

Chapter 366

(Senate Bill 725)

AN ACT concerning

Bullying, Cyberbullying, Harassment, and Intimidation – ~~Civil Relief and School Response~~

FOR the purpose of ~~authorizing a victim of cyberbullying or a parent or guardian of a victim of cyberbullying to bring a certain action for injunctive relief against a certain individual; authorizing a court to grant certain injunctive relief under certain circumstances; establishing the conditions under which a certain plaintiff is entitled to a certain temporary restraining order, preliminary injunction, or final injunction; providing that a certain plaintiff is not required to plead or prove certain facts; providing that a certain temporary restraining order is not required to include certain information; authorizing a court that grants a certain temporary restraining order to order the preservation of certain electronic communications, under certain circumstances; authorizing a school principal to make a certain report if, after an investigation is completed, the school principal has reason to believe that a student has engaged in conduct that constitutes a certain criminal offense; establishing civil and criminal immunity for a school principal who in good faith makes a certain report or participates in a certain investigation or judicial proceeding; establishing civil and criminal immunity for a certain school employee who in good faith participates in a certain investigation or judicial proceeding; prohibiting certain provisions of this Act from being interpreted to create a certain cause of action or a certain obligation, duty, or standard of care; authorizing the expulsion of a student or the placement of a student in a certain special program if the student engages in certain behavior, incites violence against a student through certain behavior, or releases or threatens to release intimate visual material of a student without the student's consent; requiring certain school policies prohibiting bullying, harassment, or intimidation to include model procedures for providing notice of an act of bullying, harassment, or intimidation to a parent or guardian of the alleged victim and of the alleged perpetrator within a certain amount of time after the date the act is reported; defining certain terms; altering certain definitions; and generally relating to the bullying, cyberbullying, harassment, and intimidation of children and students.~~

~~BY adding to~~~~Article – Courts and Judicial Proceedings~~~~Section 3-2101 through 3-2104 to be under the new subtitle “Subtitle 21. Relief for Victims of Cyberbullying”; and 5-643~~~~Annotated Code of Maryland~~~~(2013 Replacement Volume and 2017 Supplement)~~

BY adding to

Article – Education

Section 7-303.1 and 7-305.2

Annotated Code of Maryland
(2014 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,
Article – Education
Section 7–424(a), 7–424.1, and 7–424.3
Annotated Code of Maryland
(2014 Replacement Volume and 2017 Supplement)

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

~~Article – Courts and Judicial Proceedings~~

~~SUBTITLE 21. RELIEF FOR VICTIMS OF CYBERBULLYING.~~

~~§ 2101.~~

~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(B) “ADULT” MEANS AN INDIVIDUAL WHO IS AT LEAST 18 YEARS OLD.~~

~~(C) “CHILD” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.~~

~~(D) “CYBERBULLYING” MEANS BEHAVIOR DIRECTED AT A CHILD THAT CONSTITUTES AN OFFENSE UNDER § 3-805 OR § 3-809 OF THE CRIMINAL LAW ARTICLE.~~

~~(E) “INJUNCTION” MEANS AN ORDER MANDATING OR PROHIBITING A SPECIFIED ACT.~~

~~(F) “PRELIMINARY INJUNCTION” MEANS AN INJUNCTION GRANTED AFTER OPPORTUNITY FOR A FULL ADVERSARY HEARING ON THE PROPRIETY OF ITS ISSUANCE BUT BEFORE A FINAL DETERMINATION OF THE MERITS OF THE ACTION.~~

~~(G) “TEMPORARY RESTRAINING ORDER” MEANS AN INJUNCTION GRANTED WITHOUT OPPORTUNITY FOR A FULL ADVERSARY HEARING ON THE PROPRIETY OF ITS ISSUANCE.~~

~~(H) “VICTIM OF CYBERBULLYING” MEANS A CHILD AGAINST WHOM AN ACT OF CYBERBULLYING IS COMMITTED OR ALLEGED TO HAVE BEEN COMMITTED.~~

