

SENATE BILL 103

E1

(9lr0353)

ENROLLED BILL

— *Judicial Proceedings/Judiciary* —

Introduced by **Senators Zirkin, Hough, ~~and Smith~~ Smith, Carter, Cassilly, Hester, Lee, Ready, Waldstreicher, Washington, West, and Elfreth**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Electronic Harassment and Bullying**
3 **(Grace’s Law 2.0)**

4 FOR the purpose of altering prohibited actions relating to electronic harassment of minors;
5 prohibiting a person from maliciously engaging in an electronic communication
6 ~~under certain circumstances~~ if the electronic communication, as part of a series of
7 communications, has a certain effect and the person engaging in the electronic
8 communication acts with a certain intent; prohibiting a person with a certain intent
9 from using an electronic communication to maliciously engage in a certain act *under*
10 *certain circumstances* or in a course of conduct that, when considered in its entirety,
11 has a certain ~~result~~ effect; prohibiting a person from using a computer or a computer
12 ~~network to engage in certain activity with the intent to intimidate, torment, or~~
13 ~~harass a minor; prohibiting a person from engaging in certain activity with the intent~~
14 ~~to intimidate, torment, or harass a minor or the parent or guardian of a minor;~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 prohibiting a person from engaging in certain electronic conduct with a certain intent
 2 if the act of electronic conduct has a certain effect; prohibiting a person from violating
 3 this Act with the intent to induce a minor to commit suicide; establishing a certain
 4 exception to certain provisions of this Act; establishing and applying certain
 5 penalties for a violation of this Act; making the provisions of this Act severable;
 6 defining certain terms; *altering a certain definition*; and generally relating to
 7 electronic harassment and bullying.

8 BY repealing and reenacting, with amendments,
 9 Article – Criminal Law
 10 Section 3–805
 11 Annotated Code of Maryland
 12 (2012 Replacement Volume and 2018 Supplement)

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

15 **Article – Criminal Law**

16 3–805.

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

18 (2) “Electronic communication” means the ~~transmission of~~ **ACT OF**
 19 **TRANSMITTING ANY** information, data, [or a] ~~SIGN, SIGNAL,~~ **WRITING, IMAGE, SOUND,**
 20 **INTELLIGENCE, OR** communication by the use of a computer or any other electronic means
 21 [that is sent to a person and that is received by the person], **INCLUDING A**
 22 **COMMUNICATION THAT INVOLVES THE USE OF E-MAIL, AN INSTANT MESSAGING**
 23 **SERVICE, AN INTERNET WEBSITE, A SOCIAL MEDIA APPLICATION, A NETWORK CALL,**
 24 **A FACSIMILE MACHINE, OR ANY OTHER INTERNET-BASED COMMUNICATION TOOL.**

25 **(3) “ELECTRONIC CONDUCT” MEANS THE USE OF A COMPUTER OR A**
 26 **COMPUTER NETWORK TO:**

27 **(I) BUILD A FAKE SOCIAL MEDIA PROFILE;**

28 **(II) POSE AS ANOTHER, INCLUDING A FICTITIOUS PERSON IN AN**
 29 **ELECTRONIC COMMUNICATION;**

30 **(III) DISSEMINATE OR ENCOURAGE OTHERS TO DISSEMINATE**
 31 **SEXUAL INFORMATION PERTAINING TO A MINOR CONCERNING THE SEXUAL**
 32 **ACTIVITY, AS DEFINED IN § 3–809 OF THIS SUBTITLE, OF A MINOR;**

33 **(IV) DISSEMINATE A REAL OR DOCTORED IMAGE OF A MINOR;**

1 (V) ENGAGE OR ENCOURAGE OTHERS TO ENGAGE IN THE
2 REPEATED, CONTINUING, OR SUSTAINED USE OF ELECTRONIC COMMUNICATION TO
3 CONTACT A MINOR;

4 (VI) MAKE A STATEMENT TO PROVOKE A THIRD PARTY TO STALK
5 OR HARASS A MINOR; OR

6 (VII) SUBSCRIBE A MINOR TO A PORNOGRAPHIC WEBSITE.

