

Chapter 27

(House Bill 181)

AN ACT concerning

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

FOR the purpose of altering prohibited actions relating to electronic harassment of minors; prohibiting a person from maliciously engaging in an electronic communication ~~under certain circumstances~~ if the electronic communication, as part of a series of communications, has a certain effect and the person engaging in the electronic communication acts with a certain intent; prohibiting a person with a certain intent from using an electronic communication to maliciously engage in a certain act under certain circumstances or in a course of conduct that, when considered in its entirety, has a certain ~~result effect~~; ~~prohibiting a person from using a computer or a computer network to engage in certain activity with the intent to intimidate, torment, or harass a minor; prohibiting a person from engaging in certain activity with the intent to intimidate, torment, or harass a minor or the parent or guardian of a minor; prohibiting a person from engaging in certain electronic conduct with a certain intent if the act of electronic conduct has a certain effect~~; prohibiting a person from violating this Act with the intent to induce a minor to commit suicide; establishing a certain exception to certain provisions of this Act; establishing and applying certain penalties for a violation of this Act; making the provisions of this Act severable; defining certain terms; altering a certain definition; and generally relating to electronic harassment and bullying.

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

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

Article – Criminal Law

3–805.

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

(2) “Electronic communication” means the ~~transmission of~~ **ACT OF TRANSMITTING** ANY information, data, [or a] ~~SIGN, SIGNAL, WRITING, IMAGE, SOUND, INTELLIGENCE, OR~~ communication by the use of a computer or any other electronic means

[that is sent to a person and that is received by the person], INCLUDING A COMMUNICATION THAT INVOLVES THE USE OF E-MAIL, AN INSTANT MESSAGING SERVICE, AN INTERNET WEBSITE, A SOCIAL MEDIA APPLICATION, A NETWORK CALL, A FACSIMILE MACHINE, OR ANY OTHER INTERNET-BASED COMMUNICATION TOOL.

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

(I) BUILD A FAKE SOCIAL MEDIA PROFILE;

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

(III) DISSEMINATE OR ENCOURAGE OTHERS TO DISSEMINATE INFORMATION CONCERNING THE SEXUAL ACTIVITY, AS DEFINED IN § 3-809 OF THIS SUBTITLE, OF A MINOR;

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

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

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

(VII) SUBSCRIBE A MINOR TO A PORNOGRAPHIC WEBSITE.

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

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

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

~~**(4) (6)**~~ “SOCIAL MEDIA APPLICATION” MEANS ANY ~~COMPUTER SYSTEM,~~ PROGRAM, SOFTWARE, OR WEBSITE THAT ALLOWS A PERSON TO BECOME A

REGISTERED USER FOR THE PURPOSE OF ESTABLISHING PERSONAL RELATIONSHIPS WITH ONE OR MORE OTHER USERS THROUGH:

(I) DIRECT OR REAL-TIME COMMUNICATION; OR

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

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

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

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

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

(iii) without a legal purpose.

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

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

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

~~(2) A PERSON MAY NOT MALICIOUSLY ENGAGE IN AN ELECTRONIC COMMUNICATION:~~

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

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

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

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

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

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

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

~~1. PARENT OR GUARDIAN;~~

~~2. SIBLING;~~

~~3. SPOUSE; OR~~

~~4. CHILD.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(H) HARASS OR CAUSE INTIMIDATION OR TORMENT TO THE 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 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 OR HARASS THE MINOR; 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 OR HARASSING A MINOR; AND
2. CAUSING PHYSICAL INJURY OR SERIOUS EMOTIONAL DISTRESS TO A MINOR;

(II) THE PERSON INTENDS TO:

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

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

1. IS MADE AFTER RECEIVING A REASONABLE WARNING OR REQUEST TO STOP;
2. IS SENT WITH A REASONABLE EXPECTATION THAT THE RECIPIENT WOULD SHARE THE COMMUNICATION WITH A THIRD PARTY; OR
3. SHOCKS THE CONSCIENCE.

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

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

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

(II) THE PERSON INTENDS TO:

1. INTIMIDATE OR HARASS THE MINOR; AND

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

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

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

(1) a provider of electronic communication;

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

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

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

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

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

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

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

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

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

Approved by the Governor, April 18, 2019.