

# Bullying and the Law

## Federal

There is no Federal law against “bullying” UNLESS a discriminatory factor is present and a person’s federal civil rights are violated, such as: race, color, national origin, sex, disability or religion. This also includes: sexual orientation, gender identity, gender expression and association with any person or group with one or more of these actual or perceived characteristics. For more information, visit: <https://www.fbi.gov> , <http://civilrights.findlaw.com> , <http://www.usccr.gov>

## State of California

### *Penal Code*

#### **Cal. Pen. Code § 653.2.**      Posting personal information to cause fear

Any person who electronically posts or transmits: Personal identifying data of another person, or a harassing message about another person with the intent to cause the other person to reasonably fear for his or her safety or the safety of family members commits a misdemeanor crime in California.

#### **Cal. Pen. Code § 653.m.**      Use of electronic device to harass

Any person who uses a telephone or any electronic means of communication to contact another person and uses obscene language, or makes a threat to injure the person or property of the other person or a family member with the intent to annoy the other person commits a misdemeanor crime in California.

#### **How is Criminal Cyberbullying Punished in California?**

Both types of cyberbullying outlawed in California are misdemeanors. A person convicted of a misdemeanor in California faces a sentence of not more than one year in jail, a fine of not more than \$1,000, or both. (Cal. Pen. Code § 653.2.)

### *School Education Code*

#### **California Safe Place to Learn Act**    located in the California Education Code §234(b) which ensures:

All schools in the state must adopt policies and procedures to prevent and address student-on-student harassment, intimidation, or bullying based on “actual or perceived characteristics” of the victim student. (Cal.Edu. Code § 234.)

Under California law, schools must develop and post policies that:

- set out the process for students and others to report bullying
- set out the process for investigation of such reports
- require school employees to intervene and stop incidents of suspected bullying
- establish an appeal process for a student to follow to challenge a finding of bullying, and
- prohibit retaliation against anyone who reports suspected bullying.

(Cal.Edu. Code §§ 234.1, 66302.) Under these policies, harassment, intimidation, and/or bullying are grounds for suspension or expulsion. (Cal.Edu. Code § 48900)

#### “Actual or perceived characteristics”

As used in the Act, a student’s “actual or perceived characteristic” includes disability, gender, gender identity or expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.

(Cal.Edu. Code § 234.1.)

#### “Bullying”

The Act defines “bullying” as any “severe or pervasive” physical or verbal conduct that is directed toward another student and that can “be reasonably predicted” to:

(OVER)

- place a reasonable student in fear of harm to person or property
- cause a reasonable student to experience a "substantially detrimental effect" on his or her physical or mental health
- interfere with a reasonable student's academic performance, or
- interfere with a reasonable student's participation in or benefit from school services, activities, or privileges.

(Cal.Edu. Code § 48900.) The Act expressly prohibits cyberbullying by "electronic acts."

"Electronic act"

Under California law, an electronic act is a communication of any kind (including messages, texts, sounds, social network posts, or images) created and/or transmitted by means of an electronic device (including cell phones and computers). (Cal.Edu. Code § 48900.)

**Assembly Bill 9 Ch. 723**      Also known as Seth's Law

Requires all schools to have an anti-bullying policy and enacts a timeline that school officials must follow when investigating student claims of bullying. It focuses on protecting students who are bullied based on their actual or perceived sexual orientation and gender identity/gender expression, as well as race, ethnicity, nationality, gender, disability and religion.

**Assembly Bill 746, Ch. 72**

Amended §32261 of the California Education Code to include social networking sites in its definition of bullying to pupils. The code now states "bullying, including bullying committed personally or by means of an electronic act, which includes the posting of messages on a social network Internet Website".

**Assembly Bill 256, Ch. 700 (AB256)**

For purposes of pupil suspension or recommendation for expulsion from a school for cyberbullying, this bill now defines "electronic act" as the creation and transmission originated **on or off the school site**, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, as specified.

In layman's terms - It no longer matters whether cyberbullying was done on or off campus, with or without school resources or during or after school hours. **AT ANY TIME**, if a child is cyberbullied, the offending student may now receive disciplinary action by the school (at the school's discretion).

*Miscellaneous*

**Civil Harassment Restraining Orders** differ from Family Law Domestic Violence Restraining Orders in that the order is not for people who have dated or who are closely related. You may seek protection if you are worried about your safety because you are being:

- stalked
- harassed
- sexually assaulted
- threatened

by someone you do not have a close relationship with, like a neighbor or roommate.

"Civil Harassment"

Unlawful violence, like assault or battery or stalking OR A credible threat of violence AND the violence or threats seriously scare, annoy or harass someone and there is no valid reason for it.

"Credible threat of violence" means intentionally saying something or acting in a way that would make a reasonable person afraid for his or her safety or the safety of his or her family. A "credible threat of violence" includes following or stalking someone or making harassing calls or sending harassing messages (by phone, mail or e-mail) over a period of time (even if it is a short time).