

# Bullying Law

## New Massachusetts Bullying Law

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Governor Patrick signed into law a new statute dealing with bullying in the schools of the Commonwealth of Massachusetts on May 3, 2010. This article discusses what the law is and what it is not.

First, the Legislature has included in this law the requirement that the Governor proclaim each year on the fourth Wednesday in January, "No name calling day." In more substantive sections of the law they have defined bullying as, "the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that : (i) causes physical or emotional harm to the victim or damages the victim's property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantively disrupts the education process or the orderly operation of a school. For the purposes of this section, bullying shall include cyber-bullying." Cyber-bullying is also defined in the statute.

A victim must be student. Bullying is prohibited on school grounds, on property immediately adjacent to school grounds, at school sponsored or related activities. This includes at bus stops, on the bus or other vehicle owned, rented or leased by the school district.

Each school district, public or private must develop and adhere to and update a plan to address bullying prevention and intervention in consultation with teachers, school staff, professional support personnel, school volunteers, administrators, community representatives, local law enforcement agencies, students, parents and guardian. The plan must contain descriptions of and statements prohibiting bullying, cyber-bullying and retaliation, clear procedures for handling bullying complaints and provisions for anonymous reporting, although no disciplinary action may be taken against a student based solely on an anonymous report. The plan must also define a range of disciplinary actions that may be taken against the perpetrator. Schools must notify both the bully's parents and the victim's parents of any report taken. Student making false reports are subject to disciplinary action.

Each school is required to give annual notice to students, parents and guardians of relevant sections of the plan. They must post the plan on their website. All school staff is required to report to the principal any instances of bullying or retaliation. The principal will decide if law enforcement agencies should be notified if the bullying constitutes criminal activity.

Lastly, four criminal statutes have been amended as a result of this law. They are the laws dealing with Stalking, Criminal Harassment, Intimidation of a Witness and the Annoying Phone Calls. Each of these statutes have been amended by adding wording to them that include cyber-communications as a potential act that could violate the law.

A committee is established under this law to review the law to determine if changes are necessary as time passes. Also, schools need to file their plans with the state by December 31, 2010.

Now for what the law doesn't have. This new law does not create a private right of action. This means that this law does not create any new ground for a law suit against the perpetrator that did not previously exist. Other theories of law may support a suit against the perpetrator, such as intentional infliction of emotional distress, assault and battery, harassment and the likes. It also does not have any penalty prescribed for failing to report bullying by any member of the school staff, including cafeteria workers, bus drivers, paraprofessionals, volunteers, coaches, advisors, custodians, educators, administrators and school nurses. There is nothing in the law that resembles the duties of a mandatory reporter as is including in child abuse statutes such as 51A which define who a mandatory report is and what their responsibilities are with respect to reporting abuse.

The law also does not create any new criminal laws against bullying, rather, as mentioned above, it beefs up existing laws to include actions previously not stated in the law such as cyber-communications like email, messaging, blogs, and websites as means for violating the laws.

The law in its entirety can be found at <http://www.mass.gov/legis/laws/seslaw10/sl100092.htm>.