

# THE HUFFINGTON POST

## Maryland Moves to Ban 'Cyberbullying'

By: Walter Olson – April 5, 2013

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While the enactment of Gov. Martin O'Malley's sweeping gun control package has gotten more coverage, the Maryland House and Senate have also just passed a bill directed at banning "cyberbullying." [*Capital Gazette*, WJZ] The bill would, among other things, prohibit the use of electronic means (including cellphones, Facebook, and online forums) to intentionally "harass, or inflict serious emotional distress" on a minor. Violations could be punished by up to a year's imprisonment.

In effect, the new law attempts to criminalize a good portion of the tort of intentional infliction of emotional distress, at least when undertaken in part or whole through newer technology.

Unfortunately, the new law is a serious affront to First Amendment liberties. It criminalizes a substantial swath of speech without clearly laying out notice of which speech it prohibits. It also prohibits much speech that, while in many cases reprehensible and harmful, is not well remedied by the harshness of criminal sanction.

It's true that the law as passed drops some of the worst features of an earlier version, such as a ban on posting "private information" about minors. It also shifts the focus to a "course of conduct," so that an individual cruel comment standing alone might not support prosecution. But the wider dangers remain. While electronic annoyance of an adult becomes criminal only if it continues after a request to stop, no such triggering provision is included for behavior that may annoy a minor. (And as I read it, there is no requirement that the defendant *know* that the person being subjected to intentional emotional distress is a minor -- engaging in a vigorous "flame war" with a Maryland resident might turn out to be criminal if the username "ParentInLinthicum" turns out to conceal a teenage user.) Exceptions are made for speech that is intended to express political views or convey information, a curious pair of exemptions in that it has long been assumed that our First Amendment protects many types of seriously annoying speech other than those two.

We are supposed to support this law -- and some lawmakers I admire did support it -- to show that we care about children. Once on the books, however, this law will assuredly ruin the lives and futures of other kids who will be the subject of investigations and prosecutions, and not all those kids are monsters whose ruin we should accept with equanimity. Some further background here.