard for cyberbullying or electronic harassment within schools.<sup>271</sup> Cyberbullying has potentially devastating effects on a juvenile's emotional, mental, and psychological health; thus, the General Assembly should create specific cyberbullying laws and prevention programs.

#### VI. CONCLUSION

Although the Internet provides innumerable benefits, it has enhanced the ease and frequency with which individuals harboring animosity toward others can victimize targeted individuals. As illustrated by the tragic stories of Jessica Logan, Hope Witsell, Tyler Clementi, Megan Meier, and Sladjana Vidovic, cyberbullying is a burgeoning problem in the United States, especially among adolescents. Cyberbullying plagues at least one-third of American teenagers<sup>272</sup> and inflicts negative consequences on society at large.<sup>273</sup> In light of this modern trend, adolescents' mental health and psychological growth should be a paramount concern for Ohio legislators.

The Ohio General Assembly should impose criminal liability by enacting a specific cyberbullying law or by amending the telecommunications harassment statute, as well as updating the current educational, anti-bullying statutes to include a prohibition on cyberbullying. The General Assembly should craft cyberbullying legislation cautiously and comprehensively to reach all limits of victimization, and should distinguish the degrees of punishment based on the severity of the situation and the age of the perpetrator. Such a law would correctly punish those who intentionally or recklessly act in a harmful manner toward minors over the Internet, and would also deter the continuance of such conduct by perpetrators and bring justice to the victims who suffered as a result.

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<sup>270</sup> § 2917.21.

<sup>271</sup> *Id.*

<sup>272</sup> King, *supra* note 37, at 884.

<sup>273</sup> *Id.*