



Cyber Stalking and Cyber Harassment Legislation in the United States: A Qualitative Analysis

Steven D. Hazelwood¹ & Sarah Koon-Magnin²

University of South Alabama, USA

Abstract

Despite growing concern among legal scholars and criminologists, our understanding of cyber stalking and cyber harassment legislation in the United States remains limited. Using a qualitative approach, this research explored cyber stalking and cyber harassment legislation across the 50 states and identified themes present in the statutes. The primary themes that were identified using coaxial coding included intent, anonymity, communicating a message of alarm/distress/fear, prior contact with the criminal justice system, jurisdiction, and reference to minors. This may be the first step in developing clear definitions of the important phenomena of cyber stalking and cyber harassment. A more nuanced understanding of current legislation in the United States may help social scientists move forward and further explore the nature and extent of these important crimes.

Keywords: Cyber stalking, Cyber harassment, Legislation, Jurisdiction, United States.

Introduction

Over the past two decades, technology has surged into businesses, communities, and the lives of individuals, altering the way that people communicate, study, work, and interact (Baer, 2010). People in various parts of the world can communicate in real time on a variety of devices such as cell phones, tablets, or computers. A photo, video, text message, or email may be viewed by a single individual, shared with another or “go viral” and spread to hundreds of thousands of users in a matter of minutes. Technology is continuously improving, which in turn influences the way that people interact by promoting global communication and allowing individuals to connect with others more readily. However, the Internet and related technology have also become new mediums for misconduct, in that communications via the Internet can be used to threaten, harass, intimidate, and cause harm to others (Recupero, 2008).

¹Alumnus, C/o Dr. Sarah Koon-Magnin, Assistant Professor, Department of Political Science and Criminal Justice, 226 Humanities Building, University of South Alabama, Mobile, AL 36688, USA. Email: Hazelwood.Steven@gmail.com

²Assistant Professor, Department of Political Science and Criminal Justice, 226 Humanities Building, University of South Alabama, Mobile, AL 36688, USA. Email: Koon-Magnin@southalabama.edu

Most of the extant work on cyber stalking and cyber harassment in the U.S. has been conducted by legal scholars and published in law reviews (see for e.g., Goodno, 2007; Fukuchi, 2011). A few social scientists have begun to explore this important issue, focusing on topics such as how many college students are affected by cyber harassment/cyber stalking and what demographic characteristics are associated with an increased risk of victimization (Reyns, Henson, & Fisher, 2011), and how the experience of cyber stalking differs from the experiences of traditional forms of stalking behavior (Sheridan & Grant, 2007). Despite these efforts, our understanding of cyber harassment and cyber stalking remains limited. Moreover, there is no clear definition of what constitutes “cyber harassment” or “cyber stalking” in the United States (Baer, 2010; Fukuchi, 2011; Goodno, 2007).

The goal of the current study was to analyze the cyber harassment (henceforth, CH) and cyber stalking (henceforth, CS) statutes across the 50 states.³ We compiled 103 statutes, coded them for qualitative themes, and then synthesized the themes in an attempt to identify what constitutes CS and CH in current legislation around the U.S. Two similar studies have been conducted by legal scholars, who have collected and analyzed statutes prohibiting CH (Fukuchi, 2011) and CS (Goodno, 2007), respectively. In both cases, the studies focused on the practical, legal implications of CH/CS legislation. In contrast, our study takes a broader approach to analyzing these laws so that they can be more meaningfully understood by criminologists. We hope that this helps future researchers to better identify trends in CS and CH, analyze predictors, and theorize about these emerging crimes.

The current state of understanding CS and CH

CS and CH have become prevalent problems that warrant the attention of criminologists and criminal justice scholars. Although no national estimates of the extent and pervasiveness of these crimes exist, studies of various cities and campuses are cause for concern. In a discussion of the extent of CS, the Department of Justice (1999) reported that approximately 20% of stalking cases in Los Angeles and 40% of the stalking cases in New York utilized the Internet as the mediums for these criminal acts. According to a recent study, approximately 40% of college students have been victims of CS at some point in their lives (Reyns et al., 2012). Based on these estimates, and considering the increased use and ubiquity of technological devices, it is clear that CS and CH require attention from the criminal justice system.

