



# COLORADO

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**TO:** Judiciary Committees of the Colorado House of Representatives and the Senate  
Governor's Office of Legal Counsel

**FROM:** Commission on Criminal and Juvenile Justice  
Stan Hilkey, Chair of the Commission   
Executive Director, Department of Public Safety  
Kevin L. Paletta, Chair of the Cyberbullying Subcommittee  
Chief, Lakewood Police Department

**RE:** Cyberbullying Report (attached)

**DATE:** December 1, 2014

By letter dated April 15, 2014, the Commission on Criminal and Juvenile Justice was requested to study wrongful behaviors associated with cyberbullying and determine the most effective strategies to address and prevent those behaviors. Specifically, the Commission was asked to consider the following:

- Existing criminal statutes that address acts that are committed through the internet, cellular phones, or other forms of social media, the sufficiency of those statutes, and any gaps in the law that may need to be addressed;
- Effective prevention and intervention methods that include, but are not limited to, intervention in schools and other educational settings;
- The role of victim-initiated restorative justice and how restorative justice may be used to aid victims, educate perpetrators, and inform communities to achieve a positive and productive resolution when these behaviors occur;
- The specific and problematic use of pornography to harass or damage a minor victim;
- Methods and interventions that may assist victims to recover from the damage caused by cyberbullying;
- Relevant impacts related to criminal convictions or juvenile adjudications; and
- Other analysis and research the Commission deems relevant including consideration of best practices in other political subdivisions and evidence-based practices.

The Commission formed the Cyberbullying Subcommittee to address the letter's request for information. Commission member and Lakewood Police Chief Kevin Paletta chaired the Subcommittee. The Subcommittee met between August and November and prepared the attached report. This concludes the Commission's work on this matter. Please feel free to contact Chief Paletta at [kevpal@lakewoodco.org](mailto:kevpal@lakewoodco.org) if you have any questions or to request additional information.





## REPORT OF THE CYBERBULLYING SUBCOMMITTEE OF THE COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

December 2014

**Background.** In a letter dated April 15, 2014, the leadership and several members of the Colorado General Assembly asked the Colorado Commission on Criminal and Juvenile Justice (CCJJ) to conduct a comprehensive review of cyberbullying to include the use of interactive computers, cellular services, and social media by youth to bully, harass, or threaten minor victims. The request asked that the Commission to report its findings and recommendations to the General Assembly by December 1, 2014. Subsequently, the Commission received a follow-up request to include a study of sexting. The Commission formed the Cyberbullying Subcommittee to respond to the requests for information. Sexting was addressed by the Subcommittee only as it is used in acts of cyberbullying. The Subcommittee discussed sexting and recognized that it is a very different issue from cyberbullying and was therefore beyond the scope of the current study and beyond the timeframe available to the Subcommittee. However, this report does include findings that are applicable to all types of bullying, including sexting. Because of time constraints in meeting the December 1 deadline for this response, the Subcommittee's work was not presented to the Commission as a whole. The findings and discussion should not be read as official Commission recommendations.

The Cyberbullying Subcommittee was seated in August of 2014 to respond to the request for information. The Cyberbullying Subcommittee consisted of the following professionals (an asterisk identifies the person as Commission member):

- \*Kevin Paletta, Chief, Lakewood Police Department (chair)
  - \*Jennifer Bradford, Metropolitan State University
  - Christine Brite, Detective, Douglas County Sheriff's Office
  - Maureen Cain, Criminal Defense Bar
  - \*Kelly Friesen, Senate Bill 94 Coordinator, Grand County
  - Chris Harms, Director, Colorado School Safety Resource Center
  - Denise Maes, American Civil Liberties Union
  - Patty Moschner, Victim Advocate, Douglas County Sheriff's Office
  - Linda Newell, Colorado Senator, District 26
  - Tom Raynes, Executive Director, Colorado District Attorneys' Council
- Division of Criminal Justice (DCJ) staff to the committee included \*Jeanne Smith, Kim English, Jana Locke, Ken Plotz, and Laurence Lucero

**Overview of the problem.** Traditional forms of bullying have been present in society and schools for many years. Colorado law concerning education defines bullying as “any written or verbal expression, or physical or electronic act or gesture, or pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student” (C.R.S. 22-32-109.1). What may constitute bullying in the eyes of one person may be seen as expected adolescent behavior in the eyes of another, or possibly an expression of free speech. The Subcommittee was cognizant in its discussions of not confusing cyberbullying with other juvenile behavior to include peer conflicts, arguing, ignoring, roughhousing, and constitutionally protected freedom of speech.

Cyberbullying is a relatively new twist on bullying. It involves the use of electronic mediums including email, text messaging, instant messaging, blogs, websites, online gaming, and other social networking sites. Compared to traditional bullying, cyberbullying is potentially more anonymous, shared with a wider audience, and not restrained by space or time. Tragic and sensational cases where cyberbullying has resulted in assaults, sexual assaults, and suicides have spawned discussions about how to best deal with this new method of bullying.

Research on traditional bullying has shown that bullied children may experience problems associated with their health, emotional well-being, and academic work. They are more likely to report feelings of anxiety, depression, and low self-esteem (Kowalski & Limber, 2013). In a presentation to the Cyberbullying Subcommittee on August 26, 2014, Dr. Jenn Capps and Dr. Denise Mowder, JD, on faculty at Metropolitan State University, reported the following research findings regarding cyberbullying:

- Girls are just as likely as boys to be bullying victims and offenders;
- Offenders are just as likely to be students earning A’s as ones earning C’s and D’s;
- Bullying is related to reports of low self-esteem, suicidal ideation, anger, frustration, and other psychological problems;
- Nationally, traditional bullying victims were 1.7 times more likely to attempt suicide and cyberbullying victims were 1.9 times more likely to have made such attempts;
- There is no research that shows a causal link between bullying or cyberbullying and suicidality. Family dynamics, substance abuse, mental illness, depression, and low self-esteem are more significant factors in suicides;
- Nationally reported victimization rates for traditional bullying are 19.9% with cyberbullying rates reported at 25.2%.

