

SENATE BILL NO. 2167

Introduced by

Senators Marcellais, Mathern, Lyson

Representative Gruchalla

1 A BILL for an Act to create and enact a new section to chapter 1-03, two new sections to
2 chapter 15.1-02, a new section to chapter 15.1-18.2, twelve new sections to chapter 15.1-19,
3 three new sections to chapter 15.1-21, and a new section to chapter 15.1-32 of the North
4 Dakota Century Code, relating to bullying; to amend and reenact sections 12.1-15-01,
5 12.1-17-07, 12.1-17-07.1, and 12.1-31-01 of the North Dakota Century Code, relating to crimes
6 that include bullying; and to provide a penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new section to chapter 1-03 of the North Dakota Century Code is created
9 and enacted as follows:

10 **No name calling day.**

11 Each year the governor shall issue a proclamation designating the fourth Wednesday in
12 January as No Name Calling Day in order to:

- 13 1. Increase public awareness regarding the devastating effects of verbal bullying;
- 14 2. Encourage students to use positive dialogue and pledge not to use hurtful names on
15 this designated day;
- 16 3. Promote tolerance and respect for differences; and
- 17 4. Reaffirm the commitment of the citizens of this state to basic human rights and dignity.

18 **SECTION 2. AMENDMENT.** Section 12.1-15-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12.1-15-01. Criminal defamation.**

- 21 1. A person is guilty of a class A misdemeanor if ~~hethe~~ the person willfully publishes
22 defamatory matter or knowingly procures such publication or in any way knowingly
23 aids or assists in the same being done.
- 24 2. It is a defense to a prosecution under this section that:

- 1 a. The matter alleged to be defamatory is true; or
- 2 b. The matter alleged to be defamatory was contained in a privileged
- 3 communication.
- 4 3. In this section:
- 5 a. "Defamatory matter" means any written or oral communication concerning a
- 6 natural person made public with actual malice or with reckless disregard of the
- 7 truth by any utterance, printing, writing, sign, picture, representation, or effigy
- 8 tending to expose ~~such~~that person to public hatred, contempt, or ridicule or to
- 9 deprive ~~him~~that person of the benefits of public confidence and social intercourse
- 10 or any written or oral communication concerning a natural person made public as
- 11 aforesaid designed to blacken and vilify the memory of one who is dead and
- 12 tending to scandalize or provoke ~~his~~that person's surviving relatives and friends.
- 13 Written communication includes a writing that is communicated electronically by
- 14 or through the use of the internet, electronic mail, electronic messaging, or other
- 15 similar means.
- 16 b. "Privileged communication" means a communication made to a person entitled to
- 17 or interested in the communication by one who is also entitled to or interested or
- 18 who stood in such relation to the former as to afford a reasonable ground for
- 19 supposing ~~his~~the person's motive innocent.
- 20 c. "Publication" means a knowing display of defamatory matter, or the parting with
- 21 its immediate custody under circumstances which exposed the defamatory
- 22 matter to be read or seen or understood by a person other than the publisher of
- 23 the defamatory matter, although it is not necessary that the matter complained of
- 24 should have been seen or read by another.

25 **SECTION 3. AMENDMENT.** Section 12.1-17-07 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **12.1-17-07. Harassment.**

- 28 1. A person is guilty of an offense if, with intent to frighten or harass another, the person:
 - 29 a. Communicates in writing or by telephone a threat to inflict injury on any person,
 - 30 to any person's reputation, or to any property;
 - 31 b. Makes a telephone call anonymously or in offensively coarse language;

- 1 c. Makes repeated telephone calls, whether or not a conversation ensues, with no
2 purpose of legitimate communication; or
- 3 d. Communicates a falsehood in writing or by telephone and causes mental
4 anguish.
- 5 2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or
6 subsection 4. Otherwise it is a class B misdemeanor.
- 7 3. Any offense defined ~~herein~~ in this section and committed by use of a telephone may be
8 deemed to have been committed at either the place at which the telephone call or calls
9 were made or at the place where the telephone call or calls were received.
- 10 4. A person who telephones a 911 emergency line with the intent to annoy or harass
11 another person or who makes a false 911 report is guilty of a class A misdemeanor.
- 12 a. Intent to annoy or harass is established by proof of one or more calls with no
13 legitimate 911 purpose.
- 14 b. Upon conviction of a violation of this subsection, a person is also liable for all
15 costs incurred by any unnecessary emergency response.
- 16 5. Any offense defined ~~herein~~ in this section is deemed communicated in writing if it is
17 transmitted electronically by or through the use of the internet, by electronic mail, by
18 electronic messaging, by facsimile, or by other similar means.
- 19 6. For purposes of this section, a written communication includes the communication of
20 words and images.