7 (4) “INSTANT MESSAGING SERVICE” MEANS A COMPUTER SERVICE
8 ALLOWING TWO OR MORE USERS TO COMMUNICATE WITH EACH OTHER IN REAL
9 TIME.

10 ~~(3)~~ (5) “Interactive computer service” means an information service,
11 system, or access software provider that provides or enables computer access by multiple
12 users to a computer server, including a system that provides access to the Internet and
13 cellular phones.†

14 ~~(3) “INSTANT MESSAGING SERVICE” MEANS A COMPUTER SERVICE~~
15 ~~ALLOWING TWO OR MORE USERS TO COMMUNICATE WITH EACH OTHER IN REAL~~
16 ~~TIME.~~

17 ~~(4)~~ (6) “SOCIAL MEDIA APPLICATION” MEANS ANY ~~COMPUTER~~
18 ~~SYSTEM, PROGRAM, SOFTWARE, OR WEBSITE THAT ALLOWS A PERSON TO BECOME A~~
19 ~~REGISTERED USER FOR THE PURPOSE OF ESTABLISHING PERSONAL~~
20 ~~RELATIONSHIPS WITH ONE OR MORE OTHER USERS THROUGH:~~

21 (I) DIRECT OR REAL-TIME COMMUNICATION; OR

22 (II) THE CREATION OF WEBSITES OR PROFILES CAPABLE OF
23 BEING VIEWED BY THE PUBLIC OR OTHER USERS.

24 ~~(5)~~ (7) “SOCIAL MEDIA PROFILE” MEANS A WEBSITE OR PROFILE
25 CREATED USING A SOCIAL MEDIA APPLICATION.

26 (b) (1) A person may not maliciously engage in a course of conduct, through
27 the use of electronic communication, that alarms or seriously annoys another:

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

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

31 (iii) without a legal purpose.

1 ~~[(2)~~ A person may not use an interactive computer service to maliciously
2 engage in a course of conduct that inflicts serious emotional distress on a minor or places a
3 minor in reasonable fear of death or serious bodily injury with the intent:

4 (i) to kill, injure, harass, or cause serious emotional distress to the
5 minor; or

6 (ii) to place the minor in reasonable fear of death or serious bodily
7 injury.]

8 ~~(2) A PERSON MAY NOT MALICIOUSLY ENGAGE IN AN ELECTRONIC~~
9 ~~COMMUNICATION;~~

10 ~~(I) IF THE CONTENT, MANNER, TIME, OR PLACE, OR THE~~
11 ~~CONTEXT OF THE ELECTRONIC COMMUNICATION AS PART OF A SERIES OF~~
12 ~~COMMUNICATIONS, INTIMIDATES, TORMENTS, OR HARASSES A MINOR; AND~~

13 ~~(II) WITH THE INTENT TO INTIMIDATE, TORMENT, OR HARASS~~
14 ~~THE MINOR.~~

15 ~~(3) A PERSON MAY NOT USE AN ELECTRONIC COMMUNICATION TO~~
16 ~~MALICIOUSLY ENGAGE IN A SINGLE SIGNIFICANT ACT OR IN A COURSE OF CONDUCT~~
17 ~~THAT, WHEN CONSIDERED IN ITS ENTIRETY:~~

18 ~~(I) HAS THE EFFECT OF INTIMIDATING, TORMENTING,~~
19 ~~HARASSING, OR PHYSICALLY HARMING A MINOR;~~

20 ~~(II) CAUSES A MINOR TO EXPERIENCE SUBSTANTIAL~~
21 ~~EMOTIONAL DISTRESS;~~

22 ~~(III) RESULTS IN DAMAGE TO A MINOR'S PROPERTY; OR~~

23 ~~(IV) PLACES A MINOR IN REASONABLE FEAR OF HARM TO THE~~
24 ~~PHYSICAL SAFETY OF THE MINOR'S:~~

25 ~~1. PARENT OR GUARDIAN;~~

26 ~~2. SIBLING;~~

27 ~~3. SPOUSE; OR~~

28 ~~4. CHILD.~~

29 ~~(4) A PERSON MAY NOT, WITH THE INTENT TO INTIMIDATE, TORMENT,~~
30 ~~OR HARASS A MINOR, USE A COMPUTER OR A COMPUTER NETWORK TO:~~

