

Cyber-Harassment Added To The Domestic Violence Statute

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.On January 17, 2014, the Senate and the General Assembly of the State of New Jersey passed an Act that created the crime of cyber-harassment.[1] This Act entails 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 communication online or through social media to be considered cyber-harassment, a person must: (1) Threaten to inflict injury or physical harm to any person or the property of any person; (2) Knowingly sends, posts, comments, requests, suggests, or proposes 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 to his person; or (3) Threatens to commit any crime against the person or the person's property. It is a crime of the fourth degree. If the person who commits an act or acts of cyber-harassment is an adult (21 years of age or older) at the time the offense is committed and that person impersonates a minor for the purpose of cyber-harassing a minor, it then becomes a crime of the third degree.

As of October 21, 2016, the Senate and General Assembly of the State of New Jersey has approved the inclusion of the crime of cyber-harassment in the Domestic Violence Statutes. This bill was approved and signed into law by Governor Christie on December 5, 2016.[2] When Governor Christie signed this Act into law, cyber-harassment became the nineteenth crime listed under the Domestic Violence Statute.[3] Since the bill was signed into law this calendar year, it has taken our legislators almost three years to include this crime in the Domestic Violence Statutes.

There are many Domestic Violence Complaints filed charging a spouse, domestic parent, significant other or as defined in the statute with harassment. Many times these complaints include as the proposed act of domestic violence having been committed, e-mails or posts on social networking sites such as Facebook. The inclusion of the crime of cyber-harassment in the Domestic Violence Statute will enable victims of domestic violence to prove an act of cyber-harassment by producing the

communication that was sent or posted by their spouse, domestic partner, significant other or other person defined under the Act alleging that said communication intended to emotionally harm the victim. Under the Cyber-Harassment Statute, the victim of domestic violence would have to prove that the communication was sent or posted knowingly by their spouse, domestic partner, significant other or other person defined under the Act, with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person. The communication could include postings on social network sites containing lewd, indecent, or obscene material to or about that person.

There are unfortunately many incidents of domestic violence throughout the United States that occur each day. In a recent article in worldnewsdailyreport.com, a woman in Albuquerque, New Mexico was arrested for, in part, sending a former boyfriend 1,937 e-mails and 41,229 text messages, which was in addition to other means of attempting to communicate with him. During divorce actions, one or both parties may communicate through text messages, e-mails, and social media, which contain emotionally charged comments or pictures, intending to embarrass or cause emotional harm to the other spouse or domestic partner. Not all of those 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:

- Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
- Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
- Engages in any other course of alarming conduct or other repeatedly committed acts with the purpose to alarm or seriously annoy such other person.[4]

Now that the bill for cyber-harassment has been signed into law by Governor Christie, one difference between the crime of cyber-harassment and harassment under Subsection (a) is 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, or in offensively coarse conduct, or any other manner likely to cause annoyance or alarm. Whereas, 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 under the 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 the Domestic Violence Act Subsection (b), a victim must prove that he or she was subjected to striking, kicking, shoving, or other offensive touching or another person threatened to do so but it does not include damage or injury to the victim's property.

In the area of family law, an act creating the crime of cyber-harassment under the Domestic Violence Act will likely assist victims in securing a Temporary Restraining Order. In order to convince the Court that a Temporary Restraining Order should be converted to a Final Restraining Order, the Court must, after holding a hearing, determine that the victim of domestic violence proved an act of domestic violence under the statute was committed against that person and further, the victim must establish a need for a Final Restraining Order to be entered in order to prevent future abuse. [5]

It is unfortunate that there are individuals who allege domestic violence abuse, when none exists, in order to remove their spouse, domestic partner, or significant other from the home that they reside in together. By including the crime of cyber-harassment in the Domestic Violence Statute, it may defer abusive conduct and unlawful use of online communications including social networking.

[1] N.J.S.A. 2C:33-4.1.

[2] Bill No. A1946/S1257.

[3] N.J.S.A. 2C:25-17 et seq.

[4] N.J.S.A. 2C:33-4.

[5] Silver v. Silver, 387 N.J.Super. 112 (App. Div. 2006).