21 **SECTION 4. AMENDMENT.** Section 12.1-17-07.1 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **12.1-17-07.1. Stalking.**

- 24 1. As used in this section:
- 25 a. "Course of conduct" means a pattern of conduct consisting of two or more acts
26 evidencing a continuity of purpose. The term does not include constitutionally
27 protected activity.
- 28 b. "Immediate family" means a spouse, parent, child, or sibling. The term also
29 includes any other individual who regularly resides in the household or who within
30 the prior six months regularly resided in the household.

- 1 c. "Stalk" means to engage in an intentional course of conduct directed at a specific
2 person which frightens, intimidates, or harasses that person, and that serves no
3 legitimate purpose. The term includes engaging in an intentional course of
4 conduct for the purpose of communicating or causing to be communicated words,
5 images, or language, by or through the use of the internet, electronic mail,
6 electronic messaging, or other similar means and requires that the conduct be
7 directed at a specific person, frighten, intimidate, or harass that person, and
8 serve no useful purpose. The course of conduct may be directed toward that
9 person or a member of that person's immediate family and must cause a
10 reasonable person to experience fear, intimidation, or harassment.
- 11 2. ~~NeA~~ person may not intentionally stalk another person.
- 12 3. In any prosecution under this section, it is not a defense that the actor was not given
13 actual notice that the person did not want the actor to contact or follow the person; nor
14 is it a defense that the actor did not intend to frighten, intimidate, or harass the person.
15 An attempt to contact or follow a person after being given actual notice that the person
16 does not want to be contacted or followed is prima facie evidence that the actor
17 intends to stalk that person.
- 18 4. In any prosecution under this section, it is a defense that a private investigator
19 licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was
20 acting within the scope of employment.
- 21 5. If a person claims to have been engaged in a constitutionally protected activity, the
22 court shall determine the validity of the claim as a matter of law and, if found valid,
23 shall exclude evidence of the activity.
- 24 6. a. A person who violates this section is guilty of a class C felony if:
- 25 (1) The person previously has been convicted of violating section 12.1-17-01,
26 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07 or a similar
27 offense in another state, involving the victim of the stalking;
- 28 (2) The stalking violates a court order issued under chapter 14-07.1 protecting
29 the victim of the stalking, if the person had notice of the court order; or
- 30 (3) The person previously has been convicted of violating this section.

- 1 b. If subdivision a does not apply, a person who violates this section is guilty of a
2 class A misdemeanor.

3 **SECTION 5. AMENDMENT.** Section 12.1-31-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **12.1-31-01. Disorderly conduct.**

- 6 1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or
7 alarm another person or in reckless disregard of the fact that another person is
8 harassed, annoyed, or alarmed by the individual's behavior, the individual:

- 9 a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
10 b. Makes unreasonable noise;
11 c. In a public place, uses abusive or obscene language, knowingly exposes that
12 individual's penis, vulva, or anus, or makes an obscene gesture;
13 d. Obstructs vehicular or pedestrian traffic or the use of a public facility;
14 e. Persistently follows a person in or about a public place or places;
15 f. While loitering in a public place for the purpose of soliciting sexual contact, the
16 individual solicits the contact;
17 g. Creates a hazardous, physically offensive, or seriously alarming condition by any
18 act that serves no legitimate purpose; or
19 h. Engages in harassing conduct by means of intrusive or unwanted acts, electronic
20 communications, words, or gestures that are intended to adversely affect the
21 safety, security, or privacy of another person.

- 22 2. For purposes of this section, electronic communications include communications by or
23 through the use of the internet, electronic mail, electronic messaging, or other similar
24 means.

- 25 3. This section does not apply to constitutionally protected activity. If an individual claims
26 to have been engaged in a constitutionally protected activity, the court shall determine
27 the validity of the claim as a matter of law and, if found valid, shall exclude evidence of
28 the activity.

29 **SECTION 6.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
30 and enacted as follows:

1 **Development of model antibullying plan.**

2 1. The superintendent of public instruction shall consult with the attorney general, state's
3 attorneys, the state department of health, mental health experts, and experts on
4 bullying prevention for the purpose of developing a model plan that school districts and
5 nonpublic schools may consider when developing their own antibullying plans, as
6 required by section 12 of this Act.

