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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO CRIMINAL OFFENSES - COMPUTER CRIME

Introduced By: Senators Lanzi, Tassoni, Paiva Weed, Ciccone, and DiPalma

Date Introduced: March 23, 2011

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 11-52-4.2 of the General Laws in Chapter 11-52 entitled "Computer
2 Crime" is hereby repealed.

3 ~~**11-52-4.2. Cyberstalking and cyberharassment prohibited.** -- (a) Whoever transmits~~
4 ~~any communication by computer or other electronic device to any person or causes any person to~~
5 ~~be contacted for the sole purpose of harassing that person or his or her family is guilty of a~~
6 ~~misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500), by~~
7 ~~imprisonment for not more than one year, or both. For the purpose of this section, "harassing"~~
8 ~~means any knowing and willful course of conduct directed at a specific person which seriously~~
9 ~~alarms, annoys, or bothers the person, and which serves no legitimate purpose. The course of~~
10 ~~conduct must be of a kind that would cause a reasonable person to suffer substantial emotional~~
11 ~~distress, or be in fear of bodily injury. "Course of conduct" means a pattern of conduct composed~~
12 ~~of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally~~
13 ~~protected activity is not included within the meaning of "course of conduct."~~

14 ~~--(b) A second or subsequent conviction under subsection (a) of this section shall be~~
15 ~~deemed a felony punishable by imprisonment for not more than two (2) years, by a fine of not~~
16 ~~more than six thousand dollars (\$6,000), or both.~~

17 SECTION 2. Chapter 11-52 of the General Laws entitled "Computer Crime" is hereby
18 amended by adding thereto the following sections:

19 **11-52-3.1. Unauthorized access to confidential information.** -- [Whoever intentionally,](#)

1 without authorization, or in excess of one's authorization, directly or indirectly accesses a
2 protected computer, computer program, computer system, or computer network with the intent to
3 either view, obtain, copy, or download any confidential information or data contained in or stored
4 on such computer, computer program, computer system, or computer network, shall be guilty of
5 a felony and shall be subject to the penalties set forth in section 11-52-5.

6 **11-52-4.4. Cyberstalking and cyberharassment prohibited.** -- (a) As used in this
7 section the following terms shall have the following meanings:

8 (1) "Conduct" means either:

9 (i) A single act which causes a person to be repeatedly contacted by others in a manner
10 which seriously alarms, annoys, or bothers the person; or

11 (ii) Two (2) or more acts over a period of time, evidencing a continuity of purpose, which
12 seriously alarms, annoys, or bothers the person.

13 (2) "Immediate family" means a spouse, parent, child, or sibling. The term also includes
14 any other individual who regularly resides in the household or who, within the prior six (6)
15 months, regularly resided in the household.

16 (3) "Harass" means to engage in intentional conduct that serves no legitimate purpose
17 that would cause a reasonable person to suffer substantial emotional distress, or be in fear of
18 bodily injury. The term does not include constitutionally protected activity.

19 (4) "Computer" has the meaning given to that term in section 11-52-1.

20 (5) "Telecommunication device" means an analog or digital electronic device that
21 processes data, telephony, video, or sound transmission as part of any system involved in the
22 sending and/or receiving at a distance of voice, sound, data, and/or video transmissions.

23 (b) Whoever, by computer or telecommunication device, harasses another person or
24 causes any person to be contacted for the purpose of harassing that person or his or her immediate
25 family is guilty of a misdemeanor and may be subject to imprisonment for not more than one year
26 or fined not more than five hundred dollars (\$500), or both.

27 (c) A second or subsequent conviction under subsection (b) of this section shall be
28 deemed a felony subject to imprisonment for not more than two (2) years, or a fine of not more
29 than six thousand dollars (\$6,000), or both.

30 (d) If a person accused under this section claims to have been engaged in constitutionally
31 protected activity, the court shall determine the validity of the claim as a matter of law and, if
32 found valid, shall exclude evidence of the activity.

33 **11-52-7.1. Online impersonation.** -- (a) As used in this section the following terms shall
34 have the following meanings:

1 (1) "Commercial social networking site" means a business, organization or other similar
2 entity that operates a website and permits persons to become registered users for the purpose of
3 establishing personal relationships with other users through direct or real-time communication
4 with other users or the creation of web pages or profiles available to the public or to other users.