In addressing these problems, legislators have generally taken one of two approaches (Fukuchi, 2011). In some states, legislators opted to amend or modify extant statutes prohibiting harassment or stalking, by adding language specifying that contact initiated using the Internet or other digital device would also constitute harassment or stalking. Statutes utilizing this first approach, therefore, do not have statutes specifically titled CH or CS, though acts constituting CH or CS are prohibited. The second approach, selected by some states, was to add new legislation explicitly defining and prohibiting CH or CS. In these states, there are separate statutes defining traditional, in person forms of harassment/stalking and CH/CS. Due to the nature of CS and CH the perpetrator may

³ Most legislation that has been added to state codes was designed to address CS or CH among adults. Cyber bullying, which is also an important concern, typically involves children or teens and, except for extreme cases, is handled through school policies and disciplinary proceedings. The research reported here focuses on state-level legislation and thus focuses only on CS and CH.

or may not be physically present; rather, the Internet is the method of delivery of the crime. Because of the recent addition of CH/CS laws and the varying approaches states have taken to address these crimes, there is currently no consensus on a universal definition of either CH or CS (Fukuchi, 2011; Goodno, 2007). Researchers have attempted to define these phenomena in various ways.

Cyber Harassment (CH)

CH typically involves engaging in an act or behavior that torments, annoys, terrorizes, offends, or threatens an individual via email, instant messages, or other means with the intention of harming that person. Among the most infamous cases of CH is the case of Missouri 13-year old Megan Meier, who committed suicide after being harassed on the internet. Megan met an individual who she believed was a male peer on MySpace, but the individual who Megan was actually corresponding with was the mother of a teenage girl living in Meier's neighborhood. This 49-year old mother, Lori Drew, wrote hateful messages to the teen including this message on the day that Meier killed herself: "the world would be a better place without you" (Steinhauer, 2008).

Harassing communications encompass all of the events of traditional harassment, but extends the crime into the use of electronic devices to communicate messages that cause a person to feel personally targeted for harm. For example, creating a Facebook account in someone else's name and using that profile to insult people would be a form of CH. Sending inappropriate text messages (e.g., of a disturbing or sexual nature) or creating a website that features photo-shopped images of an unknowing individual in sexual acts are additional examples of CH. If it was part of a pattern or series of such behavior, nearly any act of CH would constitute CS.

Cyber Stalking (CS)

In its most basic definition, CS entails "the repeated pursuit of an individual using electronic or Internet-capable devices" (Reyns et al., 2012, p. 1). Repeated pursuits include any unwanted electronic communications, and may be threatening, coercive, or intimidating. Ultimately, stalking is a crime that creates a sense of fear, terror, intimidation, stress or anxiety in the victim. Because of the repetitive nature of CS, the victim may lose a sense of control over his/her own life, never knowing when the stalker may appear or contact the victim again. The fact that the stalker can access the victim at any time from any distance undermines the victim's sense of security and can lead to a constant experience of fear for the victim. In July of 2013, New York prosecutors secured an arrest warrant against a New Zealand woman named Jessica Parker who had been cyber stalking a writer named Melissa Anellin for approximately 5 years. One email written in 2009 stated, "You will have much to fear from me in the coming months. This is not over until someone is on the floor bleeding their life away," (Annese, 2013). Despite the distance, the internet allowed Parker to stalk, threaten, and terrify Anellin on a regular basis, promoting a sense of fear and undermining a sense of control in the victim.

Cases like that of Meier and Anellin demonstrate the serious harm that can be administered through forms of cyber communication. And although the mode of delivery is new, the underlying essence of the crimes of stalking and harassment remain visible in these types of cases. Legislation protected individuals from harassment and stalking before the introduction of the Internet into to society, but states have since added to or amended their legislation to protect citizens from cyber victimization of the same nature.

Current state of legislation

In perhaps the most comprehensive study of CS legislation, Goodno (2007) compiled and analyzed the statutes used to address CS across the 50 states. She identified five important differences between traditional forms of stalking and CS: (1) a message communicated online can be sent to anyone with internet access, is present immediately, and cannot be taken back or deleted; (2) the stalker may be anywhere in the world; (3) the stalker can stay anonymous with ease because of the lack of physical contact involved in this crime; (4) the stalker may easily impersonate another person to communicate with the victim; and (5) the stalker may use third party individuals to contact or communicate with the victim. Goodno (2007) concludes that these differences make CS a unique crime warranting unique laws. Thus, her analysis suggests that it is more beneficial for states to create new legislation rather than modify previously existing stalking and harassment statutes because of the emphasis on physical presence in original stalking and harassment statutes.