7 2. The superintendent of public instruction shall compile and make available to school
8 districts and nonpublic schools:

9 a. A list of bullying prevention and intervention resources in print, audio, video, or
10 other media formats; and

11 b. Evidence-based curricula, best practices, and academic-based research
12 pertaining to bullying prevention and intervention.

13 **SECTION 7.** A new section to chapter 15.1-02 of the North Dakota Century Code is created
14 and enacted as follows:

15 **Bullying prevention - Cost-effectiveness - Report.**

16 The superintendent of public instruction shall compile a report detailing cost-effective ways
17 in which school districts may provide professional development regarding bullying prevention
18 and intervention, as required by section 8 of this Act.

19 1. The report shall:

20 a. Include options available to school districts and nonpublic schools at no cost;

21 b. Determine the desirability and feasibility of using a train-the-trainer model; and

22 c. Examine options for providing online professional development opportunities.

23 2. The superintendent of public instruction shall provide the report to each school district
24 and nonpublic school in the state.

25 **SECTION 8.** A new section to chapter 15.1-18.2 of the North Dakota Century Code is
26 created and enacted as follows:

27 **Professional development - Bullying prevention.**

28 Each school district and nonpublic school shall provide ongoing professional development
29 regarding bullying prevention and intervention to teachers, administrators, school nurses,
30 cafeteria workers, custodians, busdrivers, athletic coaches, extracurricular activity advisors, and
31 paraprofessionals. The professional development activities must include:

- 1 1. Developmentally appropriate strategies to prevent bullying;
- 2 2. Developmentally appropriate strategies for immediate and effective interventions for
- 3 the purpose of stopping bullying;
- 4 3. Information regarding the complex interaction and power differential that can take
- 5 place between and among a perpetrator, a victim, and a witness to bullying;
- 6 4. Research findings regarding bullying, including information about specific categories of
- 7 students who tend to be particularly at risk for bullying in the school environment;
- 8 5. Information regarding the nature and scope of cyber-bullying; and
- 9 6. Internet safety issues related to cyber-bullying.

10 **SECTION 9.** A new section to chapter 15.1-19 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Definitions.**

13 In this Act, unless the context otherwise requires:

- 14 1. "Bullying" means the repeated use by a student of a written, verbal, or electronic
- 15 expression, including cyber-bullying, or the repeated use by a student of a gesture or
- 16 other physical act that:
 - 17 a. Causes physical or emotional harm to the victim or damage to the victim's
 - 18 property;
 - 19 b. Places the victim in reasonable fear of harm to the victim or of damage to the
 - 20 victim's property;
 - 21 c. Creates a hostile environment at school for the victim;
 - 22 d. Infringes upon the victim's rights at school; or
 - 23 e. Materially and substantially disrupts the educational delivery process or the
 - 24 orderly operation of a school.
- 25 2. "Cyber-bullying" means bullying through the:
 - 26 a. Use of electronic mail, internet communications, instant messaging, or facsimile
 - 27 communications;
 - 28 b. Use of technology or any electronic communication, including any transfer of
 - 29 signs, signals, writing, images, sounds, data, or intelligence, by a wire, radio,
 - 30 electromagnetic system, photo electronic system, or photo optical system;

- 1 c. Creation of a web page or blog if the creator assumes the identity of another
2 individual;
3 d. Knowing impersonation of another individual as the author of posted content or
4 messages; or
5 e. Distribution by electronic means of a communication or the posting of material on
6 an electronic medium that may be accessed by one or more individuals.
7 3. "Hostile environment" means a school environment, which as a result of bullying is
8 permeated with such a level of intimidation, ridicule, or insult that it alters the
9 conditions of a student's education.
10 4. "Perpetrator" means an individual who engages in bullying.
11 5. "School grounds" means property:
12 a. On which a school building or facility is located;
13 b. That is owned, leased, or used by a school district; and
14 c. On which a school-sponsored activity occurs.
15 6. "Victim" means an individual against whom bullying has been perpetrated.

16 **SECTION 10.** A new section to chapter 15.1-19 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Bullying - Prohibition.**

19 An individual may not engage in bullying:

- 20 1. On school grounds;
21 2. On property adjacent to school grounds;
22 3. At a school-sponsored activity;
23 4. At a schoolbus stop;
24 5. While on a schoolbus or other vehicle owned, leased, or used by the school or school
25 district; or
26 6. While using any school or school district owned, leased, or sponsored technology.

