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Cultivating the “Anti-Bullying Bill of Rights” Throughout the Nation: What Others Can Learn from the Garden State

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**CULTIVATING THE “ANTI-BULLYING BILL OF RIGHTS”
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I. INTRODUCTION

The 2010 school year began the same for Tyler Clementi as it had for college students the year before, and as it will for others in the future at Rutgers University—full of excitement and promise—but ended abruptly on September 22, 2010, when Tyler jumped off of the George Washington

Bridge and plunged into the Hudson River.¹ Tyler, an accomplished violinist and talented individual,² took his own life after “his roommate . . . secretly used a webcam to stream [Tyler]’s romantic [encounter] with another man over the [i]nternet.”³ Word of Tyler’s death reached Rutgers in an ironic fashion: On the same day the University had begun a campaign to raise awareness of the “use and abuse of new technology.”⁴ The unfortunate circumstances leading up to Tyler’s suicide created more than a splash.⁵ Tyler’s death has produced a wave of change evidenced in the New Jersey Legislature’s recent amendments to anti-bullying legislation: The “Anti-Bullying Bill of Rights.”⁶

As methods of communication have advanced, our lives have become laced with technology, establishing new methods of transmitting and sharing information as well as creating byproducts; unforeseen side effects produced as a direct result of internet social networking.⁷ Cyberbullying is recognized as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices.”⁸ Essentially, any form of harassment, intimidation, or bullying (HIB) that is executed by means of technology may constitute cyberbullying.⁹

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1. See Lisa W. Foderaro, *Private Moment Made Public, Then a Fatal Jump*, N.Y. TIMES, Sept. 30, 2010, at A1.

2. *Id.*

3. Tyler Clementi, N.Y. TIMES TOPICS, http://topics.nytimes.com/top/reference/timestopics/people/c/tyler_clementi/index.html (last updated Mar. 16, 2012).

4. Foderaro, *supra* note 1.

5. See *id.*

6. See N.J. STAT. ANN. § 18A:37-13.1–2, -16 to -30 (West 2012).

7. See Jacqueline D. Lipton, *Combating Cyber-Victimization*, 26 BERKELEY TECH. L.J. 1103, 1104–06 (2011).

8. SAMEER HINDUJA & JUSTIN W. PATCHIN, CYBERBULLYING RESEARCH CTR., CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE 1 (2010) [hereinafter HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE], available at http://www.cyberbullying.us/Cyberbullying_Identification_Prevention_Response_Fact_Sheet.pdf.

9. BARBARA C. TROLLEY & CONSTANCE HANEL, CYBER KIDS, CYBER BULLYING, CYBER BALANCE 33–34, 39 (2012); see *What Is Cyberbullying*, STOPBULLYING.GOV, <http://www.stopbullying.gov/cyberbullying/what-is-it/index.html> (last visited Feb. 24, 2013).

Cyberbullying presents a novel issue for schools and adults because exposure is more difficult to detect, control, and monitor than traditional forms of bullying, like pushing a peer into lockers or one student taunting another.¹⁰ School districts also “walk a very fine line in prohibiting cyberbullying by conducting a balancing act between a student’s constitutional rights and the policing of off-campus student-on-student harassment.”¹¹ Cyberbullying has gained increasing attention in society as a result of the spike in youth suicides and violence resulting from the behavior.¹² Enough lives have been lost to cyberbullying for anti-bullying activists to coin the term “bullycide”—“a suicide provoked by the depression and distress that results from bullying and harassment.”¹³ Several states around the nation have been forced to draft or reform anti-bullying legislation in order to keep pace with technology and combat the growing problem, while others have struggled with formulating an approach.¹⁴ New Jersey has enacted the “Anti-Bullying Bill of Rights”—the most stringent law of its kind—in order to treat this growing epidemic threatening students of all ages.¹⁵

This article will begin with an overview of cyberbullying divided into the methods, causes, evidentiary findings, and outcomes of victims who are bullied through the advancement and popularity of social networking sites.¹⁶ Next, legislative solutions that address the evasive characteristics of cyberbullying will be discussed in relation to formulating a thorough law.¹⁷ Then, the recently amended New Jersey “Anti-Bullying Bill of Rights” will provide a model framework for the nation in addressing cyberbullying.¹⁸ This analysis will include the valuable lessons learned through the Tyler Clementi and

10. *What Is Cyberbullying*, *supra* note 9.

11. Kevin Turbert, Note, *Faceless Bullies: Legislative and Judicial Responses to Cyberbullying*, 33 SETON HALL LEGIS. J. 651, 659–60 (2009).

12. Susan Hayes, *Cyberbullying Is a Serious Problem*, in CYBERBULLYING 11, 11 (Lauri S. Friedman ed., 2011).

13. Jason A. Wallace, Note, *Bullycide in American Schools: Forging a Comprehensive Legislative Solution*, 86 IND. L.J. 735, 741 (2011); *see also* SAMEER HINDUJA & JUSTIN W. PATCHIN, CYBERBULLYING RESEARCH CTR., CYBERBULLYING RESEARCH SUMMARY: CYBERBULLYING AND SUICIDE 1 (2010) [hereinafter HINDUJA & PATCHIN, CYBERBULLYING RESEARCH SUMMARY], available at http://www.cyberbullying.us/cyberbullying_and_suicide_research_fact_sheet.pdf (referring to suicides attributed to cyberbullying as “cyberbullicide”).

14. *See* BULLY POLICE USA, <http://www.bullypolice.org> (last visited Feb. 24, 2013).

15. Winnie Hu, *Bullying Law Puts New Jersey Schools on Spot*, N.Y. TIMES, Aug. 31, 2011, at A1; *see* HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 2.

16. *See* discussion *infra* Part II.

17. *See* discussion *infra* Part III.

18. *See* discussion *infra* Part III.A.

Dharun Ravi case in New Jersey,¹⁹ which have helped foster the improvements in the law.²⁰ A breakdown of key anti-bullying law components will follow the New Jersey statute for comparison.²¹ Additionally, perceived weaknesses in the New Jersey law will be examined.²² Furthermore, this article will address the gaps state legislators must bridge in existing laws to craft effective legislation that curtails cyberbullying.²³

II. CYBERBULLYING: THE “CANCER” OF INTERNET SOCIAL NETWORKING

Words have always been referred to as weapons, but innovations in technology and the enhancement of communications have reengineered the amount of damage words can cause in the twenty-first century.²⁴ Bullying has become the cancer of online social networking—exposing victims to harsher, more frequent, and even unprovoked attacks—evidenced in the increasing number of suicides as a result of harmful behavior that occurs through modern forms of communication.²⁵ Traditional bullying is categorized by its direct and physical nature that occurs in a more controlled setting, whereas cyberbullying is characterized by intimidation through a virtual setting without physical constructs.²⁶ Further, cyberbullying can occur through phone calls, text messages, e-mails, or posts on social networking sites—limitless lines of communication that are at our fingertips.²⁷

Cyberbullying can be executed in various ways, directly or indirectly, through harassment, cyberstalking, denigration, impersonation, or outing.²⁸ Harassment involves “[r]epeatedly sending offensive and insulting mes-

19. See Indictment at 1–4, *State v. Ravi*, No. 11-04-00596 (N.J. Super. Ct. App. Div. Mar. 16, 2012).

20. See BULLY POLICE USA, *supra* note 14.

21. See discussion *infra* Part IV.A.

22. See discussion *infra* Part IV.B.

23. See discussion *infra* Part IV.C.

24. See Turbert, *supra* note 11, at 652.

25. See HINDUJA & PATCHIN, CYBERBULLYING RESEARCH SUMMARY, *supra* note 13, at 1; Michel Walrave & Wannes Heirman, *Towards Understanding the Potential Triggering Features of Technology*, in TRUTHS AND MYTHS OF CYBER-BULLYING: INTERNATIONAL PERSPECTIVES ON STAKEHOLDER RESPONSIBILITY AND CHILDREN’S SAFETY 27, 40 (Shaheen Shariff & Andrew H. Churchill eds., 2010) (inferring the “toxic effect” of cyberbullying on schools).

26. TROLLEY & HANEL, *supra* note 9, at 33–34; Walrave & Heirman, *supra* note 25, at 35–36.

27. TROLLEY & HANEL, *supra* note 9, at 33; see A. James Spung, Comment, *From Backpacks to Blackberries: (Re)Examining New Jersey v. T.L.O. in the Age of the Cell Phone*, 61 EMORY L.J. 111, 119 (2011).