Recently, Fukuchi (2011) analyzed the legislation covering CH, though she included both CS and cyber bullying under this umbrella term as well. Her primary argument was that the current state of legislation makes it very difficult to prove a case of CH beyond a reasonable doubt. She proposed the use of “burden shifting devices” as a tool to help hold perpetrators accountable for CH. One such burden shifting device would include allowing certain inferences to be made when the offender engages in specific behavior. For example, Fukuchi (2011) discusses that in several states if an offender continues to contact a victim after the victim has asked the offender to cease contact, an intent to harass may be presumed. Although she recognizes the constitutional challenges of this approach, she makes a cogent argument for the usefulness of incorporating these burden shifting devices in to CH legislation.

The Present Research

We benefit from the base laid by Goodno (2007) and Fukuchi (2011); however, our study is more exploratory than the work of these legal scholars. Specifically, we updated and expanded upon their work in three ways. First, Goodno (2007) focused exclusively on CS and Fukuchi (2011) focused primarily on CH. In this study, we consider both CS and CH statutes. Second, some laws have been modified or amended since the prior studies were published, and we examine the most recent version of these statutes. Third, both Goodno (2007) and Fukuchi (2011) focused on the legal elements of proving/prosecuting a case of CS/CH. We look at the statutes from a broader context, focusing descriptively on the content of the laws. This provides a more nuanced account of how states define and prohibit CS and CH.

Methods

To compile a comprehensive list of CH/CS statutes in the U.S., we referenced various sources. As shown in Table 1, the majority of the statutes were either studied by Goodno (2007), Fukuchi (2011), or both. In addition to these published sources, we also referenced lists on three websites⁴ to ensure the most up to date information. During the

⁴ The three websites that were referenced for the most up to date legislation included: the National Conference of State Legislatures (<http://www.ncsl.org/issues-research/telecom/cyberstalking-and-cyberharassment-laws.aspx>), Kids be Safe Online

course of compiling these statutes from the state penal codes, we also found a few additional statutes listed in the Table of Contents of the state's penal codes that were relevant to this analysis. After compiling a list of all statutes, we eliminated redundancies, any statutes specifically focused on cyber bullying, and any statutes that did not include a cyber component (e.g., stalking statutes that prohibited physical personal contact and did not include electronic communication as a type of personal contact). Our complete analytic sample of statutes ($n = 103$) is shown in Table 1.

After locating and acquiring the text of the statutes listed in Table 1, the first author read and inductively coded each of the statutes. Codes were used to identify and track themes that emerged across states. As the first author read through and identified these themes, he used an open-coding scheme to develop a list of codes. After reading through all of the statutes once, the list of codes was saturated and complete. The first author then read through all of the statutes a second time to ensure that all codes that were present for each state had been identified and recorded. The second author then read and coded all of the statutes, adding codes as necessary. This technique, known as investigator triangulation, was used for validation purposes (Merriam, 2009). The two authors met to discuss discrepancies, which were resolved by mutual agreement of whether a theme was present. The method used here allowed us to make quantitative statements about qualitative data by analyzing the prevalence of certain themes across the 50 states.

Results and Discussion

Forty-nine of the 50 states have statutes specifically addressing CH or CS or both. The one exception, Nebraska, has a traditional stalking and harassment statute (28-311.02) that makes no specific reference to electronic or digital communication. There is a broad reference to "telephoning, contacting, or otherwise communicating with," (28-311.02) but this statute is not recognized as a cyber crime statute in any of the sources that were referenced when compiling the sample of CS and CH legislation utilized here. Thus the analyses presented here focus on the remaining 49 states and exclude Nebraska.

Six primary themes emerged from this analysis and will be discussed in turn: 1. Intent, 2. Anonymity, 3. Alarm/Distress/Fear, 4. Prior Contact, 5. Jurisdiction, and 6. Age Reference.⁵ Within four of these themes (Intent, Anonymity, Alarm/Distress/Fear, Prior Contact), sub-themes were also identified. The presence of each theme and sub-theme by state is shown in Table 2.

(<http://www.kidsbesafeonline.com/state-legislation.html>), and BaddTeddy (http://www.baddteddy.com/stalkers/stalker_laws.htm).

⁵ Two additional themes were identified, but will not be discussed in the paper. The first theme was *In-Person Contact*, which is not an element of a cyber-crime. This theme is indicative of the fact that many states amended existing harassment or stalking statutes to recognize CH or CS. The second theme, *Exempt Acts*, is that some statutes explicitly state that certain activities are not prohibited by the CS or CH law if they are protected by the First Amendment. This theme is discussed in work by Fukuchi (2011).

