

LOCAL LAW NO. “F” FOR 2014

A LOCAL LAW PROHIBITING CYBER-BULLYING IN ALBANY COUNTY

Introduced: 7/14/14

By Messrs. Clenahan, Joyce, Ms. Kinsch, Mr. Mayo, Ms. McLean Lane, Messrs. O'Brien, Commisso, Ethier, Reilly, Higgins, Beston, Ms. Chapman, Messrs. Ms. Connolly, Messrs. Corcoran, Cotrofeld, Dawson, Domalewicz, Feeney, Jacobson, Mackey, Mss. Maffia-Tobler, McKnight, Messrs. Morse, Rahm and Ward:

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ALBANY, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that children have as much a right to be free from emotional harm as they do from physical harm.

This Legislature hereby finds and determines that bullying is a long-standing problem among minors in Albany County and throughout the nation.

This Legislature hereby finds and determines that with the advent of technology, bullying has transformed from a predominantly school-based issue into a broader societal problem.

This Legislature hereby finds and determines that technology has allowed this emotional violence to attack our children at any time, on or off campus.

This Legislature hereby finds and determines that often times these attacks rested beyond the jurisdiction of the school.

This Legislature hereby finds and determines that local laws designed to deter cyber-bullying through criminal sanctions have not had a negative adverse effect on the school community, education, or society as a whole.

This Legislature hereby finds and determines that it has a solemn obligation and duty to protect its youth from the emotional harms of cyber-bullying, and to bring justice to the victims of cyber-bullying and their families which is something that is beyond the reach of educational based programs.

This Legislature hereby finds and determines that cyber-bullying, which consists of non-physical bullying behaviors transmitted by electronic means, is a new form of harassment.

This Legislature hereby finds and determines that cyber-bullying is rampant:

according to the Bureau of Justice Statistics, U.S. Department of Health and Human Services Cyber-bullying Research Center, 52% of students reported being cyber-bullied.

This Legislature hereby finds and determines that cyber-bullying follows its victims everywhere they go and can occur at any time of the day or night, for cyber-bullying is perpetrated online or through text and picture messages on cellular phones and handheld devices.

This Legislature hereby finds and determines that perpetrators of cyber-bullying are often more extreme in the threats and taunts they inflict on their victims than perpetrators of other forms of bullying, for the perpetrators of cyber-bullying do not actually see their victim's emotional reaction to the abuse. Further, the perpetrators of cyber-bullying often bully anonymously. This Legislature hereby finds and determines that victims of cyber-bullying suffer very real and serious harm as a result of these incidents. Often, the victims show signs of depression, anxiety, social isolation, nervousness when interacting with technology, and low self-esteem. These effects often result in declining school performance.

This Legislature hereby finds and determines that in some cases, victims completed suicide or attempted to complete suicide in part because of the cyber-bullying they have endured.

This Legislature hereby finds and determines that the County of Albany has a compelling interest to protect minors from such cyber-bullying and should do everything within the County's power to do so.

This Legislature hereby finds and determines that Free Speech is an important value, but finds and determines that Albany County simply is punishing those whose actions are aimed to inflict emotional injury on a minor by, among other things, repeated malicious conduct, the dissemination of false information, and the dissemination of a minor's private or sexual information via the internet.

This Legislature hereby finds and determines that Cyber-Bullying is narrowly tailored by, among other measures, providing that the criminal sanctions are not imposed for speech on matters of public concern as defined by the United States Supreme Court.

Therefore, the purpose of this law is to stop the cyber-bullying of minors in the County of Albany.

Section 2. Definitions.

As used in this law:

(a) "Electronic transmission" or "electronically transmits" means the transmission, dissemination or posting of information via the use of a computer online service,

internet service provider, smart phone, wireless device or any other similar electronic means that is viewable by multiple persons through, at, by, on or in a local bulletin board service, an Internet chat room, a group electronic mail or text, a social media, networking or messaging site, a webpage, a blog, a video sharing site, an electronic messaging platform, or other similar types of electronic platforms.

(b) “Course of conduct” means two or more electronic transmissions.

(c) “Person” means any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint-stock association, or other entity or business organization of any kind.

(d) “Minor” means any natural person or individual under the age of eighteen (18).

Section 3. Prohibitions.

(a) A person commits the offense of cyber-bullying if:

(1) He or she maliciously engages in a course of conduct by electronically transmitting information not of public concern with intent to inflict emotional harm on a minor; or

(2) he or she electronically transmits private sexual information about a minor with the intent to inflict emotional harm on the minor; or

(3) he or she electronically transmits a sexually explicit photo of a minor with the intent to inflict emotional harm on the minor; or

(4) he or she electronically transmits false sexual information concerning a minor with the intent to inflict emotional harm on the minor; or

(5) he or she, by electronic transmission, maliciously appropriates a minor’s name or likeness with the intent to inflict emotional harm on the minor.

Section 4. Penalties.

Any person who knowingly violates the provisions of this local law shall be guilty of an unclassified misdemeanor punishable by a fine of up to \$1,000 and/or up to one year imprisonment.

Section 5. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 6. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. A court determining

severability is expressly authorized to sever any provision or application of this article on any basis not inconsistent with the Constitution of this state or of the United States.

Section 7 Declaratory Judgment.

Any citizen of Albany County who reasonably believes his conduct may be proscribed and punished by this statute may commence a special proceeding in Albany County Supreme Court seeking a declaration that this law violates the First Amendment of the United States Constitution under Civil Practice Law and Rules § 3001. Provide: (1) such action is commenced and notice provided to the Albany County Clerk, the Clerk of Albany County Legislature, the Albany County Executive and the Albany County Attorney within sixty days of the effective date of this statute and (2) such an action is commenced before a criminal action is initiated; and (3) such an action involves only the question of law referenced above and involves no questions of fact.

Section 8. Reverse Preemption.

This law shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this local law or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Section 9. State Environmental Quality Review Act compliance.

This County Legislature determines that the foregoing action constitutes a “Type II action” as said term is defined in the State Environmental Quality Review Act (“SEQRA”), and that no further action with respect to same is required under SEQRA.

Section 10. Effective Date.

This law shall take effect immediately upon its filing in the Office of the Secretary of State.

Referred to Law Committee. 7/14/14

Favorable Recommendation - Law Committee. 8/25/14

On roll call vote the following voted in favor: Ms. Benedict, Messrs. Beston, Ms. Busch, Mr. Carman, Ms. Chapman, Messrs. Clenahan, Clouse, Commisso, Corcoran, Cotrofeld, Dawson, Domalewicz, Ethier, Feeney, Higgins, Hogan, Jacobson, Joyce, Mss. Kinsch, Lockart, Mr. Mackey, Ms. Maffia-Tobler, Messrs. Mayo, Mendick, Morse, O'Brien, Reilly, Stevens, Tunny and Ward – 30.

Those opposed: Messrs. Bullock, Clay, Nichols and Simpson – 4.

Local Law was adopted. 9/8/14