28. TROLLEY & HANEL, *supra* note 9, at 39.

sages” to an individual, becoming “[t]he online equivalent of direct bullying.”²⁹ Cyberstalking occurs when technology is used to harness control over an abusive relationship through use of a threat or fear.³⁰ Denigration is a form of cyberbullying that involves “[s]ending or posting cruel gossip or rumors about a person [in order] to damage his or her reputation or friendships.”³¹ Impersonation is a result of one person pretending to be another to “make the person look bad” or even damage his or her reputation.³² Finally, outing pertains to “[s]haring someone’s secrets or embarrassing information,” which can be obtained through deception.³³ These forms of online bullying can be achieved either directly by the bully or indirectly through another person who serves as a “proxy”—an individual acting on the behalf of the bully.³⁴ This advanced form of intimidation can be attributed to the increased sense of anonymity by bullies, the continuous access to the victim, a lesser likelihood of detection by adults, the larger audience, and lack of physical contact required to carryout the harassment.³⁵ Although these methods and tools of cyberbullying are not exhaustive, they provide a greater understanding of what is required to lead to better detection, protection, and prevention through legislation.³⁶

The prevalence of cyberbullying is very often underestimated by parents and underreported by victims in research.³⁷ While cyberbullying may not be continuous, victims are often left with lasting psychological effects such as “anger, fear, helplessness, and loss of concentration” for a prolonged period of time after the occurrence.³⁸ Cyberbullying presents a “growing problem because increasing numbers of kids [and young adults] are using and have completely embraced interactions via computers and cell phones.”³⁹ As technology continues to progress, so do the methods of destroying self-esteem and disseminating harmful information about others—graying the

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. TROLLEY & HANEL, *supra* note 9, at 39.

34. *Id.* at 34.

35. See Walrave & Heirman, *supra* note 25, at 34–35.

36. *See id.* at 33–34.

37. *Id.* at 28.

38. See Dianne L. Hoff & Sidney N. Mitchell, *Gender and Cyber-bullying: How Do We Know What We Know?*, in TRUTHS AND MYTHS OF CYBER-BULLYING: INTERNATIONAL PERSPECTIVES ON STAKEHOLDER RESPONSIBILITY AND CHILDREN’S SAFETY 51, 60 (Shaheen Shariff & Andrew H. Churchill eds., 2010).

39. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 2.

line between direct and indirect methods of bullying—in several taps of the keyboard and just a few clicks of a mouse.⁴⁰

A. *Methods of Cyberbullying*

Cyberbullying has spread alongside the exploding popularity of social networking sites like MySpace and Facebook, but has also gained momentum through cell phones and smart phones.⁴¹ This type of intimidation is easily distinguished from the more traditional forms of bullying because technology separates the bully from the victim and removes the “face-to-face” confrontation that is normally associated with bullying.⁴² Harassment morphs into cyberbullying when technology, such as social networking, is used as the conduit for delivery of rumors, insults, or hurtful messages.⁴³ This harassment can be accomplished directly—through text, email, or instant messages—or indirectly where social networking sites are used to post or disseminate harmful messages about the victim.⁴⁴ However, the line between direct and indirect cyberbullying has blurred as technology continues to shrink “the distance between worlds, which are separated by time and space in reality” making the resulting harm more serious.⁴⁵

1. Direct Cyberbullying

While direct bullying is often associated with actions like “hitting, kicking, shoving, [and] spitting,” cyberbullying can still be performed directly without any of these actions.⁴⁶ Bullies can utilize tactics such as “taunting, teasing, . . . [or] verbal harassment” to effectuate bullying.⁴⁷ These methods are made possible by technology and often do not require a physical assault in order to trigger or result in more serious outcomes, such as suicide.⁴⁸ Di-

40. *See id.* at 1–2.

41. Naomi Harlin Goodno, *How Public Schools Can Constitutionally Halt Cyberbullying: A Model Cyberbullying Policy That Considers First Amendment, Due Process, and Fourth Amendment Challenges*, 46 WAKE FOREST L. REV. 641, 641 (2011).

42. *Id.* at 650.

43. *See* Natasha Rose Manuel, Comment, *Cyber-Bullying: Its Recent Emergence and Needed Legislation to Protect Adolescent Victims*, 13 LOY. J. PUB. INT. L. 219, 221 (2011).

44. *Cyberbullying*, U.N.C. SCH. OF L., <http://www.unc.edu/courses/2010spring/law/357c/001/Cyberbully/criminal.html> (last visited Feb. 24, 2013).

45. *See* Walrave & Heirman, *supra* note 25, at 36.

46. *See* Patti Agatston, *Cyber Bullying: Bullying in the Digital Age*, NAT’L CENTER FOR MENTAL HEALTH PROMOTION & YOUTH VIOLENCE PREVENTION, http://www.promoteprevent.org/webfm_send/1152 (last visited Feb. 24, 2013).

47. *Id.*

48. Wallace, *supra* note 13, at 741; Agatston, *supra* note 46.

rect bullying is no longer required in order to inflict physical pain on individuals because psychological harm leads victims to inflict pain upon themselves.⁴⁹ Thus, while direct bullying appears to pose a viable threat, the inherent indirect nature of cyberbullying creates a more serious danger as a result of the relationship with the bully; “psychologists believe that a victim of cyberbullying may experience ‘low self-esteem, depression, chronic illness . . . school problems, familial problems, and suicidal ideation.’”⁵⁰

2. Indirect Cyberbullying

Cyberbullying can also be performed through indirect means, often referred to as bullying by “proxy.”⁵¹ Indirect forms of cyberbullying include using another’s social networking account to generate harassing posts, messages, or spreading rumors about the victim.⁵² Bullies can manipulate, impersonate, or “send inflammatory messages to online discussion groups or social networks under the guise of the victim.”⁵³ Although direct actions in traditional bullying can be distinguished based on the actor and behavior, cyberbullying blurs the line between direct and indirect bullying.⁵⁴ For example, cell phones and accounts that belong to individuals are easily hijacked and accessed without the owner’s knowledge or consent.⁵⁵ This makes the bullying less direct and more indirect because the perceived actor is operating as a “proxy” for the bully by generating the harassing messages at the victim’s expense.⁵⁶ Therefore, the distinction between direct and indirect bullying has decreased as the function and use of technology continues to increase mobility and accessibility.⁵⁷

B. Causes of Cyberbullying

The purpose of cyberbullying “is similar to that of traditional bullying in that the aggressor seeks power and control.”⁵⁸ There are often “three primary motivations for conventional bullying [including] the need to demonstrate dominance, to receive a reward (e.g. admiration by peers) and finally,

49. Wallace, *supra* note 13, at 741.

50. Lipton, *supra* note 7, at 1112; Turbert, *supra* note 11, at 655.

51. TROLLEY & HANEL, *supra* note 9, at 34.

52. *See id.* at 40; Agatston, *supra* note 46.

53. Lipton, *supra* note 7, at 1114.

54. *See id.* at 1113–14.

55. *See id.* at 1114–15; Spung, *supra* note 27, at 119.

56. TROLLEY & HANEL, *supra* note 9, at 34.

57. *See* Lipton, *supra* note 7, at 1113–14.