Table 1. Cyber stalking and cyber harassment statutes by state

State	Relevant Statute(s)	State	Relevant Statute(s)
Alabama	13A-11-8	Montana	45-5-220, 45-8-213
Alaska	11.41.270, 11.61.120	Nebraska	N/A
Arizona	13-2921	Nevada	200.575
Arkansas	5-41-108	New Hampshire	644:4, 633:3a
California	422, 528.5, 646.9, 653.2, 653m, Civil code: 1708.7	New Jersey	2C:12-10, 2C:33-4
Colorado	18-9-111, 18-3-602	New Mexico	30-3A-3
Connecticut	53a-182b, 53a-183	New York	240.30
Delaware	11-1311	North Carolina	14-196, 14-196.3, 14-277.3A
Florida	784.048, 817.568	North Dakota	12.1-17-07
Georgia	16-5-90, 16-5-91	Ohio	2903.211, 2917.21
Hawaii	711-1106, 711-1106.4, 711-1106.5	Oklahoma	21-820-1173, 21-850-1172, 21-1953
Idaho	18-7906	Oregon	163.730, 163.732, 166.065
Illinois	720 ILCS 5/12-7.5, 720 ILCS 135/1-2, 720 ILCS 135/1-3, 720 ILCS 135/2	Pennsylvania	18-2709, 18-2709.1
Indiana	35-45-2-2, 35-45-10-1, 35-45-10-2, 35-45-10-5	Rhode Island	11-52-4.2, 11-52-4.3
Iowa	708.7	South Carolina	16-3-1700, 16-17-430, 16-3-1710, 16-3-1720, 16-3-1730
Kansas	21-3438, 21-6206	South Dakota	49-31-31, 22-19A-1
Kentucky	525.080	Tennessee	12.1-17-07, 39-17-315, 39-17-308
Louisiana	14:40.2, 14:40.3	Texas	33.07, 42.07
Maine	17-A 210A	Utah	76-5-106.5, 76-9-201
Maryland	3-805	Vermont	13-1027, 13-1061, 13-1062, 13-1063, 13-1027
Massachusetts	265-43, 265-43A	Virginia	18.2-60, 18.2-152.7:1
Michigan	750.411h, 750.411i, 750.411s	Washington	9.61.260, 9A.46.020
Minnesota	609.749, 609.795	West Virginia	61-3C-14a
Mississippi	97-45-15, 97-45-17, 97-29-45	Wisconsin	947.0125, 947.013
Missouri	565.090, 565.225	Wyoming	6-2-506

Notes:

Statutes listed in **Bold** were included in Fukuchi's (2011) work

Statutes listed in *Italics* were included in Goodno's (2007) work

Statutes that are both **Bold and Italicized** were included in both Fukuchi (2011) and Goodno's (2007) work

Statutes that are Underlined were listed on referenced websites (see endnote *ii*), but not in Fukuchi (2011)

or Goodno's (2007) work

Statutes that are in normal font (i.e., not bold, italicized, or underlined) were located by the researchers when compiling the list of statutes