In Colorado, according to the Healthy Kids Colorado Survey,<sup>1</sup> in 2013 20.0% of students reported being the victim of traditional bullying in the past 12 months, and 15.1% reported being victimized by cyberbullying in the past 12 months. Middle school youth were asked if they had ever been the victim of traditional bullying (47.4%) and cyberbullying (22.7%).

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<sup>1</sup>This survey is sponsored jointly by the Colorado Department of Education, Colorado Department of Public Health and Environment, and the Colorado Department of Human Services-Office of Behavioral Health. It can be found at: <http://www.ucdenver.edu/academics/colleges/PublicHealth/community/CEPEG/UnifYouth/Pages/HealthyKidsSurvey.aspx>

A review of state statutes, conducted by Colorado Department of Criminal Justice (DCJ) staff, found that very few states have enacted specific criminal cyberbullying laws. Those that have include Louisiana, Georgia, New Mexico, North Carolina, and Virginia. Many states have chosen instead to deal with bullying and cyberbullying in their harassment and stalking statutes. These states include Alaska, Illinois, Indiana, Iowa, Kansas, Massachusetts, New York, and Texas. Like Colorado, nearly every state has adopted legislation directing school districts to develop policies requiring teacher training and the application of sanctions when dealing with bullying and cyberbullying.

Laws are already in place in Colorado to reduce and respond to acts of bullying. The state law cited above, updated by Senate Bill 01-080 and House Bill 11-1254 (Concerning Measures to Reduce the Frequency of Bullying in Schools Act), requires schools to provide a safe learning environment for all students. This includes the development of school and district policies concerning bullying prevention, education, and reporting. It further requires the Colorado Department of Education to create a page on its website to make available evidence-based practices concerning anti-bullying programs.<sup>2</sup>

The Subcommittee was unable to find evidence-based prevention or intervention programs related to cyberbullying. This is due in large part to the fact that cyberbullying is a relatively new phenomenon. Norway's Olweus Bullying Prevention Program (Olweus & Limber, 2010), listed on the University of Colorado's Blueprints for Healthy Youth Development website, is considered a "promising program" for traditional bullying, meaning that the program has clearly identified outcomes and some research indicating positive change with no harmful effects.<sup>3</sup> This program uses discussions and activities designed to reduce and prevent school bullying by establishing anti-bullying values and norms. In the absence of specific cyberbullying evidence-based practices, the Subcommittee recommends modeling any intervention programs after existing evidence-based programs such as the LifeSkills program which has been found to reduce aggression, fighting and delinquency by up to 50%.<sup>4</sup>

The Subcommittee has learned that truly effective anti-bullying public policies will require a multi-disciplinary approach that includes the school, justice system, community organizations, faith-based groups, and the family. The Subcommittee found some excellent anti-bullying policies and practices in place in school districts across the state, although such efforts have limitations. These limitations include factors such as little or no funding, broadly worded legal requirements, the lack of evidence-based anti-bullying programs, extensive requirements already existing on the schools, and the difficulty of getting voluntary youth and parent involvement in prevention and intervention efforts.

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<sup>2</sup> See <http://www.cde.state.co.us/pbis/bullying/index>.

<sup>3</sup> See Blueprints for Healthy Youth Development, University of Colorado, Institute of Behavioral Science, at <http://www.blueprintsprograms.com>.

<sup>4</sup> For more information, see <http://www.lifeskillstraining.com>.

## RESPONSE TO THE DIRECTIVES FROM THE GENERAL ASSEMBLY

After gathering data on the issue and hearing presentations from experts, the Cyberbullying Subcommittee assembled the following findings, as requested by the General Assembly. The Subcommittee paraphrased the requests for clarity in this document.

REQUEST 1: Are existing (Colorado) criminal statutes adequate to address acts of cyberbullying? What gaps may exist with existing laws?

***FINDING 1: Existing statutes can apply to bullying behaviors, including cyberbullying. Minor language changes to the harassment statute could clarify perceived gaps in existing legislation.***

Discussion. There are at least 19 criminal statutes that could be used to prosecute actions taken by persons who engage in bullying and cyberbullying behavior. The Subcommittee identified the relevant criminal statutes and these are attached to this document as Exhibit A. The statutes include: harassment, stalking, criminal impersonation, criminal invasion of privacy, disorderly conduct, interference with staff, faculty or students, criminal extortion, internet luring of a child, unlawful sexual contact, internet sexual exploitation, hazing, abuse of telephone and telegraph services, obstruction of telephone or telegraph services, menacing, bias-motivated crimes, public indecency, indecent exposure, revenge pornography (posting of a private image for harassment or pecuniary gain), and computer crime.

It is the general agreement of the Subcommittee that there are sufficient criminal statutes currently in effect in Colorado to permit, where appropriate, the prosecution of behavior that would be considered “cyberbullying.” The Subcommittee agreed that clarifying a section in the harassment statute would be helpful. The Subcommittee would recommend language as follows (new language in **bold**):

C.R.S. 18-9-111 – Harassment

A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, he or she:

(e) **Directly or indirectly**, initiates communication with a person **or directs language toward another person**, anonymously, or otherwise, by telephone, telephone network, data network, text message, computer, computer network, computer system or **other interactive electronic medium** in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system or **other interactive electronic medium** that is obscene....

REQUEST 2: Provide recommendations on effective prevention and intervention methods for addressing cyberbullying to include, but not be limited to, schools and other educational settings.

**FINDING 2: Provide funding to support the intent of the grant programs created in House Bill 11-1254 that would assist schools in implementing proven social-emotional learning (SEL) practices and include support for long-term evaluation research.**

Discussion. The literature points to the fact that cyberbullying is a medium for bullying and cannot be addressed in isolation from traditional bullying. Most of the bullying prevention and intervention efforts are centered in schools. Traditional bullying is still experienced more frequently by Colorado students than is cyberbullying. As mentioned previously, the 2013 Healthy Kids Colorado Survey found that 20.0% of Colorado high school students report having been bullied on school property during the past 12 months and 15.1% reporting having been cyberbullied within the past 12 months. This study also found that 47.4% of middle school students reported having ever been bullied on school property and 22.7% reporting having ever been cyberbullied. Research from the University of Illinois supports a transactional relationship between traditional bullying and cyberbullying. That is, bullying perpetration is an antecedent of cyberbullying perpetration in middle school (Espelage, et al., 2013).