58. Turbert, *supra* note 11, at 653.

the satisfaction of causing suffering and injury [to] a victim.”⁵⁹ The lack of social cues, such as observing the victim’s reaction, may leave some bullies “unconvinced that they are actually harming or hurting someone badly.”⁶⁰ Coincidentally, the lack of social cues with the victim can leave the bully “genuinely convinced that they are not doing anything wrong.”⁶¹ Additionally, the physical and social disconnect between the bully and the victim can be attributed to participation in cyberbullying by well-rounded students; individuals that would not typically participate in traditional forms of bullying.⁶²

Many cyberbullies perform or continue their actions because “some adults have been slow to respond to cyberbullying” and, therefore, a belief exists that “there are little to no consequences for their actions” as a result.⁶³ Technology has innovated traditional bullying and left statutes powerless or ineffective because of the differentiating characteristics that separate cyber from ordinary forms of bullying.⁶⁴ “Until recently, these [i]nternet-based forms of communication [like social networking sites] and file sharing were accessible exclusively through personal computers.”⁶⁵ Currently, smartphones incorporate wireless access to the internet, simplifying one’s ability to enter social networking sites virtually anywhere; therefore, taking even less effort than before to reach an audience.⁶⁶ The accessibility associated with cyberbullying has become a factor in promulgating its expansion and discouraging victims from reporting its occurrence.⁶⁷ Some of the main attractions of cyberbullying—higher anonymity, increased access, lower detection, a greater audience, and lack of physical contact—also act as catalysts in avoiding legislation attempting to address this harmful activity.⁶⁸

1. Increased Anonymity

Online anonymity creates such a perception that “may lead pupils to think that they can get away with cyberbullying without being sanctioned.”⁶⁹

59. Walrave & Heirman, *supra* note 25, at 41.

60. *Id.*

61. *Id.*

62. See TROLLEY & HANEL, *supra* note 9, at 35, 43; Lipton, *supra* note 7, at 1114.

63. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 2.

64. See Goodno, *supra* note 41, at 650–53.

65. Spung, *supra* note 27, at 117.

66. See *id.* at 117–18.

67. See TROLLEY & HANEL, *supra* note 9, at 41–42.

68. See Goodno, *supra* note 41, at 650–53.

69. Walrave & Heirman, *supra* note 25, at 34.

While anonymity can be viewed as a benefit in some respects, this feature of cyberbullying “strip[s] away non-verbal communication cues by the victim,” and does not allow for the bully to witness the victim’s reaction.⁷⁰ Although anonymity may create a perception of a less personal threat, or even a cowardly attempt to bully another, ignoring the behavior usually results in more inflammatory comments.⁷¹ As a result, anonymity often leads bullies to “post messages or create websites . . . to be more hurtful because they can launch their invective with little fear of reprisal.”⁷² The anonymous nature of cyberbullying causes the bully to act more aggressively⁷³ and the victim to suffer greater humiliation because of the unknown, larger audience and resulting embarrassment.⁷⁴ When anonymity is partnered with continuous access, lower detection rates, a larger audience for cyberbullies to reach, and no required physical contact, the totality of circumstances can create a more devastating scenario for the victim.⁷⁵ These characteristics of cyberbullying can be directly linked to extreme actions of victims, like suicide.⁷⁶ “The anonymity provided by the [i]nternet may increase the volume of abusive conduct because it may encourage individuals who would not engage in such conduct offline to do so in the anonymous virtual forum provided by the [i]nternet”⁷⁷ Subsequently, “anonymity naturally makes it more difficult for victims and law enforcement officers to identify and locate cyber-wrongdoers.”⁷⁸

2. Continuous Access

Historically, bullying was something that occurred before, after, or during school, providing victims with an eventual escape.⁷⁹ Even though traditional bullying can occur anywhere, access to the victim is often limited.⁸⁰ Cyberbullying “victims often do not know who the bully is, or why they are

70. *Id.* at 33, 39.

71. *See id.* at 41; Shira Auerbach, Note, *Screening Out Cyberbullies: Remedies for Victims on the Internet Playground*, 30 CARDOZO L. REV. 1641, 1643–44 (2009).

72. Auerbach, *supra* note 71, at 1643–44.

73. *Id.* at 1643–44, 1644 n.17.

74. *See* Walrave & Heirman, *supra* note 25, at 38–39.

75. *See id.* at 34–39.

76. Hayes, *supra* note 12, at 12.

77. Lipton, *supra* note 7, at 1114.

78. *Id.*

79. *See* Walrave & Heirman, *supra* note 25, at 35–36.

80. *See id.*

being targeted.”⁸¹ Traditional bullying allows a victim to know his or her attacker and possibly retreat to safety.⁸² Having “24/7 accessibility to the victim is a new issue,” as a result of social networking and increased availability of internet access.⁸³ While “[t]raditional types of bullying occur mostly at school, on the school bus, or walking to and from school,” cyberharassment is novel because—unlike traditional notions of intimidation—limits of “time and space” do not exist.⁸⁴ For example, “if a victim moves offline, this does not stop others from posting harmful things about her that may continue to harm her personal and professional development.”⁸⁵ Improvements in technology allow “minors to extend bullying episodes beyond the confines” of the classroom.⁸⁶ This scenario provides the bully an opportunity to continue his or her attack on the victim, even though school is not in session or there is no longer any physical contact between the bully and the victim.⁸⁷ Bullies’ access to their victims has been furthered by advancements and the increasing popularity of social networking sites where “the home environment” is no longer considered “a safe retreat.”⁸⁸ Therefore, “[o]nline communications . . . have a permanent quality that real world conduct lacks,” intensifying the negative effects resulting from the bullying.⁸⁹

3. Lower Detection

Cyberbullying is very difficult to observe because it often occurs “beyond the boundaries of school supervision,” therefore, victimized students fail to report the incident to parents or teachers.⁹⁰ While “many forms of traditional bullying share an increased likelihood of remaining unnoticed for teachers and school administrators,” the lower detection rate of cyberbullying—alongside anonymity and access to the victim—also makes it less likely to be reported as a result of its inconspicuous nature.⁹¹ In addition, “[o]ne striking variation [from traditional bullying] is that cyberbullies often have

81. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 2.

82. *See id.*

83. Walrave & Heirman, *supra* note 25, at 36.

84. *Id.*

85. Lipton, *supra* note 7, at 1113.

86. Walrave & Heirman, *supra* note 25, at 35.

87. *See id.* at 35–36.

88. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 1; Walrave & Heirman, *supra* note 25, at 36.

89. Lipton, *supra* note 7, at 1112.

90. Walrave & Heirman, *supra* note 25, at 37.

91. *See id.* at 34–38.

good relationships with their teachers, thus making their detection even harder."⁹² Although several scenarios involving traditional bullying can remain undetected by adults, adolescents remain more inclined to "engage in covert types of bullying [like cyberbullying], because they believe that adults and bystanders are unlikely to intervene."⁹³

Most cyberbullying occurs in group-chats, through social networking websites, and via text messages, making detection more challenging.⁹⁴ It has even begun spreading to "portable gaming devices, in 3-D virtual worlds and social gaming sites, [including] newer interactive sites such as Formspring and ChatRoulette."⁹⁵ The use of cell phones and computers removes physical restrictions, allowing adolescents to take "pictures in a bedroom, a bathroom, or another location where privacy is expected," and share the images with another who subsequently posts or distributes the photo online where privacy is nonexistent.⁹⁶ A clear example of this behavior is exemplified in more recent events, like the Tyler Clementi and Dharun Ravi case, where video footage was captured and streamed over the internet for others to "see, rate, tag, and discuss."⁹⁷

4. Greater Audience, Less Physical Contact

In addition to higher anonymity, increased access, and lower detection rates, cyberbullying targets—and often reaches—a larger audience than traditional forms of bullying.⁹⁸ While bullying can subject the victim to several or many members of an audience, cyberbullying amplifies "hurtful texts and images" by exposing the individual to a virtually "unlimited audience in a very short period of time."⁹⁹ This feature of cyberbullying is compounded by attributing a more "permanent quality [to the actions] that real world conduct lacks," because the posts or messages often remain accessible to the audience for a prolonged or indefinite period of time.¹⁰⁰ The "'viral' nature" of information through social networks "can greatly expand the extent of victimiza-

92. TROLLEY & HANEL, *supra* note 9, at 43.

93. Walrave & Heirman, *supra* note 25, at 37–38.

94. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 1.

95. *Id.*; see Walrave & Heirman, *supra* note 25, at 36.

96. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 1; Walrave & Heirman, *supra* note 25, at 36.

97. Indictment, *supra* note 19, at 1; HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 1; Foderaro, *supra* note 1.

98. Walrave & Heirman, *supra* note 25, at 37–38.

99. *Id.* at 38.