Table 2. Presence of each code in the CS and CH statutes of each state

State	Intent	Repeat Behavior	Told to Stop	Provoke	Extort	Anonymous	Third Party	Permit Use of a Device	Alarm/Fear/Distress	Threat	Family Member	Language/Gestures	Prior Contact	Protective Order	Jurisdiction	Age/Minors	Themes Present in State
Alabama	X					X			X	X		X					5
Alaska	X	X		X		X			X	X		X					7
Arizona	X					X			X								3
Arkansas	X								X	X		X					4
California	X	X	X				X		X	X	X	X	X	X	X		11
Colorado	X	X		X		X	X		X	X	X	X	X	X	X		12
Connecticut	X								X	X		X	X		X		6
Delaware	X	X		X		X		X	X		X	X					7
Florida	X	X							X	X	X	X	X	X		X	9
Georgia	X	X							X	X	X		X	X	X		8
Hawaii	X	X	X	X					X	X		X	X				8
Idaho	X	X	X						X	X	X						6
Illinois	X	X	X				X	X	X	X	X	X	X	X		X	12
Indiana	X								X	X		X	X	X			6
Iowa	X								X	X			X				4
Kansas	X	X					X	X	X	X	X	X	X	X			10
Kentucky	X					X			X	X							4
Louisiana	X	X						X	X	X	X	X	X	X	X	X	11
Maine	X	X			X				X	X	X		X				7
Maryland	X								X								2
Massachusetts	X	X							X	X				X			5
Michigan	X	X	X						X	X	X		X	X	X	X	10
Minnesota	X	X					X		X	X					X		6
Mississippi	X	X			X	X		X	X	X	X	X	X	X	X		12
Missouri	X	X				X			X	X	X	X	X	X		X	10
Montana	X	X	X		X				X	X		X	X	X			9
Nebraska																	0
Nevada	X	X							X	X	X		X				6
New Hampshire	X	X	X	X		X	X		X	X	X	X	X	X	X		13
New Jersey	X	X				X			X	X		X	X	X	X		9
New Mexico	X	X					X		X	X			X				6
New York	X					X			X	X			X				5
North Carolina	X	X			X		X	X	X	X	X	X		X	X		11
North Dakota	X					X			X	X		X			X		6
Ohio	X		X	X		X	X	X	X	X	X		X	X		X	12
Oklahoma	X	X	X		X	X		X	X	X	X	X	X	X	X		13
Oregon	X	X		X			X	X	X	X	X	X	X	X	X	X	13
Pennsylvania	X	X				X			X	X	X	X	X	X	X		10
Rhode Island	X	X							X	X	X		X	X			7
South Carolina	X	X	X					X	X	X	X	X	X	X			10
South Dakota	X	X			X	X	X	X	X	X		X					9
Tennessee	X	X				X			X	X	X	X	X	X	X	X	11
Texas	X		X					X	X	X		X					6
Utah	X	X	X	X			X		X	X	X	X	X	X	X	X	13
Vermont	X	X				X			X	X		X	X			X	9
Virginia	X								X	X	X				X		6
Washington	X	X				X	X		X	X	X	X	X	X	X		11
West Virginia	X	X	X			X		X	X	X		X	X		X		10
Wisconsin	X	X				X		X	X	X		X					7
Wyoming	X	X				X			X	X	X	X		X			8
Theme Frequency	49	36	13	8	6	22	13	14	49	46	26	34	32	26	21	10	

1. Intent

In order to prove someone guilty of a crime (with the exception of strict liability crimes) the state must show evidence of both *actus reus* and *mens rea*. *Actus reus*, “guilty act,” is evident in the criminal behavior (in this case CH or CS). *Mens rea*, “guilty mind,” refers to the mal intent of the individual who committed the act. This mal intent, because of its necessity in the U.S. criminal justice system, was the only theme present in each state’s CS and CH statutes ($n = 49$; 100% of the sample). Statutes containing the words “intent” or “purpose” or which described a behavior as occurring “willfully” or “knowingly” were coded as demonstrating *Intent*. For example, the Massachusetts statute concerns an individual who “willfully and maliciously engages in a knowing pattern of conduct...” (43A). The individual must have understood that what they were doing was wrong (*mens rea*) and engaged in the behavior (*actus reus*) anyway. However, a close reading of the statutes revealed that four sub-themes related to intent were also mentioned in the legislation of multiple states: *Repeat Behavior*, *Told to Stop*, *Provoke*, and *Extort*.

The sub-theme *Repeat Behavior* refers to performing an act multiple times. For example, as stated in the Idaho statute, “repeated acts of nonconsensual contact” (18-7906) indicate an intentional series of behavior. This repetition is understood as “evidencing a continuity of purpose” (646.9), according to the California statutes. One text or email may indicate a moment of poor judgment or a message sent to the wrong number, but a series of communication over a period of time suggests that the perpetrator is intentionally contacting a victim and each additional message received may increase the victim’s perception that the act will be continued. According to this analysis, most states ($n = 36$; 73%) make reference to *Repeat Behavior* in their CH/CS legislation. *Repeat Behavior* is especially troubling when an individual has been asked to cease communication with the target of the stalking or harassment and refuses to do so.

A state that contains the sub-theme *Told to Stop* refers to a victim expressing verbally or through other means (e.g., email, text message) his/her wish for the perpetrator to discontinue contact. This behavior can be very disturbing to a victim. For example, as stated in the Michigan statute, “‘Unconsented contact’ means any contact with another individual that is initiated or continued without that individual’s consent or in disregard of that individual’s expressed desire that the contact be avoided or discontinued” (750.411h). When someone is asked to discontinue threatening behavior and the offender continues to perform the act without regard for the victim it removes the victim’s sense of control and promotes fear. According to this analysis, 27% of the states ($n = 13$) make reference to *Told to Stop* in their CH/CS legislation.