It is clear that some students who experience cyberbullying may feel depressed, sad, angry and frustrated, and schools have a role in protecting these students. Since 2001, Colorado schools have been required to have “a specific policy concerning bullying prevention and education” (C.R.S. 22-32-109.1, “Safe Schools Act”).

Concern about bullying and suicide persist and, indeed, research has found a link between bullying behavior and an increased risk of suicide. Traditional bullying victims were 1.7 times more likely and traditional bullying perpetrators were 2.1 times more likely to have attempted suicide than those who were not victims or perpetrators. Similarly, cyberbullying victims were 1.9 times more likely and cyberbullying perpetrators were 1.5 times more likely to have attempted suicide than those who were not cyberbullying victims or perpetrators. However, many of the teens who committed suicide after experiencing bullying or cyberbullying had other emotional and social issues.<sup>5</sup> The researchers (Hinduja & Patchin, 2009) concluded the following:

...it is unlikely that the experience with cyberbullying by itself leads to youth suicide. Rather, it tends to exacerbate instability and hopelessness in the minds of adolescents already struggling with stressful life circumstances.

It is understood that the viral nature of cyberbullying means that others can easily witness and or contribute to the pain while the perpetrator may remain anonymous. However, Mitchell et al. (2011) reported that 75% of students who are bullied and harassed via the internet say they were not upset but rather either deleted messages or blocked senders.

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<sup>5</sup> According to Hertz, Donato, & Wright (2013), there is a strong association between bullying and suicide-related behaviors, but this relationship is often mediated by other factors, including depression and delinquency.

There is limited data on programs that are effective in reducing bullying particularly within the United States and no research on programs that reduce cyberbullying. However, school-based bullying prevention programs have been found decrease bullying by over 20% (Ttofi & Farrington, 2009).<sup>6</sup> Programs based on the Olweus Bullying Prevention Program in Norway have demonstrated the most effectiveness in reducing both bullying perpetration and victimization.

In a meta-analysis of 44 bullying programs, Ttofi & Farrington (2009)<sup>7</sup> found the programs that decreased bullying had the following components: parent training/meetings; improved playground supervision; schools using effective disciplinary methods and classroom management strategies; teacher training; classroom rules; whole-school anti-bullying policies; cooperative group work; and a greater number of elements to combat bullying over a longer period of time. The researchers suggested that implementation of programs should include an evaluation component. Ttofi, Farrington, Losel, and Loeber (2011) conducted a longitudinal study of bullying victimization and concluded that high quality bullying prevention programs could be considered public health and delinquency prevention initiatives.

Research suggests that schools focus on ensuring an overall positive school climate as a way to address and eliminate bullying and harassment as well as increase academic performance and other positive student outcomes. Due to substantial time and resource constraints, educators would rather use a program that focuses on multiple issues; quality social-emotional learning (SEL) curricula have been shown to do just that. For instance, a study of *The Second Step: Student Success Through Prevention*,<sup>8</sup> a program for middle school students that addresses social emotional learning and multiple issues, found substantial reductions in bully perpetration, peer victimization, physical aggression, homophobic name calling perpetration, homophobic name calling victimization, sexual harassment perpetration, and sexual harassment victimization (Cooke, et al., 2007).

Schools would welcome the General Assembly funding the grant programs outlined in H.B. 11-1254. This would enable them to provide evidence-based SEL (social-emotional learning) programs from elementary through high school. The Subcommittee agreed that providing funding to support the intent of H.B.11-1254 would be an important step forward for these efforts. Additionally, the Subcommittee strongly recommends funding for long-term evaluation research to establish the effectiveness of such programs.

REQUEST 3: What role should victim-initiated restorative justice play in acts of cyberbullying?

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<sup>6</sup> The study found that on average, school-based anti-bullying programs decreased bullying behavior by 20%-23% and victimization by bullies by 17%-20% (Ttofi & Farrington, 2009).

<sup>7</sup> See <http://www.campbellcollaboration.org/lib/project/77/> for the full report.

<sup>8</sup> According to the nonprofit Committee for Children, the Second Step program teaches empathy and communication, emotion-management and coping skills, and decision making. These skills help students stay engaged in school, make good choices, set goals, and avoid peer pressure, substance abuse, bullying, and cyber bullying. For more information, see <http://www.cfchildren.org/second-step.aspx>.

**FINDING 3: Restorative justice principles provide a useful option for resolving conflicts, but decisions on their use in any individual case should be guided by local policies and resources, and must ultimately rest with the interest and consent of the victim and the discretion of the district attorney.**

Discussion. Restorative justice is one of many tools that should be considered as an alternative to prosecution, if appropriate, but there is no known research about the effectiveness of restorative justice programs as they relate specifically to bullying.<sup>9</sup> While a variety of programs and models incorporating restorative justice (RJ) principles exist across the state, both within and outside of district attorneys' offices, there is no single model that appropriately fits all situations or all crimes. Each and every bullying scenario is unique and requires careful analysis before choosing any method of intervention or education or both.

Additionally, some aspects of RJ programs are far easier to apply than others. The notion of getting an offender to understand and empathize with the impact of his or her conduct on the victim is fundamental to the RJ process. Accordingly, in many other criminal scenarios, victim/offender mediation programs have been folded into some restorative justice practices. This approach should be done with extreme caution in bullying cases as the premise of any bullying is that the victim is in a weaker position compared to the offender and further interaction could aggravate that relationship, especially after the mediation when the actors are not in a controlled setting. While RJ may well be a positive and effective strategy for some cases, it is not a process that fits all cases.

In any situation, seeking such an alternative to prosecution or other solutions, the victim should have the controlling voice both as to whether it will be used and, if so, how far the RJ process will go. Failure to allow the victim to have such final authority in these situations could easily result in continued re-victimization.