100. Lipton, *supra* note 7, at 1112.

tion” when the bully is aware “that the embarrassing or harmful content is being viewed and shared—perhaps repeatedly—by so many people.”¹⁰¹ The rampant nature of bully-shared information online creates the appearance of audience approval, which parallels to the gratification a traditional bully receives from a chanting crowd.¹⁰²

Also, cyberbullying requires no physical contact in order to carry out an attack on a victim.¹⁰³ This magnifies the likelihood that more individuals will participate in the bullying since the need for “physical confrontation” has been removed by technology.¹⁰⁴ “[I]n cyberbullying, the perpetrator is less likely to see any suffering from the victim, which might reduce the gratification for [those] who enjoy watching pain and suffering” and leave the bully unfulfilled or unaffected by his or her actions.¹⁰⁵ The lack of physical contact does not allow the victim to merely step away, or remove him or herself from the bullying; “in today’s interconnected world that is not a viable option, as people who are forced offline forgo important personal and professional opportunities.”¹⁰⁶ “Since emotional feedback is missing, cyberbullies may assess quite wrongly the damage they are causing,” and exercise less restraint in what is said or written.¹⁰⁷ Finally, “it is often easier to be cruel using technology because cyberbullying can be done from a physically distant location, and the bully doesn’t have to see the immediate response by the target.”¹⁰⁸ Furthermore, statistics reporting cyberbullying frequently fail to capture the actual impact this behavior will have on victims because the defining characteristics of cyberbullying—anonymity, access, detection, audience, and lack of physical contact—make it inherently difficult to accurately project.¹⁰⁹

C. *Statistical Evidence*

The high occurrence of cyberbullying can be attributed to a combination of the frequency minors use the internet and the increasing popularity of so-

101. SAMEER HINDUJA & JUSTIN W. PATCHIN, CYBERBULLYING RESEARCH CTR., ELECTRONIC DATING VIOLENCE: A BRIEF GUIDE FOR EDUCATORS AND PARENTS 2 (2011), available at http://www.cyberbullying.us/electronic_dating_violence_fact_sheet.pdf.

102. See Walrave & Heirman, *supra* note 25, at 38–39.

103. Goodno, *supra* note 41, at 652.

104. *Id.*

105. Walrave & Heirman, *supra* note 25, at 41.

106. Lipton, *supra* note 7, at 1113.

107. Walrave & Heirman, *supra* note 25, at 39–40.

108. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 2.

109. See *id.* at 1–2.

cial networking sites.¹¹⁰ The number of youths who have experienced cyberbullying—"ranging from 10-40% or more"—is dependent on the age of the group being studied alongside the definition used to describe cyberbullying.¹¹¹ In 2010, a study based on a random sample of 4400 eleven to eighteen-year-olds revealed that 20% of the participants had become a victim of cyberbullying at some point.¹¹² Approximately "35% of kids have been threatened online," and "[n]early one in five has experienced it more than once."¹¹³ Accordingly, about "53% of kids admit having said something mean or hurtful to another person online," where "[m]ore than one in three have done it more than once."¹¹⁴ Perhaps the most disturbing statistic indicates that "75% of those who are bullied or harassed will go on to bully or harass others."¹¹⁵ Therefore, victimization is not an indication that bullied individuals will learn from their experiences and not recreate the harm that they have endured.¹¹⁶

Revenge and embarrassment are a common concern for victims who report cyberbullying.¹¹⁷ In actuality, "adult intervention is problematic in cyberbullying [because] a considerable proportion of victimized students choose not to tell anything about the harassment."¹¹⁸ An English study revealed that 43.7% of victims "did not report the [cyberbullying] to parents or teachers."¹¹⁹ Additional studies have revealed similar results, where victims "preferred not to tell an adult because they feared that their internet and mobile phone access would be suspended in case parents and teachers found things out."¹²⁰ "Furthermore, many teens report that they would rather try to handle cyberbullying by themselves, by signing off the internet, deactivating their accounts on a site, or by ignoring or blocking any persistent or hurtful messages, rather than tell anyone about the cyberbullying."¹²¹ Thus, cyber-

110. Matthew C. Ruedy, Comment, *Repercussions of a MySpace Teen Suicide: Should Anti-Cyberbullying Laws Be Created?*, 9 N.C. J.L. & TECH. 323, 331 (2008).

111. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 1.

112. *Id.*

113. TROLLEY & HANEL, *supra* note 9, at 41.

114. *Id.*

115. *Id.* at 47.

116. *See id.*

117. Manuel, *supra* note 43, at 225.

118. Walrave & Heirman, *supra* note 25, at 37.

119. *Id.*

120. *Id.*

121. Bethan Noonan, *Crafting Legislation to Prevent Cyberbullying: The Use of Education, Reporting, and Threshold Requirements*, 27 J. CONTEMP. HEALTH L. & POL'Y 330, 336 (2011).

bullying statistics reflect only a portion of actual victims that fall prey to online assaults.¹²²

D. *The Aftermath*

Subsequently, “60% of cyberbullying victims are negatively” impacted as a result of the harassment.¹²³ The absence of physical harassment—commonly associated with harming the victim—does not discount the “short- and long-term effects” of cyberbullying.¹²⁴ Emotional harm is only the beginning for some victims, escalating to severe psychiatric issues, and possible suicidal ideation when a victim does not receive relief or treatment.¹²⁵ “[S]ocial isolation, discrimination, and bullying” that leads to suicide is often associated with homosexual youths, who “experience higher rates of bullying than their straight peers.”¹²⁶ Verbal and textual abuse through cyberbullying that leads to another’s suicide—“cyberbullycide”—is not limited to homosexual youths.¹²⁷ This abuse allows aggressors to “kill their victims without ever laying a hand on them,” where the harassment instills such psychological pain that victims are lead to commit suicide.¹²⁸ All forms of cyberbullying have been found to contribute to the “increases in suicidal ideation,” where “20% of respondents reported seriously thinking about attempting suicide.”¹²⁹ Research has also revealed that victims of bullying and cyberbullying face an increased risk of suicidal thoughts when compared to offenders, and cyber victims are more likely to attempt suicide than individuals exposed to traditional bullying scenarios.¹³⁰ The perception of permanence is a qualifying characteristic of cyberharassment, intimidation, and bullying that may explain the increased ideation of suicide when compared to traditional bullying.¹³¹ Therefore, the perception of permanence in the harm continues beyond the initial harassment and metastasizes—like cancer—spreading into other aspects of a victim’s life.¹³²

122. *See id.*

123. Manuel, *supra* note 43, at 225.

124. *Id.*

125. *See id.* at 226.

126. Wallace, *supra* note 13, at 741.

127. *See, e.g.,* HINDUJA & PATCHIN, CYBERBULLYING RESEARCH SUMMARY, *supra* note 13, at 2.

128. Wallace, *supra* note 13, at 741.

129. HINDUJA & PATCHIN, CYBERBULLYING RESEARCH SUMMARY, *supra* note 13, at 1.

130. *Id.* at 1–2.

131. *See id.*; Lipton, *supra* note 7, at 1112–13, 1116.

132. *See* Lipton, *supra* note 7, at 1112–13, 1116.

Trends in the harm faced by victims of cyberbullying and bullies alike can be linked to damaging the “educational, social, and health related” aspects of individuals, but “the lasting effects of cyberbullying have yet to be determined.”¹³³ Victims of cyberbullying often forfeit educational opportunities by not attending school as a result of the stress and anxiety that flows from the harassment.¹³⁴ In addition, cyberbullying can create trust issues for a victim, which “affects a child’s ability to make and keep friends,” complicating the individual’s potential to cope with and recover from the harassment.¹³⁵ The effects of cyberbullying take an immediate toll on victims.¹³⁶ Cyberbullying legislation fails when it does not provide a response or remedy at the onset of the bullying, resulting in more severe, and often fatal outcomes. Therefore, in order to adequately address unknown concerns—like the long-term effects of cyberbullying—legislators must consider the known categories affected by cyberbullying: “[E]ducation, social, and health related” interests of targeted individuals.¹³⁷

III. LEGISLATIVE “CURES” TO CURB CYBERBULLYING

Until recently, “[c]urrent criminal laws, including those targeted specifically at online conduct, [have] fail[ed] to comprehensively deal with today’s cyber-abuses.”¹³⁸ In 2009, only thirty-six states had anti-bullying statutes.¹³⁹ Currently, forty-nine states—excluding Montana—have passed legislation addressing cyberbullying either explicitly or through electronic harassment.¹⁴⁰ Bully Police USA, a watch-dog organization that advocates for state bullying legislation, grades each state using letters “A++” through “F” based on a jurisdiction’s commitment to meeting twelve criteria.¹⁴¹ New

133. Noonan, *supra* note 121, at 336, 338.

134. *Id.* at 336–37.