Communication is labeled as harassing in 16% of the states ($n = 8$) if it is intended to *Provoke* the victim into inappropriate, dangerous, or criminal behavior. As described in the Alaska statute, an offender is prohibited from, “insult[ing], taunt[ing], or challeng[ing] another person in a manner likely to provoke an immediate violent response” (11.61.120). If an offender can manipulate or provoke a victim into a physical confrontation or retaliatory act the offender is then in a position of power over the victim, as the original victim has now committed a crime against the original perpetrator. This type of behavior is also characteristic of one goal of stalking behavior: to predict and control the victim’s behavior.

In 6 additional states (12%), CH or CS statutes expressly prohibit *Extortion* of the potential victim. *Extortion* refers to an offender threatening or harassing someone for the purpose of financial or personal gain. In Oklahoma it is illegal, “to defraud, deceive,

extort...for the purpose of controlling or obtaining money, property, services or other things of value” (21-1953). An offender cannot use fear and intimidation – typical tools of harassment – to extort money from a victim. The increased anonymity of the internet makes *Extortion* and other sub-themes of *Intent* increasingly relevant and difficult to police in CH/CS compared to in-person harassment and stalking.

2. *Anonymity*

The fact that an individual can purchase a temporary cell phone which does not require a registered name or can create social networking accounts using pseudonyms is a serious concern for legislators, law enforcement, and prosecutors when attempting to deter and respond to CH/CS. It makes the perpetrator more difficult to identify and track, and can also exacerbate the fear and apprehension felt by the victim, who may not know who is harassing/stalking him/her. Likely motivated by these concerns, 45% of the states ($n = 22$) make reference to *Anonymity* in their CH/CS statutes. Many of these states acknowledge that it constitutes harassment of the victim if a perpetrator “Anonymously or otherwise...” (Arizona 13-2921) engages in the prohibited behaviors. New Hampshire specifies that it constitutes harassment to engage in prohibited acts “without disclosing his or her identity” (644: 4). The use of the internet to target someone for harassment may be especially disturbing when done anonymously because it is unclear who the victim can and cannot trust, or where the stalker may be lurking. In addition, when a stalker shields his/her identity it makes it more difficult for law enforcement to investigate, and for prosecutors to prosecute the crime.

Another method of hiding one’s identity is to enlist the help of a *Third Party* person to deliver a message to the victim on behalf of the harasser or stalker. Oregon’s statutes describe various ways in which using a *Third Party* can constitute harassment. For example, “Communicating with the other person through a third party... Communicating with a third person who has some relationship to the other person with the intent of affecting the third person’s relationship with the other person... Delivering directly or through a third person any object...” The offender may be using an innocent *Third Party* who does not realize that the message they are delivering is inappropriate or prohibited, but by employing this person the offender can attempt to circumvent a protective order or maintain *Anonymity*. According to this analysis, 27% of the states ($n = 13$) make reference to *Third Party* acts.

There are also situations in which a *Third Party* may be a knowing participant in the harassment, and in these cases the *Third Party* may be held criminally responsible along with the primary perpetrator. When an individual allows their phone, tablet, laptop, or other device to be used for the commission of CH/CS, they are abetting the crime; a theme that we call *Permit Use of a Device*. As stated in the West Virginia statutes, “it is unlawful for any person to knowingly permit a computer, mobile phone or personal digital assistant or other electronic communication device under his or her control to be used for any purpose prohibited by this section” (61-3C-14a). Fourteen states (29%) define those who *Permit Use of a Device* as perpetrators in the CH/CS. By providing the means of the CH/CS communication, the individual who is permitting use of his/her device is serving as an accomplice to a crime.

Communicating anonymously or through another person or another person’s device is related to the prior theme of *Intent* because the desire to remain unidentified may indicate that the perpetrator knows that what he/she is doing is wrong and does not want to be

caught and potentially face criminal charges. However, the theme of *Anonymity* also relates to the next primary theme to be discussed because it promotes a sense of fear and anxiety in the victim.