~~§ 2102.~~

~~(A) A VICTIM OF CYBERBULLYING OR A PARENT OR GUARDIAN OF A VICTIM OF CYBERBULLYING MAY BRING AN ACTION FOR INJUNCTIVE RELIEF UNDER THIS SUBTITLE AGAINST:~~

~~(1) THE INDIVIDUAL ALLEGED TO HAVE COMMITTED AN ACT OF CYBERBULLYING AGAINST THE VICTIM, IF THE INDIVIDUAL IS AN ADULT; OR~~

~~(2) A PARENT OR GUARDIAN OF THE INDIVIDUAL ALLEGED TO HAVE COMMITTED AN ACT OF CYBERBULLYING AGAINST THE VICTIM, IF THE INDIVIDUAL IS A CHILD.~~

~~(B) A COURT MAY GRANT ANY INJUNCTIVE RELIEF APPROPRIATE UNDER THE CIRCUMSTANCES TO PREVENT FURTHER CYBERBULLYING OF A VICTIM, INCLUDING A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, OR FINAL INJUNCTION:~~

~~(1) ENJOINING THE INDIVIDUAL ALLEGED TO HAVE COMMITTED AN ACT OF CYBERBULLYING FROM ENGAGING IN CYBERBULLYING; OR~~

~~(2) COMPELLING THE PARENT OR GUARDIAN OF THE INDIVIDUAL ALLEGED TO HAVE COMMITTED AN ACT OF CYBERBULLYING TO TAKE REASONABLE ACTIONS TO CAUSE THE INDIVIDUAL TO CEASE ENGAGING IN CYBERBULLYING.~~

~~§ 2103.~~

~~(A) A PLAINTIFF IN AN ACTION FOR INJUNCTIVE RELIEF BROUGHT UNDER THIS SUBTITLE IS ENTITLED TO A TEMPORARY RESTRAINING ORDER ON A SHOWING THAT THE PLAINTIFF IS LIKELY TO SUCCEED IN ESTABLISHING THAT THE DEFENDANT:~~

~~(1) ENGAGED IN CYBERBULLYING OF THE VICTIM; OR~~

~~(2) IS THE PARENT OR GUARDIAN OF AN INDIVIDUAL WHO ENGAGED IN CYBERBULLYING OF THE VICTIM.~~

~~(B) THE PLAINTIFF IS NOT REQUIRED TO PLEAD OR PROVE THAT IMMEDIATE, SUBSTANTIAL, AND IRREPARABLE HARM WILL RESULT TO THE VICTIM BEFORE A FULL ADVERSARY HEARING CAN BE HELD ON THE PROPRIETY OF A PRELIMINARY OR FINAL INJUNCTION.~~

~~(C) A TEMPORARY RESTRAINING ORDER ISSUED UNDER THIS SECTION IS NOT REQUIRED TO:~~

~~(1) DEFINE THE HARM THAT THE COURT FINDS WILL RESULT IF THE TEMPORARY RESTRAINING ORDER IS NOT ISSUED; OR~~

~~(2) STATE THE BASIS FOR THE COURT'S DECISION TO GRANT THE TEMPORARY RESTRAINING ORDER WITHOUT WRITTEN OR ORAL NOTICE.~~

~~(D) A COURT THAT GRANTS A TEMPORARY RESTRAINING ORDER UNDER THIS SECTION MAY, ON ITS OWN MOTION OR ON THE MOTION OF EITHER PARTY, ORDER THE PRESERVATION OF ANY RELEVANT ELECTRONIC COMMUNICATION.~~

~~3-2104.~~

~~A PLAINTIFF IN AN ACTION FOR INJUNCTIVE RELIEF BROUGHT UNDER THIS SUBTITLE IS ENTITLED TO A PRELIMINARY INJUNCTION OR FINAL INJUNCTION ON A SHOWING THAT THE DEFENDANT:~~