135. *Id.* at 337–38.

136. *See id.*

137. *See id.* at 336–38.

138. Lipton, *supra* note 7, at 1117.

139. Auerbach, *supra* note 71, at 1659.

140. BULLY POLICE USA, *supra* note 14; *see also* NAT’L SCH. BDS. ASS’N, STATE ANTI-BULLYING STATUTES APRIL 2012 (2012), <http://www.nsba.org/SchoolLaw/Issues/Safety/Table.pdf>.

141. Auerbach, *supra* note 71, at 1659 nn.109–10; *see also* Brenda High, *Making the Grade: How States Are “Graded” on Their Anti Bullying Laws*, BULLY POLICE USA, <http://www.bullypolice.org/grade.html> (last visited Feb. 24, 2013) (establishing grading criteria for state legislation based upon: 1) utilizing the word “bullying;” 2) creating a law that is clearly anti-bullying and not a school safety net; 3) including the definitions of bullying and harassment; 4) recommending a model policy; 5) providing an implementation plan; 6) mandating anti-bullying programs; 7) setting a deadline for schools to establish policy; 8) provid-

Jersey ranks among the highest with an “A+,” awarded for meeting all twelve criteria—including a direct reference to cyberbullying and electronic harassment with an eye toward victim care.¹⁴² While all states that have bullying laws require a school policy, forty-three provide school sanctions as punishment, twelve provide for criminal sanctions, and only ten—including New Jersey—apply the policy to off-campus behavior.¹⁴³

The defining characteristics that make cyberbullying more invasive, such as anonymity, access, detection, audience, and lack of physical contact, make many anti-bullying statutes throughout the country ineffective.¹⁴⁴ Many authors who have addressed cyberbullying agree that “[t]he prevalence of this conduct suggests that more effective means are necessary to redress online wrongs and to protect victims’ reputations, but action against cyber-abusers has posed significant challenges for the legal system.”¹⁴⁵ Contrary to previous articles on cyberbullying, this Article examines the challenges cyberbullying presents to legislation, analyzes New Jersey’s framework in the “Anti-Bullying Bill of Rights,” and advocates for states to adopt a similar legislative approach—laws embodying key components that address the gaps in current statutes and bridge policy to legislation resulting in successful application to cyberbullying.

A. *New Jersey & the “Anti-Bullying Bill of Rights”*

The New Jersey “Anti-Bullying Bill of Rights” is currently being considered the Nation’s most stringent legislation designed to tackle bullying of all forms that have an effect on education in public schools.¹⁴⁶ Since New Jersey enacted the public school anti-bullying statute in 2002, a 2009 study has revealed that “32% of students aged 12 through 18 were bullied in the previous school year,” and “25% of the responding public schools indicated that bullying was a daily or weekly problem.”¹⁴⁷ The “[s]tate amended th[e]

ing protection from retaliation; 9) granting a school district protection for compliance; 10) assigning counseling for victims; 11) requiring accountability reports; and 12) including provisions for cyberbullying or “electronic harassment”).

142. High, *supra* note 141; *see* BULLY POLICE USA, *supra* note 14.

143. SAMEER HINDUJA & JUSTIN W. PATCHIN, CYBERBULLYING RESEARCH CTR., STATE CYBERBULLYING LAWS: A BRIEF REVIEW OF STATE CYBERBULLYING LAWS AND POLICIES 1 (2013) [hereinafter HINDUJA & PATCHIN, STATE CYBERBULLYING LAWS], available at http://www.cyberbullying.us/Bullying_and_Cyberbullying_Laws.pdf.

144. *See* Goodno, *supra* note 41, at 650–53.

145. Lipton, *supra* note 7, at 1106; *see also* Goodno, *supra* note 41, at 642–43; Noonan, *supra* note 121, at 332.

146. N.J. STAT. ANN. § 18A:37-13.2 (West 2012); Hu, *supra* note 15.

147. N.J. STAT. ANN. § 18A:37-13.1a.

law in 2007 to include cyberbullying and [again] in 2008 to require each school district to post its anti-bullying policy [and report of occurrences] on its website and distribute it annually to parents or guardians of students enrolled in the district.¹⁴⁸ Finally, in 2010—the most recent amendment, approved January 5, 2011—several sections of the law have been amended to facilitate successful implementation in schools throughout the state—specifically, application to institutions of higher education, minimum policy requirements, and funding.¹⁴⁹

The purpose of amending the law, which originated in 2002, was “to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of [HIB] of students that occur on school grounds and off school grounds under specified circumstances.”¹⁵⁰ First, title 18A, section 37-13.2 establishes that the Act, including the amendments “shall be known and may be cited [to] as the ‘Anti-Bullying Bill of Rights Act.’”¹⁵¹ Title 18A, section 37-13.1 provides legislative findings on the prevalence of HIB and sets forth the goals of the amendments: Clarity, fiscal responsibility, and effectiveness.¹⁵² The legislature noted that “[HIB] is also a problem which occurs on the campuses of institutions of higher education” in the State of New Jersey.¹⁵³

Next, title 18A, section 37-15.3 of the amendment makes the law applicable to conduct “that occurs off school grounds,” where the implementation is “consistent with the board of education’s code of student conduct and other provisions of the board’s policy on [HIB].”¹⁵⁴ Subsection five requires an incident report be provided to the principal within two days of its occurrence, or within two days of receiving notice of its occurrence.¹⁵⁵ Subsection six allows ten days to conduct an investigation, two days subsequent to the investigation to apprise the superintendent of the findings, and five days following the investigation to make a report available on the incident.¹⁵⁶ This is a large step forward for state legislation because it creates a definite timeline

148. *Id.* § 18A:37-13.1d.

149. *See id.* § 18A:37-13.1g.–j.

150. N.J. DEP’T OF EDUC., GUIDANCE FOR SCHOOLS ON IMPLEMENTING THE ANTI-BULLYING BILL OF RIGHTS ACT 1 (2011), <http://nj.gov/education/students/safety/behavior/hib/guidance.pdf> [hereinafter N.J. DEP’T OF EDUC., GUIDANCE FOR SCHOOLS].

151. N.J. STAT. ANN. § 18A:37-13.2.

152. *See id.* § 18A:37-13.1e.–i.

153. *Id.* § 18A:37-13.1j.

154. *Id.* § 18A:37-15.3.

155. *Id.* § 18A:37-15b.(5).

156. N.J. STAT. ANN. § 18A:37-15b.(6)(a)–(d).

to investigate and address bullying.¹⁵⁷ Although the majority of cyberbullying that occurs through social networking sites and technology may occur off campus, the effect it has on a victim touches and concerns the education process by impacting the victim's concentration and focus in the classroom.¹⁵⁸ Lower self-esteem, self-worth, and grades are characteristics attributable to individuals that are continually harassed, intimidated, or bullied regardless of where the acts take place.¹⁵⁹

In addition, title 18A, section 37-17 requires schools to adopt an educational program for bullying prevention¹⁶⁰ and section 37-20 requires the appointment of an "anti-bullying specialist" who leads in investigations, addresses incidents, and works with the district anti-bullying coordinator, who strengthens school policies and collaborates with the superintendent to eventually provide data to the Department of Education regarding HIB.¹⁶¹ This is significant because it provides an organized line of communication that requires adults to be educated, aware, and proactive in addressing bullying. Also, section 37-21 has created a school "safety team," which is responsible for receiving complaints, maintaining copies of the complaints, "identify[ing], and address[ing] patterns," as well as offering and participating in professional development on the prevention of HIB.¹⁶² Beyond educating adults in the school setting, professional development alerts educators of the impact and consequences this conduct can have on a victim.¹⁶³ This theme is evidenced in section 37-22, requiring all newly-certified teachers to complete a program in HIB as established by the State Board of Education and made applicable to district administrators' certification through section 37-23.¹⁶⁴

Additionally, title 18A, section 37-24 commands schools to develop a "guidance document for use by parents or guardians, students, and school districts" to aid in the understanding and implementation of the law.¹⁶⁵ This portion of the statute attempts to reconcile the low rate of detection by parents or guardians in addition to victims' frequent failure to report bullying.¹⁶⁶ Sections 37-25 and 37-26 place the Commissioner of Education in charge of training, implementation, and communication with the county superinten-

157. *See id.*

158. *See* Manuel, *supra* note 43, at 243–44; Turbert, *supra* note 11, at 686.