3. *Alarm/Distress/Fear*

The very nature of stalking or harassing an individual is that the victim experiences *Alarm/Distress/Fear* as a result of the stalking behavior. Coupled with the perpetrators mal *Intent*, the presence of an action that produces *Alarm/Distress/Fear* in a victim is evidence of harassment or stalking in most states. When these acts are communicated on an electronic device, they constitute CH or CS. All 49 of the states (100%) with CH/CS legislation in place make reference to *Alarm/Distress/Fear*. What may cause one person to suffer emotional distress or experience fear may differ from what causes another to share those emotions. Thus, the law uses a “reasonable person standard” to determine whether a crime has been committed. This standard broadens the definition of *Alarm/Distress/Fear* beyond the individual victim and his/her experiences, instead testing whether an average (“reasonable”) person would have also experienced the emotions of *Alarm/Distress/Fear*. If a reasonable person would experience *Alarm/Distress/Fear* as a result of the perpetrator’s actions, those actions constitute CH/CS. Indiana’s statutes define stalking as an act that would “cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and actually causes the victim to feel terrorized, frightened, intimidated, or threatened” (IC 35-45-10-1) and harassment as “contact that would cause a reasonable to suffer emotional distress and that actually causes the victim to suffer emotional distress” (IC 35-45-10-2). It is not enough for just the victim to experience the *Alarm/Distress/Fear*, nor is it enough for a reasonable person to experience *Alarm/Distress/Fear*. Rather, an individual must experience *Alarm/Distress/Fear* and a reasonable person must agree that this was a justified reaction. There are three sub-themes related to *Alarm/Distress/Fear*: *Threat*, *Family Member*, and *Language/Gestures*.

The clearest example of *Alarm/Distress/Fear*, and simplest act to prove that meets the reasonable person standard, is a direct *Threat*. For this reason, most states ($n = 46$; 94%) make explicit reference to *Threat* in their statutes, in addition to *Alarm/Distress/Fear*. In Utah, CH is described as an activity or series of activities that, “annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, or disrupt the electronic communications of another” (76-9-201). Colorado references when a perpetrator, “threaten(s) bodily injury or property damage” (18-9-111). However, this statute is clarified as follows, “The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear” (18-3-602). That is, a perpetrator does not have to explicitly state that he/she intends to harm the victim if the message being sent by the perpetrator’s harassing/stalking behavior demonstrates an intent to harm the victim.

It is important to note that the communication of a *Threat* or, more broadly, *Alarm/Distress/Fear*, does not necessarily have to be addressed towards the individual who is being stalked or harassed. A perpetrator who focuses on the victim’s children, parents, siblings, or significant others is still guilty of CH/CS in many states ($n = 26$; 52%). The theme *Family Member* is defined in the Mississippi statutes to include, “a member of the victim’s family, or another individual living in the same household as the victim” (97-45-15). California offers a broader definition: “spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the six months preceding any portion of the pattern of conduct, regularly

resided, in the plaintiff's household" (1708-1725). Thus, the communication causing an individual to feel *Alarm/Distress/Fear* may or may not include a threat and can be aimed at a variety of individuals to constitute CH/CS. These messages can also be communicated in various ways.

Statutes in 36 states (73%) acknowledge that a message can be communicated in multiple forms by explicitly making reference to *Language or Gestures* as modes of communication. For example, the Virginia statutes prohibit, "any person, with the intent to coerce, intimidate, or harass any person," from using "a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act" (18.2-152.7: 1). Alabama's statutes prohibit communication that, "Directs abusive or obscene language or makes an obscene gesture towards another person" (13A-11-8). Gestures, which may be displayed online, via a webcam, or sent through a photo or video message to a cell phone, may include displaying the middle finger, unwelcome sexually provocative images, or making threatening signs such as slitting one's throat or pulling a trigger. Intimidating and harassing *Language or Gestures* can offend an individual and cause him/her to experience *Alarm/Distress/Fear*.

4. Prior Contact with the Criminal Justice System

It is typical in the criminal justice system that individuals who have a prior criminal record face more severe charges or penalties than those without a criminal history. When an individual has been warned or punished through prior contact with the criminal justice system (or in the case of a protective order has been expressly prohibited from contacting an individual) it should deter future criminal behavior. If the offender is not deterred and continues to engage in CH/CS, the criminal justice system typically requires a more severe sanction to ensure that the offender desists from future crime either through deterrence or incapacitation. In 32 states (65%) the CH/CS statutes make reference to an individual's *Prior Contact* with the criminal justice system. More than half of states ($n = 26$; 53%) reference a specific form of *Prior Contact*: violation of a *Protective Order*. If, "at the time of the harassment an injunction or restraining order was in effect prohibiting the harassment," (South Carolina statute 16-3-1710) the corresponding criminal charge or sentence imposed on the perpetrator will be increased.