~~(1) ENGAGED IN CYBERBULLYING OF THE VICTIM; OR~~

~~(2) IS THE PARENT OR GUARDIAN OF AN INDIVIDUAL WHO ENGAGED IN CYBERBULLYING OF THE VICTIM.~~

~~5-643.~~

~~(A) IN THIS SECTION, "SCHOOL PRINCIPAL" HAS THE MEANING STATED IN § 7-303.1 OF THE EDUCATION ARTICLE.~~

~~(B) A SCHOOL PRINCIPAL WHO IN GOOD FAITH MAKES A REPORT UNDER § 7-303.1 OF THE EDUCATION ARTICLE OR PARTICIPATES IN A RESULTING INVESTIGATION OR JUDICIAL PROCEEDING IS IMMUNE FROM ANY CIVIL LIABILITY OR CRIMINAL PENALTY THAT WOULD OTHERWISE RESULT FROM MAKING THE REPORT OR PARTICIPATING IN THE RESULTING INVESTIGATION OR JUDICIAL PROCEEDING.~~

~~(C) AN EMPLOYEE OF A PUBLIC OR NONPUBLIC SCHOOL WHO IN GOOD FAITH PARTICIPATES IN AN INVESTIGATION OR JUDICIAL PROCEEDING RESULTING FROM A REPORT MADE UNDER § 7-303.1 OF THE EDUCATION ARTICLE IS IMMUNE FROM ANY CIVIL LIABILITY OR CRIMINAL PENALTY THAT WOULD OTHERWISE RESULT FROM PARTICIPATING IN THE INVESTIGATION OR JUDICIAL PROCEEDING.~~

Article – Education

7-303.1.

(A) IN THIS SECTION, "SCHOOL PRINCIPAL" MEANS THE PRINCIPAL OF A PUBLIC OR NONPUBLIC SCHOOL, OR A DESIGNEE OF THE PRINCIPAL WHO IS AN ADMINISTRATOR.

(B) A SCHOOL PRINCIPAL MAY MAKE A REPORT TO ANY RELEVANT LAW ENFORCEMENT AGENCY IF, AFTER AN INVESTIGATION IS COMPLETED, THE SCHOOL PRINCIPAL HAS REASON TO BELIEVE THAT A STUDENT HAS ENGAGED IN CONDUCT THAT CONSTITUTES AN OFFENSE UNDER:

(1) § 3-201 OF THE CRIMINAL LAW ARTICLE (ASSAULT IN THE FIRST DEGREE);

(2) § 3-202 OF THE CRIMINAL LAW ARTICLE (ASSAULT IN THE SECOND DEGREE);

(3) § 3-805 OF THE CRIMINAL LAW ARTICLE (MISUSE OF ELECTRONIC COMMUNICATION OR INTERACTIVE COMPUTER SERVICE); OR

(4) § 3-809 OF THE CRIMINAL LAW ARTICLE (REVENGE PORN).

~~(C) A SCHOOL PRINCIPAL WHO MAKES A REPORT UNDER THIS SECTION AND ANY EMPLOYEE OF THE SCHOOL WHO PARTICIPATES IN A RESULTING INVESTIGATION OR JUDICIAL PROCEEDING SHALL HAVE THE IMMUNITY DESCRIBED IN § 5-643 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE.~~

~~(D) THIS SECTION MAY NOT BE INTERPRETED TO CREATE:~~

~~(1) A CIVIL, CRIMINAL, OR ADMINISTRATIVE CAUSE OF ACTION BASED ON ANY ACT OR OMISSION UNDER THIS SECTION; OR~~

~~(2) AN OBLIGATION, DUTY, OR STANDARD OF CARE THAT WOULD PROVIDE A BASIS FOR ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE CAUSE OF ACTION.~~