1 ~~(I) BUILD A FAKE SOCIAL MEDIA PROFILE;~~

2 ~~(II) POSE AS ANOTHER, INCLUDING A FICTITIOUS PERSON, IN AN~~
3 ~~ELECTRONIC COMMUNICATION;~~

4 ~~(III) FOLLOW A MINOR ONLINE OR USING AN INSTANT~~
5 ~~MESSAGING SERVICE; OR~~

6 ~~(IV) DISSEMINATE OR ENCOURAGE OTHERS TO DISSEMINATE~~
7 ~~SEXUAL INFORMATION PERTAINING TO THE MINOR, WHETHER TRUE OR FALSE.~~

8 ~~(5) A PERSON MAY NOT, WITH THE INTENT TO INTIMIDATE, TORMENT,~~
9 ~~OR HARASS A MINOR OR THE PARENT OR GUARDIAN OF A MINOR, USE A COMPUTER~~
10 ~~OR A COMPUTER NETWORK TO:~~

11 ~~(I) 1. DISSEMINATE A REAL OR DOCTORED IMAGE OF THE~~
12 ~~MINOR;~~

13 ~~2. ACCESS, ALTER, OR ERASE ANY COMPUTER NETWORK,~~
14 ~~COMPUTER DATA, COMPUTER PROGRAM, OR COMPUTER SOFTWARE BELONGING TO~~
15 ~~OR LICENSED FOR USE BY THE MINOR WITHOUT AUTHORIZATION;~~

16 ~~3. ENGAGE OR ENCOURAGE OTHERS TO ENGAGE IN THE~~
17 ~~REPEATED, CONTINUING, OR SUSTAINED USE OF ELECTRONIC COMMUNICATION TO~~
18 ~~CONTACT THE MINOR;~~

19 ~~4. MAKE ANY STATEMENT, WHETHER TRUE OR FALSE,~~
20 ~~INTENDED TO IMMEDIATELY PROVOKE, OR THAT IS LIKELY TO PROVOKE, ANY THIRD~~
21 ~~PARTY TO STALK OR HARASS A MINOR;~~

22 ~~5. ENGAGE IN OR CAUSE THE UNAUTHORIZED COPYING~~
23 ~~AND DISSEMINATION OF ANY IMAGE, DATA, OR INFORMATION, WHETHER IN PRINT~~
24 ~~OR ELECTRONIC FORM, PERTAINING TO THE MINOR;~~

25 ~~6. SUBSCRIBE THE MINOR TO A PORNOGRAPHIC~~
26 ~~WEBSITE; OR~~

27 ~~7. SUBSCRIBE THE MINOR TO A MAILING LIST OR TO~~
28 ~~RECEIVE ONE OR MORE ELECTRONIC COMMUNICATIONS; AND~~

29 ~~(II) HARASS OR CAUSE INTIMIDATION OR TORMENT TO THE~~
30 ~~MINOR.~~

~~(6) A PERSON MAY NOT VIOLATE THIS SECTION WITH THE INTENT TO INDUCE A MINOR TO COMMIT SUICIDE.~~

(3) A PERSON MAY NOT MALICIOUSLY ENGAGE IN AN ELECTRONIC COMMUNICATION IF:

(I) THE ELECTRONIC COMMUNICATION IS PART OF A SERIES OF COMMUNICATIONS AND HAS THE EFFECT OF:

