

# **Proposed Local Law Number 17 Of 2016**

## **County Of Ulster**

### **A Local Law Prohibiting Cyber-Bullying In Ulster County**

**BE IT ENACTED**, by the Legislature of the County of Ulster, as follows:

#### **SECTION 1. LEGISLATIVE INTENT.**

In the many ways that bullying is done, perpetrators of cyber-bullying are often more extreme in the threats and taunts they inflict on their victims than perpetrators of other forms of bullying. Perpetrators of cyber-bullying do not actually see their victim's emotional reaction to the information that is sent out over the internet. Cyber-bullying is often done anonymously.

Cyber-bullying follows its victims everywhere they go and can occur at any time of the day or night because cyber-bullying is perpetrated online or through text or picture messages on cellular phones and other hand-held devices. Technology has allowed this emotional violence to attack our children at any time whether at school or at home. Often times these attacks can originate outside the jurisdiction of the school and/or may be beyond a school's resources.

The Ulster County Legislature recognizes that bullying among children has been a long standing problem throughout the country.

This Legislature hereby finds that with the advent of technology, bullying has transformed from a predominantly school-based issue into a broader societal problem.

This Legislature hereby finds that victims of cyber-bullying suffer very real and serious harm as a result of these incidents. Victims of cyber-bullying often suffer from depression, anxiety, social isolation, nervousness when interacting with technology, and low self-esteem all of which can directly affect the child's performance in and out of school. In some cases, victims attempt to commit suicide or commit suicide in whole or in part because of the cyber-bullying they have endured.

The Ulster County Legislature finds that cyber-bullying is occurring in Ulster County. Therefore, the County must take affirmative action to protect the children of Ulster County from unwanted harassment, threats, abuse, intimidation, and harm to themselves, their reputation, and their relationships with friends, family members, peers, teachers, principals and employers.

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To stop cyber-bullying and provide for the protection, safety, well-being, and healthy development of the children of Ulster County, the Legislature determines that it is necessary to proscribe certain expressions of speech by technological means through the enactment of a narrowly tailored local law that prohibits the cyber-bullying of persons under the age of eighteen (18) who are in Ulster County.

Municipal Home Rule Law §10 (12) allows a County to enact a local law for the protection, safety, health, and well-being of a County's residents.

This Legislature hereby finds that the County of Ulster has an interest in providing options to ~~schools and~~ law enforcement which serve to rehabilitate juveniles who have engage in cyber-bullying. These options should include diversion services and community services. These services can assess why the juvenile is committing such acts and divert him or her from committing similar acts in the future while considering the best interest of said juvenile.

The purpose of this local law is to curtail or eliminate cyber-bullying of children in Ulster County and to promote civility during internet usage.

#### **SECTION 2. DEFINITIONS.**

As used in this law:

- a. "Electronic transmission" or "electronically transmits" means the transmission, dissemination, or posting of information via the use of a computer online service, internet service provider, smart phone, tablet, wireless device or any other similar electronic means that is viewable by multiple persons through, at, by, on or in a local bulletin board service, an Internet chat room, a group electronic mail or text, a social media, networking or messaging site, a webpage, a blog, a video sharing site, an electronic messaging platform, or other similar types of electronic platforms.
- b. "Person" means any natural person or individual.
- c. "Minor" means any natural person or individual under the age of eighteen (18).

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**SECTION 3. PROHIBITIONS.**

A person is guilty of Cyber-Bullying of a Minor when:

With the intent to harass, abuse, intimidate, torment, or otherwise inflict emotional harm on a minor, the actor electronically transmits, anonymously or otherwise:

- a. information about such minor which has no legitimate communicative purpose and the actor knows or reasonably should know that the electronic transmission of the information will cause harm to the minor's reputation or the minor's relationships with the minor's parents, family members, friends, peers, employers, and school administrators and faculty; or
- b. private sexual information about the minor; or
- c. a photograph or a video, whether real or altered, that depicts any uncovered portion of the breasts, buttocks, or genitals of the minor and said photograph or video has no legitimate communicative purpose; or
- d. false sexual information about the minor; or
- e. information that has no legitimate communicative purpose by appropriating the minor's name, likeness, e-mail accounts, websites, blogs for the purpose of harassing such minor or other minors.

**SECTION 4. PENALTIES.**

- a. Any person who, under the age of sixteen (16), knowingly violates the provisions of this local law shall be adjudicated a juvenile delinquent pursuant to Article 3 of the Family Court Act.
- b. Any person sixteen (16) years or older who knowingly violates Section 3 of this local law and has not been previously convicted of violating this local law, shall be guilty of an unclassified misdemeanor and subject to the penalties outlined in Article 65 of the NYS Penal Law.

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c. Any person sixteen (16) years or older who knowingly violates Section 3 of this local law and has previously been convicted of violating this local law, shall be guilty of a Class A misdemeanor and subject to the penalties outlined in NYS Penal Law Section 70.15.

**SECTION 5. APPLICABILITY.**

This law shall apply to all actions occurring 90 days after the effective date of this law.

**SECTION 6. SEVERABILITY.**

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. A court determining severability is expressly authorized to sever any provision or application of this article on any basis not inconsistent with the Constitution of this state or of the United States.

**SECTION 7. DECLARATORY JUDGMENT.**

Any citizen of Ulster County who reasonably believes his conduct may be proscribed and punished by this statute may commence a special proceeding in Ulster County Supreme Court seeking a declaration that this law violates the First Amendment of the United States Constitution under New York State Civil Practice Law and Rules § 3001 provided: (1) such action is commenced and written notice thereof is sent to the Ulster County Clerk, the Clerk of Ulster County Legislature, the Ulster County Executive and the Ulster County Attorney within sixty days of the effective date of this statute; (2) such an action is commenced before a criminal action is initiated; and (3) such an action involves only the question of law referenced above and involves no questions of fact.

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**SECTION 8. REVERSE PREEMPTION.**

This law shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this local law or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Ulster. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

**SECTION 9. ANNUAL REPORTING.**

On or before April 30<sup>th</sup> of each year, the Ulster County District Attorney's Office and the County Attorney shall submit an annual report to the Ulster County Legislature regarding matters charged in the previous year pursuant to this Local Law. Such report shall include the number of cases charged under this Local Law, the age of each offender, the charge for the offense, and the disposition of the matter. The report shall not include any information so as to identify any defendant/respondent or victim. The report may include any recommendations that the District Attorney and/or the County Attorney may have.

**SECTION 10. EFFECTIVE DATE.**

This law shall take effect 90 days after its filing in the Office of the Secretary of State.