There are currently four district attorneys' offices operating state-funded RJ pilot programs in Colorado. These programs are in place in the following judicial districts: 10<sup>th</sup> (Pueblo), 12<sup>th</sup> (operating in Alamosa), 19<sup>th</sup> (Weld) and the 20<sup>th</sup> (Boulder). It is important to note that each one of these programs has different criteria for eligibility and different approaches to how RJ is used, as determined to be in the best interest of each community. However, there is no specific tracking of RJ's application and effectiveness related to bullying events. This regional approach to RJ accurately reflects the structure of the criminal justice system in Colorado which is purposefully designed to provide for local control and local influence on policy and resource allocation. Tailoring these programs to the local community is essential and the most responsible way to implement RJ concepts in a locally relevant and responsible manner. Each community is

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<sup>9</sup> Strang et al. (2013) conducted a systematic review of ten experimental studies of face-to-face restorative justice conferencing where victims and offenders involved in a crime meet in the presence of a trained facilitator, with their families and friends or others affected by the crime, to discuss and resolve the offense and its consequences. The review found RJ conferences (delivered in the manner of the ten studies in this review) appear likely to reduce future detected crimes among the kinds of offenders who are willing to consent to RJ conferences, and whose victims are also willing to consent. The condition of consent is crucial for the generalizability of these findings. See Strang et al. (2013) for more information, at <http://www.campbellcollaboration.org/lib/project/63/>.



different and each community has different expectations and priorities related to criminal justice and public safety. Accordingly, while the use and consideration of RJ principles may well be a useful tool in some bullying scenarios and should always be an available option, decisions to utilize RJ in any given case should be guided by local policies and resources and must ultimately rest within the discretion of the prosecutor and the interest and consent of the victim.

REQUEST 4: Address the specific and problematic role pornography plays in cyberbullying.

**FINDING 4: To the extent that criminal laws can address this behavior either through prevention or intervention, there are adequate statutes currently in place in Colorado (see Exhibit A, attached).**

Discussion. The ease with which a picture, especially a picture of intimate parts or sexual behavior, can be used to harass and intimidate another makes this behavior particularly troubling and problematic. There are numerous statutes in Colorado that address the use of images of private intimate parts (from consensual images of a person's private parts to pornographic images under the law). To the extent that the juvenile and adult justice system can address this behavior, either through prevention or intervention, there are available and adequate criminal statutes (see Exhibit A and the response to Request 1). All interventions described in other sections of this document should be used to educate persons about the wrongful use of private images and the damage that can be caused by a simple click of a camera or a "send" button.

REQUEST 5: What methods and interventions are or should be available to assist the victims with their recovery from the damages caused by cyberbullying?

**FINDING 5: While there are connections and services available for victims who are engaged with the justice system, there is a need for general behavioral health service access through non-profits, schools, and community-based centers. This is as applicable for victims of bullying as it is for all persons needing behavioral health assistance.**

Discussion. There are multiple sources of assistance and information for victims of any kind of bullying, not restricted to cyberbullying. At the federal level, the website *stopbullying.gov* has suggestions for how victims and families can get help. The link from that web site for Colorado is answered by the Rocky Mountain Crisis Partners (formerly the Metro Crisis Services) who help people connect with counseling, suicide hot lines, and other services. This agency has its own marketing within Colorado. Anonymous reporting methods, such as Safe2Tell in Colorado, are effective ways of getting information about bullying and providing intervention. For school year 2013-2014, calls related to bullying were the second highest category of reports for Safe2Tell. These calls allowed for intervention and provision of services where appropriate.

Many schools have implemented bullying prevention programs and regularly publicize help lines or other assistance for victims. A program called Positive Behavior Interventions and Supports sponsored through the Colorado Department of Education is an evidence-based practice that has been introduced in over a thousand schools in the state.<sup>10</sup>

There are multiple local efforts to reach truant, runaway and homeless youth who are more likely to be victims of multiple types of abuse, including bullying. Special populations are targeted through organizations such as Special Olympics through their program called Project UNIFY™ for persons with intellectual challenges. Multiple agencies do outreach to persons in the LGBT community who are at higher risk of being bullied. Parents, Family and Friends of Lesbians and Gays (PFLAG) chapters across the state are examples of such agencies.

Where bullying behavior results in a criminal complaint, a victim has access to justice system victim advocates who can help connect the individual with appropriate services. For crimes enumerated in the Victims' Rights Act, victim compensation funds are available to pay for counseling or other assistance. However, there is not the same access to assistance for victims outside the justice system. There is a need for additional behavioral health services in community-based centers, non-profit agencies, and schools.

REQUEST 6: What other research and analysis does the committee deem relevant, to include best practices in other political venues and evidence-based models?

***FINDING 6: Research concludes that some school-based programs can be effective in addressing bullying behavior. Broad-based policies should be initiated with caution until a long-term investment in evaluation research can support particular approaches.***

Discussion. The research on cyberbullying is limited, but is evolving. Much of the existing body of literature combines both traditional bullying and cyberbullying, making the delineation of the impact of one over the other difficult to discern. Further, the more pressing issues that have created a greater awareness regarding cyberbullying revolve around the impact of cyberbullying specifically on mental health issues and suicide ideation. Although research has suggested that there is a link between cyberbullying and increased suicide ideation, it simultaneously suggests that there are myriad factors that contribute to these negative outcomes, and cause and effect relationship should not be presumed (Tokanuga, 2010). Instead, efforts should focus on best practices for providing support services and resources for these victims (Schneider, et al., 2012). Additionally, it is also argued that much of the issues that are currently being experienced regarding cyberbullying may be addressed by using the same methods directed at traditional bullying (Olweus, 2012).

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<sup>10</sup> According to the Colorado Department of Education, the mission of the Colorado Positive Behavioral Interventions and Supports Initiative is to establish and maintain effective school environments that maximize academic achievement and behavioral competence of all learners in Colorado. For more information, see <http://www.cde.state.co.us/pbis#sthash.A0hXm2JK.dpuf>.