~~7-305.2.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

~~(2) "BULLYING, HARASSMENT, OR INTIMIDATION" HAS THE MEANING INDICATED IN § 7-424 OF THIS TITLE.~~

~~(3) "INTIMATE PARTS" MEANS THE NAKED GENITALS, PUBIC AREA, BUTTOCKS, OR FEMALE NIPPLE.~~

~~(4) “INTIMATE VISUAL MATERIAL” MEANS A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, OR ANY OTHER REPRODUCTION OF THE IMAGE OF A STUDENT WITH THE STUDENT’S INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN AN ACT OF SEXUAL CONTACT.~~

~~(5) “SEXUAL CONTACT” MEANS SEXUAL INTERCOURSE, INCLUDING GENITAL-GENITAL, ORAL-GENITAL, ANAL-GENITAL, OR ORAL-ANAL, WHETHER BETWEEN PERSONS OF THE SAME OR OPPOSITE SEX.~~

~~(B) A STUDENT MAY BE EXPELLED OR PLACED IN A SPECIAL PROGRAM FOR DISRUPTIVE STUDENTS ESTABLISHED UNDER § 7-304 OF THIS SUBTITLE IF THE STUDENT:~~

~~(1) ENGAGES IN BULLYING, HARASSMENT, OR INTIMIDATION THAT ENCOURAGES A STUDENT TO COMMIT OR ATTEMPT TO COMMIT SUICIDE;~~

~~(2) INCITES VIOLENCE AGAINST A STUDENT THROUGH GROUP BULLYING, HARASSMENT, OR INTIMIDATION; OR~~

~~(3) RELEASES OR THREATENS TO RELEASE INTIMATE VISUAL MATERIAL OF A STUDENT WITHOUT THE STUDENT’S CONSENT.~~

7-424.

(a) (1) In this section the following words have the meanings indicated.

(2) “Bullying, harassment, or intimidation” means intentional conduct, including verbal, physical, or written conduct, or an intentional electronic communication, that:

(i) Creates a hostile educational environment by ~~substantially~~ interfering with a student’s educational benefits, opportunities, or performance, or with a student’s physical or psychological well-being and is:

1. Motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status, or physical or mental ability or disability; ~~or~~

2. ~~SEXUAL IN NATURE, INCLUDING DESCRIPTIONS OR DEPICTIONS OF A STUDENT WITH THE STUDENT’S INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN AN ACT OF SEXUAL CONTACT; OR~~

and 3. Threatening, ~~HARASSING~~, or ~~[seriously]~~ intimidating;

(ii) 1. Occurs on school property, at a school activity or event, or on a school bus; or

2. ~~[Substantially disrupts]~~ ~~DISRUPTS~~ the orderly operation of a school.

(3) “Electronic communication” means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, or pager.

(4) **“INTIMATE PARTS” MEANS THE NAKED GENITALS, PUBIC AREA, BUTTOCKS, OR FEMALE NIPPLE.**

(5) **“SEXUAL CONTACT” MEANS SEXUAL INTERCOURSE, INCLUDING GENITAL–GENITAL, ORAL–GENITAL, ANAL–GENITAL, OR ORAL–ANAL, WHETHER BETWEEN PERSONS OF THE SAME OR OPPOSITE SEX.**

7–424.1.

(a) [(1)] In this section [the following words have the meanings indicated], **“BULLYING, HARASSMENT, OR INTIMIDATION” HAS THE MEANING STATED IN § 7–424 OF THIS SUBTITLE.**

[(2) “Bullying, harassment, or intimidation” means intentional conduct, including verbal, physical, or written conduct, or an intentional electronic communication, that:

(i) Creates a hostile educational environment by substantially interfering with a student’s educational benefits, opportunities, or performance, or with a student’s physical or psychological well–being and is:

1. Motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attribute, socioeconomic status, familial status, or physical or mental ability or disability; or

2. Threatening or seriously intimidating; and

(ii) 1. Occurs on school property, at a school activity or event, or on a school bus; or

2. Substantially disrupts the orderly operation of a school.

(3) (i) “Electronic communication” means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, or pager.

(ii) “Electronic communication” includes a social media communication.]

(b) (1) By March 31, 2009, the State Board, after consultation with and input from local school systems, shall develop a model policy prohibiting bullying, harassment, or intimidation in schools.