5 (2) "Electronic mail" means an electronic mail message sent through the use of an
6 electronic mail program or a message board program.

7 (3) "Identifying information" means information that alone or in conjunction with other
8 information identifies a person, including a person's:

9 (i) Name, social security number, date of birth, or government-issued identification
10 number;

11 (ii) Unique biometric data, including the person's fingerprint, voice print or retina or iris
12 image;

13 (iii) Unique electronic identification number, electronic mail address, routing code or
14 financial institution account number; and

15 (iv) Telecommunication identifying information or access device.

16 (4) "Public official" means a person elected by the public or elected or appointed by a
17 governmental body or an appointed official in the executive, legislative, or judicial branch of the
18 state or any political subdivision thereof.

19 (b) A person commits the crime of online impersonation if the person:

20 (1) Uses the name or persona of another person to create a web page on or to post one or
21 more messages on a commercial social networking site or sends an electronic mail, instant
22 message, text message or similar communication without obtaining the other person's consent and
23 with the intent to harm, defraud, intimidate or threaten any person;

24 (2) Sends an electronic mail, instant message, text message or similar communication that
25 references a name, domain address, telephone number or other item of identifying information
26 belonging to any person without obtaining the other person's consent, with the intent to cause a
27 recipient of the communication to reasonably believe that the other person authorized or
28 transmitted the communication and with the intent to harm or defraud any person; or

29 (3) Uses the name or persona of a public official to create a web page on or to post one or
30 more messages on a commercial social networking site or sends an electronic mail, instant
31 message, text message or similar communication without obtaining the public official's consent
32 and with the intent to induce another to submit to such pretended official authority, to solicit
33 funds or otherwise to act in reliance upon that pretense to the other person's detriment.

34 (c) Whoever violates this section shall be guilty of a felony and subject to imprisonment

1 for not more than three (3) years or fined not more than two thousand dollars (\$2,000), or both.

2 SECTION 3. Section 11-64-1 of the General Laws in Chapter 11-64 entitled "Electronic
3 Imaging Devices" is hereby amended to read as follows:

4 **11-64-1. Definitions.** -- (1) For the purposes of this section the following definitions
5 apply:

6 (a) "Disseminate" means to make available by any means to any person.

7 (b) "Imaging Device" means any electronic instrument capable of capturing, recording,
8 storing or transmitting visual images.

9 (c) "Intimate areas" means the naked or undergarment clad genitals, pubic area, buttocks,
10 or any portion of the female breast below the top of the areola of a person which the person
11 intended to be protected from public view.

12 (d) "Legal entity" means any partnership, firm, association, corporation or any agent or
13 servant thereof.

14 (e) "Publish" means to:

15 (i) Disseminate with the intent that such image or images be made available by any
16 means to any person or other legal entity;

17 (ii) Disseminate with the intent such images be sold by another person or legal entity;

18 (iii) Post, present, display, exhibit, circulate, advertise or allow access by any means, so
19 as to make an image or images available to the public; or

20 (iv) Disseminate with the intent that an image or images be posted, presented, displayed,
21 exhibited, circulated, advertised or made accessible by any means, and to make such images
22 available to the public.

23 (f) "Sell" means to disseminate to another person, or to publish, in exchange for
24 something of value.

25 (g) "Sexually explicit conduct" means actual:

26 (i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or
27 oral-anal, or lascivious sexual intercourse where the genitals, or pubic area of any person is
28 exhibited;

29 (ii) Bestiality;

30 (iii) Masturbation; or

31 (iv) Sadistic or masochistic abuse.

32 SECTION 4. Chapter 11-9 of the General Laws entitled "Children" is hereby amended by
33 adding thereto the following sections:

34 **11-9-1.4. Minor electronically disseminating indecent material to another person**

1 **"Sexting" prohibited.** – (a) As used in this section the following terms shall have the following
2 meanings:

3 (1) "Minor" means any person not having reached eighteen (18) years of age;

4 (2) "Computer" has the meaning given to that term in section 11-52-1;

5 (3) "Telecommunication device" means an analog or digital electronic device that
6 processes data, telephony, video, or sound transmission as part of any system involved in the
7 sending and/or receiving at a distance of voice, sound, data, and/or video transmissions;

8 (4) "Indecent visual depiction" means any digital image or digital video of the minor
9 engaging in sexually explicit conduct, and includes data stored on any computer,
10 telecommunication device, or other electronic storage media that is capable of conversion into a
11 visual image;

12 (5) "Sexually explicit conduct" means actual masturbation or graphic focus on or
13 lascivious exhibition of the nude genitals or pubic area of the minor or the nude breast or breasts
14 of the minor, if the minor is a female.

