



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Cyber-Bullying and General Bullying Laws in Wisconsin

Increasing adolescent access to the Internet and wireless phones have caused a general increase in a practice that was previously reserved for face-to-face confrontation-bullying. When the practice of bullying incorporates the use of websites, email, and text messages, it is often referred to as cyber-bullying. Cyber-bullying may be generally defined as using electronic devices such as computers, mobile telephones or tablets to engage in behavior which is intended to cause fear, intimidation or harm to others. The National Crime Prevention Association (NCPA) gives the following examples of cyber-bullying:

- Sending someone mean or threatening emails, instant messages, or text messages.
- Excluding someone from an instant messenger buddy list or blocking their email for no reason.
- Tricking someone into revealing personal or embarrassing information and sending it to others.
- Breaking into someone's email or instant message account to send cruel or untrue messages while posing as that person.
- Creating websites to make fun of another person such as a classmate or teacher.
- Using websites to rate peers as prettiest, ugliest, etc.

In Wisconsin, there are a number of laws that are intended to prevent the practice of bullying in general, as well as the specific practice of cyber-bullying.

Cyber-bullying, or the practice of using electronic devices such as computers, mobile telephones or tablets to engage in behavior which is intended to cause fear, intimidation, or harm to others, is generally prohibited in Wisconsin. However, there is not a single statutory section specifically prohibiting cyber-bullying. The prohibitions intended to address cyber-bullying are found in several civil and criminal provisions that are more broadly applicable to harassment, unlawful use of the telephone, and unlawful use of computerized communications. These prohibitions are found in ch. 947, Stats., as crimes against public peace. In addition,

because bullying is generally concentrated among school children, policies are included in ch. 118, Stats., regarding general school operations.

This Information Memorandum briefly describes the laws that are intended to limit the practice of cyber-bullying, and bullying in general, in Wisconsin.

## **CRIMES**

### ***HARASSMENT***

Wisconsin law prohibits an individual from doing any of the following with the intent to harass or intimidate another person:

- Striking, shoving, kicking or otherwise subjecting a person to physical contact, or attempting or threatening to do the same.
- Engaging in a course of conduct or repeatedly committing acts that harass or intimidate a person and which serve no legitimate purpose.

[s. 947.013 (1m), Stats.]

Such actions are punishable as Class B forfeitures<sup>1</sup> under Wisconsin law.

If the act of harassment is accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm or the act occurs while the actor is under certain injunctions that prohibit or limit contact with the victim, the harassment action is punishable as a Class A misdemeanor.<sup>2</sup> [s. 947.013 (1r), Stats.] If an individual intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate a violation under this provision, the misdemeanor penalty is increased to a Class H felony.<sup>3</sup> [s. 947.013 (1v), Stats.]

Additionally, there are higher (increased) penalties for individuals with prior harassment convictions. [s. 947.013 (1t) and (1x), Stats.]

### ***UNLAWFUL USE OF TELEPHONE***

It is a Class B misdemeanor<sup>4</sup> for an individual to make a telephone call:

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<sup>1</sup> A Class B forfeiture means a forfeiture not to exceed \$1,000.

<sup>2</sup> A Class A misdemeanor is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both.

<sup>3</sup> A Class H felony is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both.

<sup>4</sup> A Class B misdemeanor is punishable by a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.

- To threaten to inflict injury or physical harm to any person, or to the property of any person, with the intent to frighten, intimidate, threaten, abuse, or harass.
- To use any obscene, lewd, or profane language, or to suggest any lewd or lascivious act, with the intent to frighten, intimidate, threaten, or abuse.
- Whether or not conversation ensues, to not disclose his or her identity while intending that the call abuse or threaten any person at the called number.

[s. 947.012 (1), Stats.]

It is a Class B forfeiture for an individual to do the following:

- Make a telephone call and use any obscene, lewd, or profane language or suggest any lewd or lascivious act, with intent to harass or offend.
- Make or cause the telephone of another repeatedly to ring, with intent to harass any person at the called number.
- Make repeated telephone calls, whether or not conversation ensues, with intent solely to harass any person at the called number.
- Make a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number.
- Knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.

[s. 947.012 (2), Stats.]