Currently, the United States is perceived as leading the way in bullying research, which includes cyberbullying. However, much of the work that is being done internationally is not only contributing to the evolving body of research, but it is also highlighting some areas that future research in the U.S. should focus on. One such area is the issue of the status emphasis that has been placed on bullying/cyberbullying (DeSmet, et al., 2014). A potential notable difference between the U.S. and other countries with regards to the prevalence of bullying issues is that the U.S. has raised a greater awareness of bullying and therefore has also potentially inadvertently contributed to the existing stigma of bullying. As much of the research thus far has indicated, many self-response measures of bullying/cyberbullying indicate that the vast majority of respondents indicate that bullying does not pose a particular problem to them (Ortega, et al., 2012). International studies are highlighting a potential cause for this as minimizing the stigma and therefore the impact of bullying, reducing its overall importance to the potential victims. Future research in the U.S. should focus specifically on this stigma/status issue to identify if the increase in awareness campaigns is actually having an adverse effect.

Past and current research is largely disjointed based upon a lack of a solid theoretical framework, disparate conceptual and operational definitions of cyberbullying, and overlapping risk factors and victim responses between traditional and cyberbullying (Tokanuga, 2010). Therefore, future research needs to be broader-based and less anecdotal. Additionally, increased qualitative research could find deeper or hidden trends/patterns within the contextual nature of bullying to help delineate the true impact of cyberbullying, if any. Along with this, delineating any psychological impacts between the two forms of bullying would substantially contribute to our knowledge-base. While research concludes that some school-based programs can be effective in addressing bullying behavior, broad-based policies should be initiated cautiously until a long-term investment in evaluation research can support particular approaches. Ultimately, more research in all areas needs to continue. Over time, it is suspected that there will be an increase in understanding of the true effects of cyberbullying. It is certainly expected that the nature of bullying through an electronic/cyberspace forum will continue as technology and accessibility to technology continues to increase.

## CONCLUSION

The Cyberbullying Subcommittee of the Commission on Criminal and Juvenile Justice conducted an in-depth analysis of the state of cyberbullying, including a review of available research, a review of existing laws in Colorado, an examination and discussion of legislation in other states, as well as discussions within the Subcommittee by professionals in the fields of research, victimization, and justice. In the end, the Subcommittee is recommending against the passage of legislation specific to cyberbullying. The Subcommittee's reasons include the following:

- Such legislation has a strong likelihood to unintentionally criminalize a broad range of adolescent behaviors and speech.
- The justice system is not likely the best remedy to resolve acts of cyberbullying.
- Many applicable laws already exist to address bullying behaviors that warrant justice system involvement.

- Programs and policies already exist in schools and public safety agencies to prevent, deter, and address acts of cyberbullying. These programs could be expanded and enhanced.
- Cyberbullying is frequently difficult to investigate and prosecute due to other contributing factors involved in adolescent behavior, and legislation specific to cyberbullying would not solve this problem. Further, such legislation is likely to face first amendment challenges.

Instead, the Subcommittee suggests that there could be a benefit achieved by amending the harassment statute to include the language suggested in the response to Request #1.

The Subcommittee was in strong agreement that, if there is still a desire to sponsor legislation directed toward cyberbullying, the statute should be worded with specific language and contain clear definitions to ensure that it is enforceable, prosecutable, and constitutional. In the recent case of the *People v. Marquan M.*, heard in the New York State Court of Appeals, in a 5-2 decision, found that an Albany law regarding cyberbullying was unconstitutional due to its overly broad and poorly written language. The court went on to say, “It appears that the provision would criminalize a broad spectrum of speech outside the popular understanding of cyberbullying....” Colorado must avoid creating similar legislation.

The Subcommittee encourages adding funds to H.B.11-1254 so the intent of that legislation, to expand the availability of anti-bullying efforts in schools, can be implemented.

These findings bring to a conclusion the work of the Cyberbullying Subcommittee of the Colorado Commission on Criminal and Juvenile Justice. The chair wishes to thank all of the members for their diligent efforts and commitment.

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## EXHIBIT A

### **COLORADO CRIMINAL STATUTES THAT MIGHT BE RELEVANT TO BULLYING/CYBERBULLYING AS CRIMINAL BEHAVIOR**

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For CCJJ Cyberbullying Subcommittee  
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#### **HARASSMENT**

CRS 18-9-111 --- Harassment

(1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:

(a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or

(b) In a public place directs obscene language or makes an obscene gesture to or at another person; or

(c) Follows a person in or about a public place; or

(d) Repealed.

(e) Initiates communication with a person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, or computer system that is obscene; or

(f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(g) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

(h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(1.5) As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(2) Harassment pursuant to subsection (1) of this section is a class 3 misdemeanor; except

that harassment is a class 1 misdemeanor if the offender commits harassment pursuant to subsection (1) of this section with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, or national origin.

(3) Any act prohibited by paragraph (e) of subsection (1) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

## **STALKING**

CRS 18-3-602

(1) A person commits stalking if directly, or indirectly through another person, the person knowingly:

(a) Makes a credible threat to another person and, in connection with the threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or

(b) Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or

(c) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress. For purposes of this paragraph (c), a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress.

(2) For the purposes of this part 6:

(a) Conduct "in connection with" a credible threat means acts that further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat.

(b) "Credible threat" means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.

(d) "Repeated" or "repeatedly" means on more than one occasion.

(3) A person who commits stalking:

(a) Commits a class 5 felony for a first offense except as otherwise provided in subsection (5) of this section; or

(b) Commits a class 4 felony for a second or subsequent offense, if the offense occurs within seven years after the date of a prior offense for which the person was convicted.

(4) Stalking is an extraordinary risk crime that is subject to the modified presumptive sentencing range specified in [section 18-1.3-401 \(10\)](#).

(5) If, at the time of the offense, there was a temporary or permanent protection order, injunction, or condition of bond, probation, or parole or any other court order in effect against the person, prohibiting the behavior described in this section, the person commits a class 4 felony.