159. *See* N.J. DEP'T OF EDUC., GUIDANCE FOR SCHOOLS, *supra* note 150, at 2–3; Turbert, *supra* note 11, at 654–55.

160. N.J. STAT. ANN. § 18A:37-17a.

161. *Id.* § 18A:37-20.

162. *Id.* § 18A:37-21a., c.(1)–(3), d.

163. *See* Noonan, *supra* note 121, at 356.

164. N.J. STAT. ANN. §§ 18A:37-22a.–c., -23.

165. *Id.* § 18A:37-24a.

166. *See id.* § 18A:37-24a.(2); Walrave & Heirman, *supra* note 25, at 37.

dents to ensure compliance with the "Anti-Bullying Bill of Rights".¹⁶⁷ Therefore, administrators are accountable to victims of bullying and the bullies themselves.¹⁶⁸ Section 37-27 requires that the Commissioner of Education make an "online tutorial [available regarding] harassment, intimidation, and bullying."¹⁶⁹ Ultimately, this portion of the law informs parents and students of the causes and safeguards in place to detect and rectify bullying at its onset.¹⁷⁰

Subsequently, title 18A, section 37-28 creates a fund for the Department of Education—the "Bullying Prevention Fund"—in order to carry out the provisions of the "Anti-Bullying Bill of Rights."¹⁷¹ This additional funding addresses shortcomings in previous amendments due to the economic climate, by providing the financial support to aid districts with compliance.¹⁷² In section 37-29, the week starting with the "first Monday in October of each year is designated as a 'Week of Respect' in the State of New Jersey," where education and instruction focus on preventing HIB.¹⁷³ By providing education specified in the law as "age-appropriate," this provision is created to reinforce the regulations, channels of communication, and consequences associated with bullying to deter students from promulgating or participating in this behavior.¹⁷⁴ Section 37-30 states that the law does not affect the "provisions of any collective bargaining agreement," whereas section 3B-68 requires "public institution[s] of higher education [to] adopt [the] policy."¹⁷⁵ The tragic incident between Tyler Clementi and Dharun Ravi occurred at Rutgers University—a New Jersey institution for higher education—demonstrating the significance of applicability beyond high school.¹⁷⁶ Finally, section 37-31 encourages nonpublic schools to adopt the provisions of the "Anti-Bullying Bill of Rights," and sections 37-13 and 37-32 state that the amendments strengthen the rights of victims and do not remove certain prior protections put in place by previous revisions.¹⁷⁷

167. N.J. STAT. ANN. §§ 18A:37-25, -26.

168. *See id.*

169. *Id.* § 18A:37-27.

170. *See id.*; N.J. DEP'T OF EDUC., GUIDANCE FOR SCHOOLS, *supra* note 150, at 1.

171. N.J. STAT. ANN. § 18A:37-28.

172. *See id.*

173. *Id.* § 18A:37-29.

174. *See id.*; N.J. DEP'T OF EDUC., GUIDANCE FOR SCHOOLS, *supra* note 150, at 13.

175. N.J. STAT. ANN. §§ 18A:37-30, :3B-68a.

176. Foderaro, *supra* note 1.

177. N.J. STAT. ANN. §§ 18A:37-31a., -13.1(f), -32.

B. *Tyler Clementi, Dharun Ravi, and the Effects of this New Legislation*

Dharun Ravi filmed his roommate—Tyler Clementi—without his knowledge, using the camera on his computer to capture an intimate moment between Tyler and another man.¹⁷⁸ About two days later, Tyler discovered that his privacy was compromised over the internet, and ultimately took his own life by jumping off the George Washington Bridge on September 22, 2010.¹⁷⁹ The Grand Jurors of the State of New Jersey indicted Ravi on fifteen counts including: Invasion of privacy, attempted invasion of privacy, bias intimidation, tampering with physical evidence, hindering apprehension or prosecution, and witness tampering.¹⁸⁰ The prosecutor argued that these charges stemmed from a planned hate crime, designed to violate “his roommate’s privacy,” and subsequently “expose Mr. Clementi’s sexual orientation and an intimate encounter with another man.”¹⁸¹ In response, the defense emphasized Ravi’s immaturity, rather than categorizing his actions as a failure to respect his roommate’s privacy—claiming no link to Tyler’s sexual orientation.¹⁸² The 2008 amendments to the anti-bullying legislation in New Jersey incorporated cyberbullying through the term “electronic communication,” but like many other states, failed to account for institutions of higher education or provide applicability to off-campus activity.¹⁸³ Tyler’s death sparked “public outcry” leading to “comprehensive antibullying policies,” which now includes “increase[d] staff training and adhere[nce] to tight deadlines for reporting episodes” of HIB.¹⁸⁴ Although New Jersey would have eventually passed a broader law, the circumstances Tyler faced and his subsequent suicide resonated with legislators and motivated the express passage of a more sweeping, comprehensive approach.¹⁸⁵

Essentially, Ravi—an eighteen-year-old Indian citizen—cyberbullied Tyler—an eighteen-year-old homosexual—leading Tyler to commit suicide after tricking, denigrating, and outing him.¹⁸⁶ Tricking refers to someone’s attempt to have another reveal secrets or share information through deceit

178. Foderaro, *supra* note 1; Pervaiz Shallwani, *Clementi Case Trial Begins*, WALL ST. J., Feb. 25, 2012, at A15.

179. Foderaro, *supra* note 1; Shallwani, *supra* note 178.

180. Indictment, *supra* note 19, at 1–5; Shallwani, *supra* note 178.

181. Shallwani, *supra* note 178.

182. *Id.*

183. See HINDUJA & PATCHIN, STATE CYBERBULLYING LAWS, *supra* note 143, at 1, 9–10.

184. Hu, *supra* note 15.

185. Matt Friedman, *Christie Signs Anti-Bullying Legislation*, RECORD (N.J.), Jan. 7, 2011, at A3.

186. Foderaro, *supra* note 1; Shallwani, *supra* note 178.

online for purposes of humiliation.¹⁸⁷ Ravi set up a camera without Tyler's knowledge, after he had agreed to leave their shared dorm room and give Tyler complete privacy.¹⁸⁸ Ravi tricked Tyler by physically leaving the room, setting up a camera, and invading his privacy.¹⁸⁹ "Denigration" occurs when "cruel gossip or rumors about a person" are spread "to damage his or her reputation or friendships," which is also "[t]he online equivalent to indirect bullying with wider dissemination."¹⁹⁰ Ravi indirectly bullied Tyler by streaming a live video feed from their room, without Tyler's knowledge, and tweeting an open invitation for others to iChat Ravi and view Tyler's intimate moment live.¹⁹¹ In addition, outing occurs when a bully "[s]har[es] someone's secrets or embarrassing information or images online," without their permission or knowledge.¹⁹² Tyler was described as a private person, who kept to himself, and his sexual orientation remained unclear; Tyler was not openly homosexual.¹⁹³

The amendments made to the 2002 bullying law in 2007, 2008, and 2010 have been the direct product of gaps in the legislation made evident by cases like Tyler's where the law does not provide a clear resolution.¹⁹⁴ Prior to Tyler's death, one of the law's shortcomings included a failure to "expressly instruct a district on how to thwart off-campus cyberbullying, which is a problem considering that the majority of cyberbullying does not occur on school grounds but rather in the comfort of students' homes."¹⁹⁵ The New Jersey Legislature's most recent revision has addressed concerns regarding applicability and workability in formulating the latest set of amendments to the anti-bullying law.¹⁹⁶ The State has mandated a system where experts advise and oversee the implementation of the law.¹⁹⁷ By maintaining current education programs in New Jersey that address HIB, a web of delegated administrators and district employees collect data, report incidents, and teach students about the dangers of this behavior.¹⁹⁸ "Each school must designate an anti-bullying specialist to investigate complaints; each district must, in

187. TROLLEY & HANEL, *supra* note 9, at 39.

188. *See* Foderaro, *supra* note 1.

189. *See id.*

190. TROLLEY & HANEL, *supra* note 9, at 39.

191. Foderaro, *supra* note 1.

192. TROLLEY & HANEL, *supra* note 9, at 39.

193. *See* Foderaro, *supra* note 1.