15 (b) No minor shall knowingly and voluntarily and without threat or coercion use a
16 computer or telecommunication device to transmit an indecent visual depiction of himself or
17 herself to another person.

18 (c) A violation of this section shall be a status offense and referred to the family court.

19 (d) Any minor adjudicated under subsection (b) shall not be charged under section 11-9-
20 1.3 and, further, shall not be subject to sex offender registration requirements set forth in section
21 11-37.1-1 et seq., entitled "Sexual Offender Registration and Community Notification Act."

22 **11-9-1.5. Electronically disseminating indecent material to minors prohibited.** -- (a)
23 As used in this section the following terms shall have the following meanings:

24 (1) "Minor" means any person not having reached eighteen (18) years of age.

25 (2) "Computer" has the meaning given to that term in section 11-52-1.

26 (3) "Telecommunication device" means an analog or digital electronic device that
27 processes data, telephony, video, or sound transmission as part of any system involved in the
28 sending and/or receiving at a distance of voice, sound, data, and/or video transmissions.

29 (4) "Indecent visual depiction" means any digital image or digital video depicting one or
30 more persons engaging in sexually explicit conduct, and includes:

31 (i) Data stored on any computer, telecommunication device, or other electronic storage
32 media that is capable of conversion into a visual image; or

33 (ii) Digital video depicting sexually explicit conduct transmitted live over a computer
34 online service, Internet service, or local electronic bulletin board service.

- 1 (5) "Sexually explicit conduct" means actual:
- 2 (i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or
3 oral-anal, or lascivious sexual intercourse where the genitals or pubic area of any person is
4 exhibited;
- 5 (ii) Bestiality;
- 6 (iii) Masturbation;
- 7 (iv) Sadistic or masochistic abuse; or
- 8 (v) Graphic or lascivious exhibition of the genitals or pubic area of any person.
- 9 (b) No person shall knowingly and intentionally use a computer or telecommunication
10 device to transmit an indecent visual depiction to a person he or she knows is, or believes to be, a
11 minor.
- 12 (c) No minor shall be charged under this section if his or her conduct falls within section
13 11-9-1.4, "Minor Electronically Disseminating Indecent Material to Another Person – "Sexting"
14 Prohibited."
- 15 (d) The fact that an undercover operative or law enforcement officer was involved in the
16 detection and investigation of an offense under this section shall not constitute a defense to a
17 prosecution under this section.
- 18 (e) Any person who violates the provisions of this section shall be subject to sex offender
19 registration requirements set forth in section 11-37.1-1 et seq., entitled "Sexual Offender
20 Registration and Community Notification Act."
- 21 (f) Any person who violates the provisions of this section shall be guilty of a felony and
22 may be imprisoned for not more than five (5) years or fined not more than five thousand dollars
23 (\$5,000), or both.

24 SECTION 5. Chapter 11-64 of the General Laws entitled "Electronic Imaging Devices"
25 is hereby amended by adding thereto the following section:

- 26 **11-64-3. Unauthorized dissemination of indecent material.** -- (a) A person is guilty of
27 unauthorized dissemination of indecent material when such person uses an imaging device to
28 capture, record, or store visual images of another person engaged in sexually explicit conduct or
29 of the intimate areas of another person, with or without that other person's knowledge and consent
30 under circumstances in which that other person would have a reasonable expectation of privacy
31 and, thereafter, without the consent of the person or all persons depicted in the visual image,
32 intentionally disseminates, publishes, or sells such visual image or images.
- 33 (b) Constitutionally protected activity is not subject to the provisions of this section.
- 34 (c) Any person who violates the provisions of this section shall not be subject to sex

1 offender registration requirements set forth in section 11-37.1-1 et seq., entitled "Sexual Offender
2 Registration and Community Notification Act."

3 (d) Any person who violates the provisions of this section shall be subject to
4 imprisonment for not more than three (3) years or fined not more than five thousand dollars
5 (\$5,000), or both.

6 SECTION 6. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES - COMPUTER CRIME

- 1 This act would create various criminal offenses relating to Internet activity.
- 2 This act would take effect upon passage.

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