### **CRIMINAL IMPERSONATION**

18-5-113. Criminal impersonation

(1) A person commits criminal impersonation if he or she knowingly:

(b) Assumes a false or fictitious identity or capacity, legal or other, and in such identity or capacity he or she:

(I) Performs an act that, if done by the person falsely impersonated, might subject such person to an action or special proceeding, civil or criminal, or to liability, charge, forfeiture, or penalty; or

(II) Performs any other act with intent to unlawfully gain a benefit for himself, herself, or another or to injure or defraud another.

(2) Criminal impersonation is a class 6 felony.

(3) For the purposes of subsection (1) of this section, using false or fictitious personal identifying information, as defined in [section 18-5-901 \(13\)](#), shall constitute the assumption of a false or fictitious identity or capacity.

### **CRIMINAL INVASION OF PRIVACY**



#### 18-7-801. Criminal invasion of privacy

(1) A person who knowingly observes or takes a photograph of another person's intimate parts, as defined in [section 18-3-401 \(2\)](#), without that person's consent, in a situation where the person observed or photographed has a reasonable expectation of privacy, commits criminal invasion of privacy.

(2) Criminal invasion of privacy is a class 2 misdemeanor.

(3) For the purposes of this section, "photograph" includes a photograph, motion picture, videotape, live feed, print, negative, slide, or other mechanically, electronically, digitally, or chemically reproduced visual material.

### **DISORDERLY CONDUCT**

#### 18-9-106. Disorderly conduct

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or

### **INTERFERENCE WITH STAFF , FACULTY OR STUDENTS**

#### 18-9-109. Interference with staff, faculty, or students of educational institutions

(1) No person shall, on or near the premises or facilities of any educational institution, willfully deny to students, school officials, employees, and invitees:

(a) Lawful freedom of movement on the premises;

(b) Lawful use of the property or facilities of the institution;

(c) The right of lawful ingress and egress to the institution's physical facilities.

(2) No person shall, on the premises of any educational institution or at or in any building or other facility being used by any educational institution, willfully impede the staff or faculty of such institution in the lawful performance of their duties or willfully impede a student of the institution in the lawful pursuit of his educational activities through the use of restraint, abduction, coercion, or intimidation or when force and violence are present or threatened.

(5) Any person who violates any of the provisions of this section, except subsection (6) of this section, commits a class 3 misdemeanor.

(6) (a) A person shall not knowingly make or convey to another person a credible threat to cause death or to cause bodily injury with a deadly weapon against:

(I) A person the actor knows or believes to be a student, school official, or employee of an educational institution; or

(II) An invitee who is on the premises of an educational institution.

(b) For purposes of this subsection (6), "credible threat" means a threat or physical action

that would cause a reasonable person to be in fear of bodily injury with a deadly weapon or death.

(c) A person who violates this subsection (6) commits a class 1 misdemeanor.

### **CRIMINAL EXTORTION**

18-3-207. Criminal extortion - aggravated extortion

(1) A person commits criminal extortion if:

(a) The person, without legal authority and with the intent to induce another person against that other person's will to perform an act or to refrain from performing a lawful act, makes a substantial threat to confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of, the threatened person or another person; and

(b) The person threatens to cause the results described in paragraph (a) of this subsection (1) by:

(I) Performing or causing an unlawful act to be performed; or

(II) Invoking action by a third party, including but not limited to, the state or any of its political subdivisions, whose interests are not substantially related to the interests pursued by the person making the threat.

(1.5) A person commits criminal extortion if the person, with the intent to induce another person against that other person's will to give the person money or another item of value, threatens to report to law enforcement officials the immigration status of the threatened person or another person.

(3) For the purposes of this section, "substantial threat" means a threat that is reasonably likely to induce a belief that the threat will be carried out and is one that threatens that significant confinement, restraint, injury, or damage will occur.

(4) Criminal extortion, as described in subsections (1) and (1.5) of this section, is a class 4 felony. Aggravated criminal extortion, as described in subsection (2) of this section, is a class 3 felony.

### **INTERNET LURING OF A CHILD**

18-3-306. Internet luring of a child

(1) An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication by computer, computer network, telephone network, data network, text message, or instant message, describes explicit sexual conduct as defined in [section 18-6-403 \(2\) \(e\)](#), and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

(2) It shall not be a defense to this section that a meeting did not occur.

(a) and (b) (Deleted by amendment, L. 2007, p. 1688, § 8, effective July 1, 2007.)

(3) Internet luring of a child is a class 5 felony; except that luring of a child is a class 4 felony if committed with the intent to meet for the purpose of engaging in sexual exploitation as defined in [section 18-6-403](#) or sexual contact as defined in [section 18-3-401](#).

(4) For purposes of this section, "in connection with" means communications that further, advance, promote, or have a continuity of purpose and may occur before, during, or after the invitation to meet.net Luring

### **UNLAWFUL SEXUAL CONTACT**

18-3-404. Unlawful sexual contact

(1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:

(a) The actor knows that the victim does not consent; or

(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or

(c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or

(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or

(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or

(g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in [section 18-3-402](#) to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

(1.7) Repealed.

(2) (a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in [section 18-1.3-501 \(3\)](#).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in [section 18-3-402 \(4\) \(a\)](#), (4) (b), or (4) (c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or

subsection (1.5) of this section.

(3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of [section 18-1.3-406](#); except that this subsection (3) shall not apply if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section.

(4) A person who is convicted on or after July 1, 2013, of unlawful sexual contact under this section, upon conviction, shall be advised by the court that the person has no right:

(a) To notification of the termination of parental rights and no standing to object to the termination of parental rights for a child conceived as a result of the commission of that offense;

(b) To allocation of parental responsibilities, including parenting time and decision-making responsibilities for a child conceived as a result of the commission of that offense;

(c) Of inheritance from a child conceived as a result of the commission of that offense; and

(d) To notification of or the right to object to the adoption of a child conceived as a result of the commission of that offense.

### **INTERNET SEXUAL EXPLOITATION**

18-3-405.4. Internet sexual exploitation of a child

(1) An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:

(a) Expose or touch the person's own or another person's intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message; or

(b) Observe the actor's intimate parts via a computer network or system, telephone network, or data network or by a text message or instant message.