1. INTIMIDATING, ~~TORMENTING,~~ OR HARASSING A MINOR; AND

2. CAUSING PHYSICAL INJURY OR SERIOUS EMOTIONAL DISTRESS TO A MINOR; AND

(II) THE PERSON ENGAGING IN THE ELECTRONIC COMMUNICATION INTENDS TO:

1. INTIMIDATE, ~~TORMENT,~~ OR HARASS THE MINOR; ~~OR~~ AND

2. CAUSE PHYSICAL INJURY OR SERIOUS EMOTIONAL DISTRESS TO THE MINOR.

(4) A PERSON MAY NOT MALICIOUSLY ENGAGE IN A SINGLE SIGNIFICANT ACT OR COURSE OF CONDUCT USING AN ELECTRONIC COMMUNICATION IF:

(I) THE PERSON'S CONDUCT, WHEN CONSIDERED IN ITS ENTIRETY, HAS THE EFFECT OF:

1. INTIMIDATING, ~~TORMENTING,~~ OR HARASSING A MINOR; AND

2. CAUSING PHYSICAL INJURY OR SERIOUS EMOTIONAL DISTRESS TO A MINOR; ~~AND~~

(II) THE PERSON INTENDS TO:

1. INTIMIDATE, ~~TORMENT,~~ OR HARASS THE MINOR; ~~OR~~ AND

2. CAUSE PHYSICAL INJURY OR SERIOUS EMOTIONAL DISTRESS TO THE MINOR ; AND

1 (III) IN THE CASE OF A SINGLE SIGNIFICANT ACT, THE
 2 COMMUNICATION:

3 1. IS MADE AFTER RECEIVING A REASONABLE WARNING
 4 OR REQUEST TO STOP;

5 2. IS SENT WITH A REASONABLE EXPECTATION THAT THE
 6 RECIPIENT WOULD SHARE THE COMMUNICATION WITH A THIRD PARTY; OR

7 3. SHOCKS THE CONSCIENCE.

8 (5) A PERSON MAY NOT MALICIOUSLY ENGAGE IN ELECTRONIC
 9 CONDUCT IF:

10 (I) THE ACT OF ELECTRONIC CONDUCT HAS THE EFFECT OF:

11 1. INTIMIDATING, ~~TORMENTING,~~ OR HARASSING A
 12 MINOR; AND

13 2. CAUSING PHYSICAL INJURY OR SERIOUS EMOTIONAL
 14 DISTRESS TO A MINOR; AND

15 (II) THE PERSON INTENDS TO:

16 1. INTIMIDATE, ~~TORMENT,~~ OR HARASS THE MINOR; ~~OR~~
 17 AND

18 2. CAUSE PHYSICAL INJURY OR SERIOUS EMOTIONAL
 19 DISTRESS TO THE MINOR.

20 (6) A PERSON MAY NOT VIOLATE THIS SECTION WITH THE INTENT TO
 21 INDUCE A MINOR TO COMMIT SUICIDE.

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

27 (1) a provider of electronic communication;

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

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

5 (d) Subsection (b)(1) **THROUGH (5)** of this section does not apply to a peaceable
 6 activity:

7 (1) intended to express a political view or provide information to others; **OR**

8 (2) **CONDUCTED FOR A LAWFUL PURPOSE.**

9 (e) (1) A person who violates ~~SUBSECTION (B)(1) THROUGH (5)~~ **(B)(1), (2),**
 10 **(3), (4), OR (5)** OF this section is guilty of a misdemeanor and on conviction is subject to
 11 imprisonment not exceeding [1 year] **3 YEARS** or a fine not exceeding [\$500] **\$10,000** or
 12 both.

13 (2) **A PERSON WHO VIOLATES SUBSECTION (B)(6) OF THIS SECTION IS**
 14 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT**
 15 **NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
 17 the application thereof to any person or circumstance is held invalid for any reason in a
 18 court of competent jurisdiction, the invalidity does not affect other provisions or any other
 19 application of this Act that can be given effect without the invalid provision or application,
 20 and for this purpose the provisions of this Act are declared severable.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 22 October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.