(2) The model policy developed under paragraph (1) of this subsection shall include:

(i) A statement prohibiting bullying, harassment, and intimidation in schools;

(ii) A statement prohibiting reprisal or retaliation against individuals who report acts of bullying, harassment, or intimidation;

(iii) A definition of bullying, harassment, or intimidation that is either the same as set forth in subsection [(a)(2)] **(A)** of this section or a definition that is not less inclusive than that definition;

(iv) Standard consequences and remedial actions for persons committing acts of bullying, harassment, or intimidation and for persons engaged in reprisal or retaliation;

(v) Standard consequences and remedial actions for persons found to have made false accusations;

(vi) Model procedures for reporting acts of bullying, harassment, and intimidation;

(vii) **MODEL PROCEDURES FOR PROVIDING NOTICE OF AN ACT OF BULLYING, HARASSMENT, OR INTIMIDATION TO:**

1. A PARENT OR GUARDIAN OF THE ALLEGED VICTIM, WITHIN 3 BUSINESS DAYS AFTER THE DATE THE ACT IS REPORTED; AND

2. A PARENT OR GUARDIAN OF THE ALLEGED PERPETRATOR, WITHIN ~~A REASONABLE AMOUNT OF TIME~~ 5 BUSINESS DAYS AFTER THE DATE THE ACT IS REPORTED;

(VIII) Model procedures for the prompt investigation of acts of bullying, harassment, and intimidation;

~~[(viii)]~~ **(IX)** Information about the types of support services available to the student bully, victim, and any bystanders;

~~[(ix)]~~ **(X)** Information regarding the availability and use of the bullying, harassment, or intimidation form under § 7–424 of this subtitle; and

~~[(x)]~~ **(XI)** Information regarding the availability and use of an anonymous two–way electronic tip program established under § 7–424 of this subtitle.

(3) By September 1, 2016, and every 5 years thereafter, the State Board, after consultation with local school systems, shall update the model policy required under paragraph (1) of this subsection.

(c) (1) Each county board shall establish a policy prohibiting bullying, harassment, or intimidation at school based on the model policy.

(2) The policy shall address the components of the model policy specified in subsection (b)(2) of this section.

(3) A county board shall develop the policy in consultation with representatives of the following groups:

- (i) Parents or guardians of students;
- (ii) School employees and administrators;
- (iii) School volunteers;
- (iv) Students; and
- (v) Members of the community.

(4) By January 1, 2017, and every 5 years thereafter, each county board shall update its policy based on the State Board’s update of the model policy under subsection (b)(3) of this section.

(d) Each county board shall publicize its policy in student handbooks, school system Web sites, and any other location or venue the county board determines is necessary or appropriate.

(e) Each county board policy shall include information on the procedure for reporting incidents of bullying, harassment, or intimidation, including:

(1) A chain of command in the reporting process; and

(2) The name and contact information for an employee of the Department, designated by the Department, who is familiar with the reporting and investigation procedures in the applicable school system.

(f) (1) By July 1, 2009, each county board shall submit its policy to the State Superintendent.

(2) By January 1, 2017, and every 5 years thereafter, each county board shall submit its updated policy to the State Superintendent.

(g) Each county board shall develop the following educational programs in its efforts to prevent bullying, harassment, and intimidation in schools:

(1) An educational bullying, harassment, and intimidation prevention program for students, staff, volunteers, and parents; and

(2) A teacher and administrator development program that trains teachers and administrators to implement the policy.

(h) (1) A school employee who reports an act of bullying, harassment, or intimidation under this section in accordance with the county board's policy established under subsection (c) of this section is not civilly liable for any act or omission in reporting or failing to report an act of bullying, harassment, or intimidation under this section.

(2) The provisions of this section may not be construed to limit the legal rights of a victim of bullying, harassment, or intimidation.

7-424.3.

(a) (1) In this section the following words have the meanings indicated.