(2) (Deleted by amendment, L. 2009, [\(HB 09-1163\)](#), [ch. 343](#), [p. 1797](#), [§ 1](#), effective July 1, 2009.)

(3) Internet sexual exploitation of a child is a class 4 felony.

### **HAZING**

18-9-124. Hazing - penalties - legislative declaration

(1) (a) The general assembly finds that, while some forms of initiation constitute acceptable behavior, hazing sometimes degenerates into a dangerous form of intimidation and degradation. The general assembly also recognizes that although certain criminal statutes cover the more egregious hazing activities, other activities that may not be covered by

existing criminal statutes may threaten the health of students or, if not stopped early enough, may escalate into serious injury.

(b) In enacting this section, it is not the intent of the general assembly to change the penalty for any activity that is covered by any other criminal statute. It is rather the intent of the general assembly to define hazing activities not covered by any other criminal statute.

(2) As used in this section, unless the context otherwise requires:

(a) "Hazing" means any activity by which a person recklessly endangers the health or safety of or causes a risk of bodily injury to an individual for purposes of initiation or admission into or affiliation with any student organization; except that "hazing" does not include customary athletic events or other similar contests or competitions, or authorized training activities conducted by members of the armed forces of the state of Colorado or the United States.

(b) "Hazing" includes but is not limited to:

(I) Forced and prolonged physical activity;

(II) Forced consumption of any food, beverage, medication or controlled substance, whether or not prescribed, in excess of the usual amounts for human consumption or forced consumption of any substance not generally intended for human consumption;

(III) Prolonged deprivation of sleep, food, or drink.

(3) It shall be unlawful for any person to engage in hazing.

(4) Any person who violates subsection (3) of this section commits a class 3 misdemeanor.

## **COMPUTER CRIME**

18-5.5-102. Computer crime

(1) A person commits computer crime if the person knowingly:

(a) Accesses a computer, computer network, or computer system or any part thereof without authorization; exceeds authorized access to a computer, computer network, or computer system or any part thereof; or uses a computer, computer network, or computer system or any part thereof without authorization or in excess of authorized access; or

(b) Accesses any computer, computer network, or computer system, or any part thereof for the purpose of devising or executing any scheme or artifice to defraud; or

(c) Accesses any computer, computer network, or computer system, or any part thereof to obtain, by means of false or fraudulent pretenses, representations, or promises, money; property; services; passwords or similar information through which a computer, computer network, or computer system or any part thereof may be accessed; or other thing of value; or

(d) Accesses any computer, computer network, or computer system, or any part thereof to commit theft; or

(e) Without authorization or in excess of authorized access alters, damages, interrupts, or causes the interruption or impairment of the proper functioning of, or causes any damage to, any computer, computer network, computer system, computer software, program, application, documentation, or data contained in such computer, computer network, or computer system or any part thereof; or

(f) Causes the transmission of a computer program, software, information, code, data, or command by means of a computer, computer network, or computer system or any part thereof with the intent to cause damage to or to cause the interruption or impairment of the proper functioning of or that actually causes damage to or the interruption or impairment of the proper functioning of any computer, computer network, computer system, or part thereof; or

### **ABUSE OF TELEPHONE AND TELEGRAPH SERVICES**

18-9-306. Abuse of telephone and telegraph service

(1) A person commits a class 3 misdemeanor, if:

(b) He knowingly sends or delivers a false message or furnishes or conspires to furnish such message to an operator to be sent or delivered with intent to injure, deceive, or defraud any person, corporation, or the public; or

(d) He impersonates another, and thereby procures the delivery to himself of the message directed to such person, with the intent to use, destroy, or detain the same; or

(e) He knowingly and without authorization reads or learns the contents or meaning of a message on its transit and uses or communicates to another any information so obtained;

### **OBSTRUCTION OF TELEPHONE OR TELEGRAPH SERVICES**

18-9-306.5. Obstruction of telephone or telegraph service

(1) A person commits obstruction of telephone or telegraph service if the person knowingly prevents, obstructs, or delays, by any means whatsoever, the sending, transmission, conveyance, or delivery in this state of any message, communication, or report by or through any telegraph or telephone line, wire, cable, or other facility or any cordless, wireless, electronic, mechanical, or other device.

(2) Obstruction of telephone or telegraph service is a class 1 misdemeanor.

### **MENACING**

18-3-206. Menacing

(1) A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing is a class 3 misdemeanor, but, it is a class 5 felony if committed:

(a) By the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon; or

(b) By the person representing verbally or otherwise that he or she is armed with a deadly weapon.

### **BIAS-MOTIVATED CRIMES**

#### 18-9-121. Bias-motivated crimes

(1) The general assembly hereby finds and declares that it is the right of every person, regardless of race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of individuals and groups. The general assembly further finds that the advocacy of unlawful acts against persons or groups because of a person's or group's race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation for the purpose of inciting and provoking bodily injury or damage to property poses a threat to public order and safety and should be subject to criminal sanctions.

(2) A person commits a bias-motivated crime if, with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation, he or she:

(a) Knowingly causes bodily injury to another person; or

(b) By words or conduct, knowingly places another person in fear of imminent lawless action directed at that person or that person's property and such words or conduct are likely to produce bodily injury to that person or damage to that person's property; or

(c) Knowingly causes damage to or destruction of the property of another person.

(3) Commission of a bias-motivated crime as described in paragraph (b) or (c) of subsection (2) of this section is a class 1 misdemeanor. Commission of a bias-motivated crime as described in paragraph (a) of subsection (2) of this section is a class 5 felony; except that commission of a bias-motivated crime as described in said paragraph (a) is a class 4 felony if the offender is physically aided or abetted by one or more other persons during the commission of the offense.

(3.5) (a) In determining the sentence for a first-time offender convicted of a bias-motivated crime, the court shall consider the following alternatives, which shall be in addition to and not in lieu of any other sentence received by the offender:

(I) Sentencing the offender to pay for and complete a period of useful community service intended to benefit the public and enhance the offender's understanding of the impact of the offense upon the victim;

(II) At the request of the victim, referring the case to a restorative justice or other suitable alternative dispute resolution program established in the judicial district pursuant to [section 13-22-313, C.R.S.](#)

(b) In considering whether to impose the alternatives described in paragraph (a) of this subsection (3.5), the court shall consider the criminal history of the offender, the impact of

the offense on the victim, the availability of the alternatives, and the nature of the offense. Nothing in this section shall be construed to require the court to impose the alternatives specified in paragraph (a) of this subsection (3.5).

