

# INTERNET LAW

## Creating a New Crime: Cyber-Harassment

By Jennie L. Osborne

On Jan. 17, 2014, the Senate and General Assembly of the State of New Jersey passed an act that created the crime of cyber-harassment. (See N.J.S.A. 2C:33-4.1.) This act covers crimes committed through communications in an online capacity or through a social networking site, irrespective of the type of electronic device used. In order for the online or social media communication to be considered cyber-harassment, a person must have:

1. Threatened to inflict injury or physical harm to any person or the property of any person;
2. Knowingly sent a lewd post, comment, request, suggestion, proposal, or any lewd, indecent or obscene material to or about a person with the intent to emotionally harm a reasonable person, or place a reasonable person in fear of physical or emotional harm; or
3. Threatened to commit any crime against the person or the person's property.

Cyber-harassment is a crime of the fourth degree. If the person who commits an act or acts of cyber-harassment is an adult (aged 21 years or older) at the time the offense is committed, and that person impersonates a minor for the purpose of cyber-harassing a minor, it becomes a crime of the third degree.

As of Oct. 21, 2016, the State Senate and General Assembly have approved the inclusion of cyber-harassment in the Domestic Violence Statutes. This bill, which made cyber-harassment the 19th crime listed under the Domestic Violence Statutes (See N.J.S.A. 2C:25-17 et seq.), was approved and signed into law by then-Governor Chris Christie, on Dec. 5, 2016. (See Bill No. A1946/S1257.) From the time the 2014 bill creating cyber-harassment as a crime was signed into law, it took our legislators almost three years to include cyber-harassment in the Domestic Violence Statutes.

Many domestic violence complaints are filed charging a spouse, domestic partner, significant other or other person as defined in the statutes with harassment. In many complaints, the alleged act of domestic violence involves e-mails or posts on social networking sites such as Facebook, which the victim perceives as harassment. The inclusion of cyber-harassment in the Domestic Violence Statutes will enable victims of domestic violence to prove an act of cyber-harassment by producing the allegedly offending communication. Under the Cyber-Harassment Statute, the domestic violence victim would have to prove that the communication was sent or posted knowingly by his or her spouse, domestic partner, significant other or other person defined under the act, with the intent to emotionally harm a reasonable person (i.e., the victim) or place a reasonable person in fear of physical or emotional harm. The communication could include postings on social network sites containing lewd, indecent or obscene material to or about that person.

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### The inclusion of cyber-harassment in the Domestic Violence Statutes will enable victims of domestic violence to prove an act of cyber-harassment by producing the allegedly offending communication.

Unfortunately, many incidents of domestic violence occur throughout the United States each day. In an article in *worldnewsdailyreport.com*, a woman in Albuquerque, New Mexico, was arrested in part for sending a former boyfriend 1,937 e-mails and 41,229 text messages, in addition to other attempts to communicate with him.

During divorce or dissolution actions, one or both parties may communicate through text messages, e-mails and social media, and some of those messages or posts may contain emotionally charged comments or pictures that may have been intended to embarrass or cause emotional harm to the other spouse or domestic partner. Not all communications result in a complaint of domestic violence being filed by the victim or target of the e-mail, text or social media posting. Under the Harassment Statute in the Domestic Violence Act, the victim must prove that the other party:

(a) Made, or caused to be made, a communication or communications anonymously, at extremely inconvenient hours, in offensively coarse language, or in any other manner likely to cause annoyance or alarm;

(b) Subjected another to striking, kicking, shoving or other offensive touching, or threatened to do so; or

(c) Engaged in any other course of alarming conduct or other repeatedly committed acts with the purpose to alarm or seriously annoy the other person.

(N.J.S.A. 2C:33-4).

Now that cyber-harassment is a crime under state law, one difference between

cyber-harassment and harassment is that, under subsection (a), the victim who alleges harassment has to prove that the communication made or caused to be made from the party inflicting the domestic violence was sent anonymously or at extremely inconvenient hours, in offensively coarse conduct, or in any other manner likely to cause annoyance or alarm. By comparison, the Cyber-Harassment Act, under section 1(a), requires that the victim prove that the communication was *intended to emotionally harm* that person, using a reasonable person's standard.

Another difference is that under Cyber-Harassment Act Subsection 1(a)(1), the person making the communication with the purpose to harass another person can be charged for making a threat to inflict injury or physical harm not only to the other person, but to the property of any person. Under Domestic Violence Act subsection (b), a victim must prove that he or she was subjected to striking, kicking, shoving or other offensive touching, or that another person threatened to do so, but the act does not include damage or injury to the victim's property. If a victim also suffered damage to property, the victim could include a charge of criminal mischief in the domestic violence complaint. This could include property that is owned solely by the victim or jointly by the victim and his or her spouse, domestic partner, significant other or any other person covered under the act. N.J.S.A. 2C:17-3 states that a person is guilty of criminal mischief if he or she purposely or knowingly damages another person's tangible property.

In family law, an act creating the crime of cyber-harassment under the Domestic Violence Act will likely help victims secure a temporary restraining order. In order for a temporary restraining order to be converted to a final restraining order, the court must determine that the victim proved an act of

domestic violence under the statutes was committed against that person. The victim also must establish that a final restraining order is needed to prevent future abuse. (See *Silver v. Silver*, 387 N.J. Super. 112 (App. Div. 2006)). In *Silver*, the court set forth a two-fold analysis for any judge considering entering a final domestic violence restraining order, as follows:

First, the judge must determine whether the [victim] has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19a has occurred .... The second inquiry, upon a finding of the commission of a predicate act of domestic violence, is whether the court should enter a restraining order that provides protection for the victim ....

*Id.* at 125-127.

It is unfortunate that some individuals allege domestic violence abuse when none exists in an attempt to remove their spouse, domestic partner or significant other from the home where they reside together. In many of these cases, harassment in the use of e-mails and text messages is alleged. Including cyber-harassment in the Domestic Violence Statutes may defer abusive conduct and unlawful use of online communications, including social networking, and may help more clearly define when use of online communication and social media become unlawful. ■

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