(2) "Bullying, harassment, and intimidation" [means any intentional written, verbal, or physical act, including an electronic communication, that:

(i) 1. Physically harms an individual;

2. Damages an individual's property;

3. Substantially interferes with an individual's education or learning environment; or

4. Places an individual in reasonable fear of harm to the individual's person or property; and

(ii) 1. Occurs on school property, at a school activity or event, or on a school bus; or

2. Substantially disrupts the orderly operation of a school.

(3) “Electronic communication” means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, or pager] **HAS THE MEANING STATED IN § 7-424 OF THIS SUBTITLE.**

[(4) (3) “Nonpublic school” means a nonpublic school that participates in State-funded education programs.

(b) By March 31, 2012, each nonpublic school shall adopt a policy prohibiting bullying, harassment, and intimidation.

(c) The policy adopted under subsection (b) of this section shall include:

(1) A statement prohibiting bullying, harassment, and intimidation in the school;

(2) A statement prohibiting reprisal or retaliation against individuals who report acts of bullying, harassment, or intimidation;

(3) A definition of bullying, harassment, and intimidation that is either the same as set forth in subsection (a) of this section or a definition that is not less inclusive than that definition;

(4) Standard consequences and remedial actions for persons committing acts of bullying, harassment, or intimidation and for persons engaged in reprisal or retaliation, including:

(i) Specific penalties for persons who repeatedly commit acts of bullying, harassment, or intimidation; and

(ii) A requirement that persons who commit acts of bullying, harassment, or intimidation receive educational and therapeutic services concerning bullying prevention;

(5) Standard consequences and remedial actions for persons found to have made false accusations;

(6) Standard procedures for reporting acts of bullying, harassment, or intimidation, including a chain of command in the reporting process;

(7) **STANDARD PROCEDURES FOR PROVIDING NOTICE OF AN ACT OF BULLYING, HARASSMENT, OR INTIMIDATION TO:**

(I) A PARENT OR GUARDIAN OF THE ALLEGED VICTIM, WITHIN 3 BUSINESS DAYS AFTER THE DATE THE ACT IS REPORTED; AND

(II) A PARENT OR GUARDIAN OF THE ALLEGED PERPETRATOR, WITHIN ~~A REASONABLE AMOUNT OF TIME~~ 5 BUSINESS DAYS AFTER THE DATE THE ACT IS REPORTED;

(8) Standard procedures for the prompt investigation of acts of bullying, harassment, or intimidation;

[(8)] (9) Standard procedures for protecting victims of bullying, harassment, or intimidation from additional acts of bullying, harassment, or intimidation, and from retaliation; and

[(9)] (10) Information about the types of support services available to a student bully or victim and any bystanders.

(d) A nonpublic school is encouraged to develop the policy adopted under subsection (b) of this section in consultation with the following groups:

- (1) Parents or guardians of students;
- (2) School employees and administrators;
- (3) School volunteers; and
- (4) Students.

(e) A nonpublic school is encouraged to publicize the policy adopted under subsection (b) of this section in student handbooks, on the school's Web site, and any other location or venue the school determines is necessary or appropriate.

(f) A nonpublic school is encouraged to develop the following educational programs in its efforts to prevent bullying, harassment, and intimidation:

- (1) An educational bullying, harassment, and intimidation prevention program for students, staff, volunteers, and parents; and
- (2) A teacher and administrator development program that trains teachers and administrators to implement the policy adopted under subsection (b) of this section.

(g) An employee of a nonpublic school who reports an act of bullying, harassment, or intimidation in accordance with the nonpublic school's policy adopted under subsection

(b) of this section is not civilly liable for any act or omission in reporting or failing to report an act of bullying, harassment, or intimidation in accordance with the policy.

(h) The provisions of this section may not be construed to:

(1) Limit the legal rights of a victim of bullying, harassment, or intimidation; or

(2) Require a statewide policy in nonpublic schools relating to bullying, harassment, and intimidation.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Approved by the Governor, May 8, 2018.