(4) The criminal penalty provided in this section for commission of a bias-motivated crime does not preclude the victim of such action from seeking any other remedies otherwise available under law.

(5) For purposes of this section:

(a) "Physical or mental disability" refers to a disability as used in the definition of the term "person with a disability" in [section 18-6.5-102 \(11\)](#).

(b) "Sexual orientation" means a person's actual or perceived orientation toward heterosexuality, homosexuality, bisexuality, or transgender status.

## **PUBLIC INDECENCY**

18-7-301. Public indecency

(1) Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

(a) An act of sexual intercourse; or

(c) A lewd exposure of an intimate part as defined by [section 18-3-401 \(2\)](#) of the body, not including the genitals, done with intent to arouse or to satisfy the sexual desire of any person; or

(d) A lewd fondling or caress of the body of another person; or

(e) A knowing exposure of the person's genitals to the view of a person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), public indecency is a class 1 petty offense.

(b) Public indecency as described in paragraph (e) of subsection (1) of this section is a class 1 misdemeanor if the violation is committed subsequent to a conviction for a violation of paragraph (e) of subsection (1) of this section or for a violation of a comparable offense in any other state or in the United States, or for a violation of a comparable municipal ordinance.

## **INDECENT EXPOSURE**

18-7-302. Indecent exposure

(1) A person commits indecent exposure:

(a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person;



(b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) (a) (Deleted by amendment, L. 2003, p. 1435, § 31, effective July 1, 2003.)

(b) Indecent exposure is a class 1 misdemeanor.

(3) (Deleted by amendment, L. 2002, p. 1587, § 21, effective July 1, 2002.)

(4) Indecent exposure is a class 6 felony if the violation is committed subsequent to two prior convictions of a violation of this section or of a violation of a comparable offense in any other state or in the United States, or of a violation of a comparable municipal ordinance.

(5) For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

## **REVENGE PORN**

18-7-107. Posting a private image for harassment - definitions

(1) (a) An actor who is eighteen years of age or older commits the offense of posting a private image for harassment if he or she posts or distributes through the use of social media or any web site any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older:

(I) With the intent to harass the depicted person and inflict serious emotional distress upon the depicted person;

(II) (A) Without the depicted person's consent; or

(B) When the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private; and

(III) The conduct results in serious emotional distress of the depicted person.

(b) Posting a private image for harassment is a class 1 misdemeanor.

(c) Notwithstanding the provisions of [section 18-1.3-501 \(1\) \(a\)](#), in addition to any other sentence the court may impose, the court shall fine the defendant up to ten thousand dollars. The fines collected pursuant to this paragraph (c) shall be credited to the crime victim compensation fund created in [section 24-4.1-117, C.R.S.](#)

(2) It shall not be an offense under this section if the photograph, video, or image is related to a newsworthy event.

(3) Nothing in this section precludes punishment under any section of law providing for greater punishment.

(4) (a) An individual whose private intimate parts have been posted in accordance with this

section may bring a civil action against the person who caused the posting of the private images and is entitled to injunctive relief, the greater of ten thousand dollars or actual damages incurred as a result of the posting of the private images, exemplary damages, and reasonable attorney fees and costs.

(b) An individual whose private intimate parts have been posted in accordance with this section shall retain a protectable right of authorship regarding the commercial use of the private image.

(5) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f) (2), an information service, as defined in 47 U.S.C. sec. 153, or a telecommunications service, as defined in 47 U.S.C. sec. 153, for content provided by another person.

(6) For purposes of this section, unless the context otherwise requires:

(a) "Newsworthy event" means a matter of public interest, of public concern, or related to a public figure who is intimately involved in the resolution of important public questions or, by reason of his or her fame, shapes events in areas of concern to society.

(b) "Private intimate parts" means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female.

(c) "Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet web site profiles.

#### 18-7-108. Posting a private image for pecuniary gain - definitions

(1) (a) An actor who is eighteen years of age or older commits the offense of posting a private image for pecuniary gain if he or she posts or distributes through social media or any web site any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older:

(I) With the intent to obtain a pecuniary benefit from any person as a result of the posting, viewing, or removal of the private image; and

(II) (A) When the actor has not obtained the depicted person's consent; or

(B) When the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private.

(b) Posting a private image for pecuniary gain is a class 1 misdemeanor.

(c) Notwithstanding the provisions of [section 18-1.3-501 \(1\) \(a\)](#), in addition to any other sentence the court may impose, the court shall fine the defendant up to ten thousand dollars. The fines collected pursuant to this paragraph (c) shall be credited to the crime victim compensation fund created in [section 24-4.1-117, C.R.S.](#)

(2) It shall not be an offense under this section if the photograph, video, or image is related to a newsworthy event.

(3) Nothing in this section precludes punishment under any section of law providing for greater punishment.

(4) (a) An individual whose private intimate parts have been posted in accordance with this section may bring a civil action against the person who caused the posting of the private images and is entitled to injunctive relief, the greater of ten thousand dollars or actual damages incurred as a result of the posting of the private images, exemplary damages, and reasonable attorney fees and costs.

(b) An individual whose private intimate parts have been posted in accordance with this section shall retain a protectable right of authorship regarding the commercial use of the private image.

(5) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f) (2), an information service, as defined in 47 U.S.C. sec. 153, or a telecommunications service, as defined in 47 U.S.C. sec. 153, for content provided by another person.

(6) For purposes of this section, unless the context otherwise requires:

(a) "Newsworthy event" means a matter of public interest, of public concern, or related to a public figure who is intimately involved in the resolution of important public questions or, by reason of his or her fame, shapes events in areas of concern to society.

(b) "Private intimate parts" means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female.

(c) "Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet web site profiles.