27 **SECTION 11.** A new section to chapter 15.1-19 of the North Dakota Century Code is
28 created and enacted as follows:

1 **Retaliation - Prohibition.**

2 An individual may not engage in retaliation against another who reports bullying, provides
3 information during an investigation of bullying, witnesses an act of bullying, or has reliable
4 information about bullying.

5 **SECTION 12.** A new section to chapter 15.1-19 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Bullying prevention - Plan development.**

8 Each school district and nonpublic school shall develop a plan to address bullying
9 prevention and intervention. In developing the plan, each school district and nonpublic school
10 shall consult with and allow opportunities for input from administrators, teachers, professional
11 and nonprofessional school staff, volunteers, community representatives, law enforcement
12 agencies, parents, students, and the general public.

13 **SECTION 13.** A new section to chapter 15.1-19 of the North Dakota Century Code is
14 created and enacted as follows:

15 **Bullying prevention - Plan - Content.**

16 The bullying prevention plan required by section 12 of this Act must include:

- 17 1. A definition of bullying, cyber-bullying, and retaliation;
- 18 2. A prohibition on bullying, cyber-bullying, and retaliation;
- 19 3. A procedure for students, staff members, parents, and others to report bullying or
20 retaliation;
- 21 4. A procedure for the anonymous reporting of bullying or retaliation;
- 22 5. A procedure for responding to and investigating reports of bullying or retaliation;
- 23 6. The disciplinary actions that may be taken against a perpetrator;
- 24 7. A procedure for assessing a victim's need for protection;
- 25 8. A procedure for restoring a sense of safety to a victim;
- 26 9. A strategy for protecting an individual who reports bullying, provides information during
27 a bullying investigation, witnesses bullying, or has reliable information about an act of
28 bullying;
- 29 10. A procedure for notifying the parents of a victim and the parents of a perpetrator;

- 1 11. A requirement that the parents of a victim and the parents of a perpetrator be notified
- 2 of any action taken to prevent further bullying or retaliation, provided the notification is
- 3 not otherwise prohibited by law;
- 4 12. A requirement that the school principal immediately notify law enforcement authorities
- 5 if the actions of a perpetrator constitute a violation of criminal law;
- 6 13. The disciplinary actions that may be taken against a student who knowingly makes a
- 7 false accusation of bullying or retaliation; and
- 8 14. The provision of counseling or other services for the victim, the perpetrator, and
- 9 appropriate family members of both the victim and the perpetrator.

10 **SECTION 14.** A new section to chapter 15.1-19 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Bullying prevention - Provision of information to parents.**

13 Each school district and nonpublic school shall provide to the parents of each student
14 enrolled in the school information regarding:

- 15 1. The dynamics of bullying;
- 16 2. Cyber-bullying and online safety;
- 17 3. Ways in which parents can support the school district's or nonpublic school's
- 18 antibullying curriculum at home;
- 19 4. The school district's or nonpublic school's bullying prevention plan; and
- 20 5. Ways in which parents can support the school district's or nonpublic school's bullying
- 21 prevention plan.

22 **SECTION 15.** A new section to chapter 15.1-19 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Bullying prevention plan - Provision of information to students.**

25 Annually, each school district and nonpublic school shall provide to each student a copy of
26 those provisions of the bullying prevention plan which are relevant to the student, in age
27 appropriate terms, and in the language that is most prevalent to the student.

28 **SECTION 16.** A new section to chapter 15.1-19 of the North Dakota Century Code is
29 created and enacted as follows:

1 **Bullying prevention plan - Provision of information to employees.**

2 Annually, each school district and nonpublic school shall provide to each employee a copy
3 of the bullying prevention plan required by section 12 of this Act. Each school district and
4 nonpublic school shall bring to the attention of each employee those sections of the plan that
5 set forth the duties of all employees with respect to the prevention of bullying, intervention in
6 acts of bullying, and the investigation of reported bullying incidents.

7 **SECTION 17.** A new section to chapter 15.1-19 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Bullying prevention plan - Availability.**

10 In addition to any other required distribution or notification, each school district and
11 nonpublic school shall file a copy of its bullying prevention plan with the superintendent of public
12 instruction, make the plan available on its website, and provide a written copy of the plan upon
13 request.