194. N.J. STAT. ANN. § 18A:37-13.1c.-d. (West 2012); *see* Hu, *supra* note 15, *see also* N.J. DEP'T OF EDUC., GUIDANCE FOR SCHOOLS, *supra* note 150, at 1.

195. Turbert, *supra* note 11, at 659.

196. *See, e.g.*, N.J. STAT. ANN. § 18A:37-15.3.

197. *See* Hu, *supra* note 15.

198. *See id.*

turn, have an anti-bullying coordinator; and the State Education Department will evaluate every effort, posting grades on its Web site” for each school district in the state.¹⁹⁹ The Department of Education oversees the process, which involves data collection and reports and providing clearer education for parents online in addition to a response timeline.²⁰⁰ Students have one week of every school year that focuses on education to prevent HIB.²⁰¹ This improved system is reinforced by a new state fund created through the law to provide financial support and execute bullying education while maintaining funding for the program.²⁰² Some districts in the state have even partnered with local authorities to ease reporting and “up[] the ante by involving law enforcement rather than resolving issues in the principal’s office.”²⁰³ Therefore, New Jersey has incorporated the new additions into their bullying law with the preexisting functions to forge a well-oiled machine that operates effectively. Furthermore, the law’s reach goes beyond school grounds to include off-campus incidents of bullying that conflict with the board of education’s policies and spread applicability to public institutions of higher education.²⁰⁴ At first blush, the implications of the law appear to expose school boards and open court houses to increased litigation, but ultimately, this marks the beginning of schools and communities sharing accountability and responsibility for controlling cyberbullying at its roots through broader legislation.

IV. WHY OTHER STATES SHOULD ADOPT THE “ANTI-BULLYING BILL OF RIGHTS”

The Garden State provides a comprehensive approach to the growing problem of cyberbullying—through the “Anti-Bullying Bill of Rights”—because New Jersey’s law includes key components such as the policy, the policy review, and the revision of the policy in addition to legal remedies for victims.²⁰⁵ A complex problem like cyberbullying requires a well-guided approach to detect, report, address, and avert repetition in the future. New

199. *Id.*

200. See N.J. STAT. ANN. § 18A:37-24a.-b.; N.J. DEP’T OF EDUC., GUIDANCE FOR PARENTS ON THE ANTI-BULLYING BILL OF RIGHTS ACT 38-39 (2012), <http://www.state.nj.us/education/students/safety/behavior/hib/ParentGuide.pdf>.

201. N.J. STAT. ANN. § 18A:37-29.

202. *Id.* § 18A:37-28.

203. Hu, *supra* note 15.

204. See N.J. STAT. ANN. §§ 18A:37-15.3, :3B-68.

205. *New Jersey Anti-Bullying Laws & Policies*, STOPBULLYING.GOV, <http://www.stopbullying.gov/laws/new-jersey.html> (last visited Feb. 24, 2013); see also N.J. STAT. ANN. §§ 18A:37-13.1-2, -16 to -30.

Jersey's approach provides a model framework that other states throughout the country should adopt for several reasons. First, the law provides a communication network and protocol to monitor and document bullying.²⁰⁶ Second, the statute creates an educational program to strengthen the faculty and students' understanding of the effects of HIB.²⁰⁷ "Education provides a way for states to combat cyberbullying while avoiding the negative effects that result from imposing criminal penalties on children."²⁰⁸ In addition, education is key to overcoming the disregard for cyberbullying resulting from misconceptions that lead many to believe "there are more serious forms of aggression to worry about."²⁰⁹ Finally, legal ramifications continue to be an important part of the formula in addressing cyberbullying by allowing victims to seek other legal remedies and placing future bullies on warning.²¹⁰

A. Key Components of a Model Anti-Bullying Law

In order to achieve results, the Education Secretary of the United States has set forth a list of eleven "Key Components in State Anti-Bullying Laws" and policies throughout the nation.²¹¹ The first component of a cyberbullying law requires a purpose statement to "[o]utline[] the range of detrimental effects bullying has on students, including impacts on student learning, school safety, student engagement, and the school environment."²¹² This initial section should include a declaration "that any form, type, or level of bullying is unacceptable, and that every incident needs to be taken seriously by school administrators, school staff (including teachers), students, and students' families."²¹³ Next, the statute should provide specific types and examples of prohibited conduct alongside "a clear definition of cyberbullying."²¹⁴ In addition, an "Enumeration of Specific Characteristics" should explain conduct included in the behavior, but not limit bullying to specific acts or any par-

206. Adam Cohen, *Why New Jersey's Antibullying Law Should Be a Model for Other States*, TIME IDEAS (Sept. 6, 2011), <http://ideas.time.com/2011/09/06/why-new-jerseys-antibullying-law-should-be-a-model-for-other-states/>.

207. *Id.*; Friedman, *supra* note 185.

208. Kelsey Farbotko, Comment, *With Great Technology Comes Great Responsibility: Virginia's Legislative Approach to Combating Cyberbullying*, 15 RICH. J.L. & PUB. INT. 55, 73 (2011).

209. HINDUJA & PATCHIN, CYBERBULLYING: IDENTIFICATION, PREVENTION, AND RESPONSE, *supra* note 8, at 2.

210. See *Key Components in State Anti-Bullying Laws*, STOPBULLYING.GOV, <http://www.stopbullying.gov/laws/key-components/index.html> (last visited Feb. 24, 2013).

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

ticular characteristic.²¹⁵ The next guideline calls for “Development and Implementation of [Local Educational Agency] Policies” that memorialize the prohibited conduct and provide a course of action that includes reporting, recording, and referring the victim and bully for professional help.²¹⁶ Additionally, effective laws must face state review to remain current and “ensure the goals of the state statute are met.”²¹⁷ Successful statutes “[i]nclude[] a plan for notifying students, students’ families, and staff of policies related to bullying, including the consequences for engaging in bullying.”²¹⁸ States should “[i]nclude[] a provision [mandating] school districts to provide training [and education] for all school staff”—not only teachers—in “preventing, identifying, and responding to bullying.”²¹⁹ Training and transparency emerge as key components to a comprehensive statute because they include a reporting system and allow districts to draft their own policy, creating accountability and responsibility that leads to greater community awareness and investment.²²⁰ Finally, a statement of legal rights should be included allowing other paths of recourse for the victim.²²¹

B. *Perceived Weaknesses in the New Jersey Law*

The “Anti-Bullying Bill of Rights” has taken an aggressive approach to HIB by incorporating all faculty and staff—an all-hands-on-deck approach—into the law’s education and enforcement.²²² The law became effective in classrooms throughout the State of New Jersey in the Fall of 2011.²²³ Administrators in school districts have labeled the law a tall order that “has gone well overboard” in allocating additional responsibility to employees by requiring them “to police the community [twenty-four] hours a day.”²²⁴ In most districts, guidance counselors and social workers already on staff, have acquired the additional responsibilities mandated by the law, including investigations, reports, and anti-bullying education.²²⁵ Enforcement of the law—requiring additional time and effort—is being achieved by current staff members with existing job descriptions, therefore, raising compliance con-

215. *Key Components in State Anti-Bullying Laws*, *supra* note 210.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *See Key Components in State Anti-Bullying Laws*, *supra* note 210.

221. *Id.*

222. N.J. STAT. ANN. § 18A:37-13 (West 2012); Hu, *supra* note 15.

223. *See* Hu, *supra* note 15.

224. *Id.*

225. *Id.*

cerns with regard to time and experience.²²⁶ Training equips every employee, like janitors and aides, who may come into contact with students and witness bullying to file an incident report.²²⁷ Accordingly, superintendents throughout the state argue that the statute subjects districts to increased opportunities of “lawsuits from students and parents dissatisfied with the outcome” from a school district’s response to bullying allegations.²²⁸ While fiscal responsibility remains a concern for boards of education, many schools within the state are building on existing programs and policies or making use of local authorities to help comply with and enforce the law.²²⁹

“[L]aws . . . serve an important expressive function about acceptable modes of online behavior even in situations where their enforcement may be limited by a variety of . . . factors.”²³⁰ The benefits reaped by schools under the law’s bullying policy mandate outweigh the burdens placed on state administrators and districts.²³¹ Newspaper articles have examined these financial, legal, and interpretive implications regarding compliance with the law, but continue to view this statute as a touchstone for anti-bullying legislation.²³² Despite the expenses districts have incurred as a result of the legal requirements for compliance, schools have been “proactive [to address bullying] regardless of the money” received through the anti-bullying fund.²³³ Utilizing guidance counselors and social workers has helped the state’s schools take on the additional responsibilities associated with fulfilling these requirements.²³⁴ In addition, the state is limiting the liability of districts by establishing a baseline of protection through investigating, holding a hearing, and issuing a decision—appealable to the Commissioner of Education—all of which are governed by individual timelines.²³⁵ While critics tend to focus on the ability of schools to correctly categorize behavior as actionable under the statute, it is important to note that schools formulate their own policies under the law.²³⁶ The legislation sets a minimum level of safeguards and

226. *Id.*

227. *Key Components in State Anti-Bullying Laws*, *supra* note 210.