#### ***UNLAWFUL USE OF COMPUTERIZED COMMUNICATIONS SYSTEMS***

It is a Class B misdemeanor for an individual to do any of the following with the intent to frighten, intimidate, threaten, abuse, or harass another person:

- Send a message to the person on an electronic mail or other computerized communication system and in that message threaten to inflict injury or physical harm to any person or the property of any person.
- Send a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message threaten to inflict injury or physical harm to any person or the property of any person.
- Send a message to the person on an electronic mail or other computerized communication system and in that message use any obscene, lewd, or profane language or suggest any lewd or lascivious act.

- Send a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message use any obscene, lewd, or profane language or suggest any lewd or lascivious act.
- Send a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.
- While intentionally preventing or attempting to prevent the disclosure of his or her identity, send a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

[s. 947.0125 (2), Stats.]

It is a Class B forfeiture for an individual to do any of the following with the intent to harass, annoy, or offend another person:

- Send a message to the person on an electronic mail or other computerized communication system and in that message use any obscene, lewd, or profane language or suggest any lewd or lascivious act.
- Send a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message use any obscene, lewd, or profane language or suggest any lewd, or lascivious act.

[s. 947.0125 (3) (a) and (b), Stats.]

It is a Class B forfeiture for an individual to do any of the following with the intent solely to harass another person:

- Send repeated messages to the person on an electronic mail or other computerized communication system;
- Send repeated messages on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the messages.

[s. 947.0125 (3) (c) and (d), Stats.]

It is a Class B forfeiture for an individual to do either of the following with the intent to harass or annoy another person:

- Send a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.

- While intentionally preventing or attempting to prevent the disclosure of his or her identity, send a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

[s. 947.0125 (3) (e) and (f), Stats.]

Finally, it is a Class B forfeiture to knowingly permit or direct another person to send a computerized message prohibited under these laws from any computer terminal or other device that is under his or her control. [s. 947.0125 (3) (g), Stats.]

## **SCHOOL OPERATIONS**

### ***GENERAL PROHIBITION ON PUPIL DISCRIMINATION***

State law generally requires that a person may not be denied admission to any public school or be denied participation in, denied the benefits of, or discriminated against in any curricular, extra-curricular, pupil services, recreational, or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability. [s. 118.13 (1), Stats.] In order to implement this requirement, school boards must develop written policies and procedures and submit them to the state superintendent for review. [s. 118.13 (2), Stats.] Any public school official, employee, or teacher who intentionally engages in conduct which discriminates against a person or causes a person to be denied rights, benefits, or privileges in violation of the prohibition on discrimination, may be required to forfeit up to \$1,000. [s. 118.13 (4), Stats.]

### ***MODEL POLICY ON BULLYING***

2009 Wisconsin Act 309 directed the Department of Public Instruction (DPI) to develop a model education and awareness program and a model school policy on bullying by pupils, both of which were to be posted on the DPI website. The school boards were then required to adopt a policy prohibiting bullying by pupils by August 15, 2010, and to distribute the policy to pupils, parents, and guardians on an annual basis thereafter. The DPI model policy includes the following sections:

- A definition of bullying.
- A prohibition on bullying.
- A procedure for reporting bullying that allows reports to be made confidentially.
- A prohibition against a pupil retaliating against another pupil for reporting an incident of bullying.
- A procedure for investigating reports of bullying. The procedure must identify the school district employee in each school who is responsible for conducting the investigation and require that the parent or guardian of each pupil involved in a bullying incident be notified.

- A requirement that school district officials and employees report incidents of bullying and identify the persons to whom the reports must be made.
- A list of disciplinary alternatives for pupils that engage in bullying or who retaliate against a pupil who reports an incident of bullying.
- An identification of the school-related events at which the policy applies.
- An identification of the property owned, leased, or used by the school district on which the policy applies.
- An identification of the vehicles used for pupil transportation on which the policy applies.

[s. 118.46 (1) (a), Stats.]

The DPI model bullying policy can be accessed on the Internet at: <http://sspw.dpi.wi.gov/files/sspw/doc/modelbullyingpolicy.doc>. The DPI model bullying prevention program can be found at: <http://sspw.dpi.wi.gov/files/sspw/pdf/bullyingprogram.pdf>.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Dan Schmidt, Senior Analyst, on August 1, 2013.

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