14 **SECTION 18.** A new section to chapter 15.1-19 of the North Dakota Century Code is
15 created and enacted as follows:

16 **Duty to report.**

- 17 1. Each individual employed by a school district or a nonpublic school shall report to the
18 principal any incident of bullying or retaliation that the individual has witnessed or of
19 which the individual was made aware.
- 20 2. Upon receiving a report of bullying or retaliation, the principal shall conduct an
21 investigation. If the principal determines that an act of bullying or retaliation has
22 occurred, the principal shall:
- 23 a. Notify law enforcement officials if the principal has reason to believe that the
24 incident may be a violation of criminal law;
- 25 b. Institute appropriate disciplinary action; and
- 26 c. Notify the parents of the perpetrator and the victim about the incident and to the
27 extent allowable under law, about the action taken to prevent any further acts of
28 bullying or retaliation.
- 29 3. If the incident involves a student from another school, the principal receiving the report
30 shall notify the principal of the school in which the other student is enrolled.

1 4. If the incident involves an individual who is not enrolled as a student at an elementary
2 or high school in this state, the principal shall notify law enforcement officials.

3 **SECTION 19.** A new section to chapter 15.1-19 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Internet safety measures - Policy requirement - Parental notification.**

6 The board of each school district shall develop and implement a policy setting forth internet
7 safety measures designed to protect students from inappropriate subject matter and materials
8 that can be accessed via the internet. The board shall provide a copy of the policy to the parent
9 of each student enrolled in the district.

10 **SECTION 20.** A new section to chapter 15.1-19 of the North Dakota Century Code is
11 created and enacted as follows:

12 **North Dakota commission on bullying - Membership - Duties - Reimbursement -**
13 **Report.**

14 1. The North Dakota commission on bullying consists of:

- 15 a. The governor or an individual designated by the governor, who shall serve as the
16 chairman;
- 17 b. The attorney general or the attorney general's designee;
- 18 c. The superintendent of public instruction or the superintendent's designee;
- 19 d. One individual serving as a state's attorney, appointed by the governor;
- 20 e. One individual serving as a chief of police, appointed by the governor;
- 21 f. One individual serving as a county sheriff, appointed by the governor;
- 22 g. One individual representing the North Dakota council of educational leaders,
23 appointed by the governor;
- 24 h. One individual representing the North Dakota education association, appointed
25 by the governor;
- 26 i. One individual representing the North Dakota school boards association,
27 appointed by the governor; and
- 28 j. One individual having a child enrolled in a public school in this state, appointed
29 by the governor.

- 1 2. The commission shall establish its rules of operation and procedure, provided the
2 duties and rules do not conflict with this chapter. The individuals appointed by the
3 governor serve at the pleasure of the governor.
- 4 3. Each member of the commission is entitled to reimbursement for actual and necessary
5 expenses incurred in the same manner as state officials.
- 6 4. The commission shall:
 - 7 a. Investigate and study bullying and cyber-bullying;
 - 8 b. Review the laws of this state to determine if they are adequate to prevent bullying
9 and cyber-bullying and appropriately punish perpetrators;
 - 10 c. Review parental responsibility and liability for bullying and cyber-bullying; and
 - 11 d. Provide periodic reports to the governor.

12 **SECTION 21.** A new section to chapter 15.1-21 of the North Dakota Century Code is
13 created and enacted as follows:

14 **Content standards - Bullying prevention - Requirement.**

15 The superintendent of public instruction shall ensure that all content standards include a
16 requirement for the instruction of students in bullying prevention.

17 **SECTION 22.** A new section to chapter 15.1-21 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Social and emotional learning curricula - Implementation.**

20 The superintendent of public instruction shall provide by rule for the implementation of
21 social and emotional learning curricula in each grade from kindergarten through grade twelve.
22 For purposes of this section, "social and emotional learning" means the processes by which
23 students acquire the knowledge, attitudes, and skills necessary to recognize and manage their
24 emotions, demonstrate caring and concern for others, establish positive relationships, make
25 responsible decisions, and constructively handle challenging social situations.

26 **SECTION 23.** A new section to chapter 15.1-21 of the North Dakota Century Code is
27 created and enacted as follows:

28 **Instruction - Bullying prevention - Requirement.**

29 Each school district and nonpublic school shall incorporate age-appropriate instruction on
30 bullying prevention into the curriculum of each grade.

1 **SECTION 24.** A new section to chapter 15.1-32 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Individualized education program plan - Skills to avoid and respond to bullying.**

- 4 1. If in developing a student's individualized education program plan, the multidisciplinary
5 team determines that the student's disability may affect social skills development or
6 that the student is vulnerable to bullying because of the student's disability, the team
7 shall ensure that the student's individualized education program plan includes the
8 development of skills and proficiencies necessary to avoid and respond to bullying.
9 2. For purposes of this section, "bullying" includes teasing and harassment.