228. Hu, *supra* note 15.

229. *See id.*

230. Lipton, *supra* note 7, at 1116.

231. Cohen, *supra* note 206.

232. *See, e.g., id.* (arguing the shortcomings of the law’s compliance and noting the importance of New Jersey’s stance in bullying victim rights).

233. Charles Hack, *School Districts Stunned by Disparity in Anti-Bullying Funding Awards*, NJ.COM (July 3, 2012, 4:44 PM), http://www.nj.com/hudson/index.ssf/2012/07/school_districts_stunned_by_di.html.

234. *See* Hu, *supra* note 15.

235. N.J. STAT. ANN. § 18A:37-15b.(6)(a)–(e) (West 2012).

236. *See* Turbert, *supra* note 11, at 659; *see also* N.J. STAT. ANN. § 18A:37-15b.

criteria that must be present in each policy throughout the state, while affording inherently different school districts flexibility to detail and define bullying.²³⁷ An urban school in New Jersey faces different challenges in regulating the school climate rather than a suburban location.²³⁸ Giving boards of education the ability to establish policy in their respective school systems creates a greater sense of investment by the community into anti-bullying education and injects efficacy into the programs.²³⁹

C. *Bridging the Gaps in Anti-Bullying Legislation with Policy*

“Other states’ laws have similar aims but lack the rigorous oversight and quick response mechanisms that New Jersey is putting in place.”²⁴⁰ As of January 2013, forty-nine states have passed some type of law that addresses bullying, forty-seven of which include electronic harassment, and sixteen states have legislation that uses the term “cyberbullying.”²⁴¹ While only ten states currently have laws that regulate off-campus bullying, nine states have proposed general updates to their bullying legislation—but only two of those proposals incorporate the addition of off-campus bullying.²⁴² State laws should address off-campus behavior, provide a clear and accessible policy, and provide an education of cyberbullying awareness that includes remedies for faculty, staff, students, and parents.²⁴³ From nonprofit organizations to governmental agencies, these groups agree with the establishment of a baseline for anti-bullying legislation consisting of eleven criteria.²⁴⁴

In an effort to bridge the existing gaps in states’ anti-bullying legislative attempts, an effective statute should include: (1) A purpose statement; (2) the scope of the law; (3) specification of prohibited conduct; (4) additional characteristics of prohibited conduct; (5) collaborative policy development; (6) an investigative, reporting, responding, and recording policy; (7) a frequent policy review provision; (8) a communication plan; (9) a training and preventative education provision; (10) transparency and monitoring; and (11) the right to other legal recourse.²⁴⁵ These characteristics may not be entirely

237. See N.J. STAT. ANN. § 18A:37-15b.

238. Hack, *supra* note 233.

239. See Turbert, *supra* note 11, at 659; *see, e.g.*, N.J. STAT. ANN. § 18A:37-15b.

240. Cohen, *supra* note 206.

241. HINDUJA & PATCHIN, STATE CYBERBULLYING LAWS, *supra* note 143, at 1.

242. *Id.* at 1–2, 4, 6–9.

243. See Turbert, *supra* note 11, at 685.

244. See BULLY POLICE USA, *supra* note 14; *Key Components in State Anti-Bullying Laws*, *supra* note 210.

245. *Key Components in State Anti-Bullying Laws*, *supra* note 210.

exhaustive, but address the primary facets of a comprehensive bullying law needed for states throughout the nation.²⁴⁶

V. CONCLUSION

Enacting detailed legislation for cyberbullying is an important step that states must take in order to curb this growing problem. "Cyberbullying is venomous student expression that scars schools' basic educational mission and the development of civility in children."²⁴⁷ The psychological sting that results from cyberbullying is attributed to increased anonymity, constant internet access, lower detection by adults, and the increased audience with a lack of physical contact between the bully and the victim.²⁴⁸ Unlike traditional notions of bullying, cyberbullying and electronic harassment contribute more harmful, long-term effects to victims resulting from the virtual permanence of the actions and perceived inability of escape by the victim.²⁴⁹ The difference between comprehensive laws on anti-bullying and ineffective legislation is traced through the level of response and treatment of the victim.²⁵⁰

In the wake of Tyler Clementi's suicide, New Jersey has developed a meticulous piece of legislation that details the prohibition of harassment, intimidation, and bullying by going beyond the key components of an effective law.²⁵¹ Through an anti-bullying legislation amendment, the state has created a model framework to define, monitor, and deter bullying beyond its roots in the school zone, branching out to off-campus activity.²⁵² Although Tyler's death ignited the prompt revision and application of anti-bullying policies in institutions of higher education,²⁵³ this statute has been created to address indefinites—like the many forms of cyberbullying—with definite timelines of response to reported incidents.²⁵⁴ New Jersey has taken the guesswork out of policy formulation by enlisting experts to oversee the state's protocol, procedure, and communication.²⁵⁵ Alternatively, critics of the law highlight funding, categorization of bullying, and increased litigation

246. *See id.*

247. Turbert, *supra* note 11, at 686.

248. *See* discussion *supra* Part II.B.

249. Walrave & Heirman, *supra* note 25, at 35–36; Manuel, *supra* note 43, at 224–25.

250. *See Key Components in State Anti-Bullying Laws*, *supra* note 210; *see also* Cohen, *supra* note 206.

251. *See* N.J. STAT. ANN. § 18A:37-15 (West 2012); Cohen, *supra* note 206.

252. *See* N.J. STAT. ANN. § 18A:37-15.3.

253. *See id.* § 18A:3B-68a.; Friedman, *supra* note 185.

254. *See* N.J. STAT. ANN. §§ 18A:3B-68a., :37-13.1f.; *see also* Friedman, *supra* note 185.

255. *See* N.J. STAT. ANN. § 18A:37-20.

as inherent flaws to the statute.²⁵⁶ The amendments forming the “Anti-Bullying Bill of Rights” utilize existing members of faculty, such as psychologists and counselors, to alleviate some of the financial straps attributed to the law in light of actual funding awards.²⁵⁷ In addition, many schools in the state have built on preexisting policy and procedure, dovetailing the new requirements into practice.²⁵⁸ Education and transparency have been mandated throughout the process to reinforce bullying detection and proactively decrease future occurrences.²⁵⁹ Furthermore, while increased exposure to litigation initially alarmed districts,²⁶⁰ the law has created a responsive, hierarchical system that provides a procedural checklist for school districts under state supervision.²⁶¹ Ultimately, the benefits of enacting a comprehensive approach to bullying encompassing its multifaceted contexts outweigh the burdens expressed by critics.²⁶² The gaps between state bullying legislation and victims’ needs must be bridged to ameliorate the disconnect under current law. These bridges should not become a resource that inadvertently facilitates the suicide of cyberbullying victims because of the absence of legislative relief. The Garden State has cultivated a twenty-first century law, designed to keep pace with technology and bullying through continuous re-evaluation of policy; like software updates built directly into the statute, New Jersey has enacted the latest hardware in anti-bullying legislation.

256. Cohen, *supra* note 206; *see also* Hu, *supra* note 15.

257. *See* N.J. STAT. ANN. § 18A:37-20a.; *see also* Hu, *supra* note 15.

258. *See, e.g.*, Hu, *supra* note 15.

259. *See, e.g.*, N.J. STAT. ANN. § 18A:37-24; *see also* Cohen, *supra* note 206.

260. *See* Hu, *supra* note 15.

261. *See* N.J. STAT. ANN. § 18A:37-15; Hu, *supra* note 15.

262. Cohen, *supra* note 206.