5. Jurisdiction

Perhaps the most complicated aspect of defining CH/CS is the difficulty in determining the appropriate *Jurisdiction* in which legal action should be pursued. The essence of CS and CH allows the perpetrator to be nearly anywhere in the world when he/she sends the CH/CS communications to the victim. To ensure that the perpetrator can be held accountable for his/her behavior, in many states the typical jurisdictional lines recognized by the criminal justice system are expanded when considering CS and CH. A sizable minority of states ($n = 21$; 43%) explicitly address this concern by defining the *Jurisdiction*. For example, as stated in the Minnesota statutes "the accused may be prosecuted in any county in which one of the acts was committed for all acts... at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides" (609.749). Without this explicit acknowledgment, a CH or CS case may go unpunished for the practical reason that it is not clear who is legally in

charge of investigating and prosecuting the act. Allowing charges to be filed in the jurisdiction in which the harassing communication either originated or was received is an important step in responding to the unique elements of these crimes.

6. Age Reference

The final theme that emerged from this analysis was a specific reference to *Age*. In 10 states (20%), the degree of the crime and/or penalty was increased when the victim of the CH or CS was a child. In Missouri, harassment jumps from a misdemeanor to a felony when it is, “committed by a person twenty-one years of age or older against a person seventeen years of age or younger” (565.090). In Tennessee, stalking becomes a felony if, “the victim of the offense was less than eighteen years of age at any time during the person’s conduct, and the person is five or more years older than the victim” (3917-315). It is common for minors to receive extra protections under the law, and for adults who victimize children to face more severe charges and punishments than those who victimize their peers. Thus, the inclusion of this theme in some states’ CH/CS is not surprising.

Discussion

Each state is responsible for its own laws and protections.⁶ Traditionally, legislation has protected individuals from harassment and stalking. Since the proliferation of technology into communities and individual’s lives, CS and CH have resulted in new legislation. Despite a great deal of variation across states, there are also many sources of overlap. In this analysis, we identified a total of 6 themes and 10 sub-themes that emerged as patterns in state legislation. The most common (and legally critical) theme was *Intent*. However, the *Intent* to commit a crime can be evidenced in various ways, including: a pattern of *Repeat Behavior*, maintaining contact after being *Told to Stop*, or attempting to *Provoke* or *Extort* a victim. *Anonymity* is another common theme in CH/CS legislation and can be aided by enlisting the help of an unknowing *Third Party* or finding an individual who will *Permit Use of a Device*.

All crimes, by their nature, are harmful to someone. But the primary characteristic of CS and CH is that it promotes *Alarm/Distress/Fear*. These emotions may be the result of a *Threat*, concern for a *Family Member*, or receipt of distributing communication in the form of *Language/Gestures*. The final three themes, *Prior Contact*, *Jurisdiction*, *And Reference to Minors*, are typically mentioned in criminal codes. However, the definition of jurisdiction was broadened in many states’ CS and CH statutes to better serve victims by holding their perpetrators accountable.

⁶ It should be noted that the definition of “electronic communication” differs substantially across states. The simplest description is “electronic communication” (see, for example, Alaska’s 11.41.270). However, in some states, specific technologies are listed. In Georgia, for example, ‘contact’ shall mean any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device” (16-5-90). Texas’ statute is even more specific: “Electronic communication” means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes: (A) a communication initiated by electronic mail, instant message, network call, or facsimile machine; and (B) a communication made to a pager.” (42.07).

1. Most comprehensive legislation

New Hampshire, Oklahoma, Oregon, and Utah each have 13 of the 16 themes/sub-themes represented in their CH/CS legislation, presenting a four-way tie for the state with the most comprehensive CH/CS legislation. However, when the content of the laws is considered, there are important differences between these four states. Both New Hampshire and Oklahoma specify that a message communicated with *Anonymity* constitutes cyber crime, whereas Oregon and Utah make no specific reference to *Anonymity*. This is an important element when dealing with CH/CS, in which identities are so easily hidden or impersonated. However, Oregon has, in our view, the most comprehensive discussion of how a *Third Party* may be used by a perpetrator of CS and CH. New Hampshire does not state that third party individuals will be held accountable if they *Permit Use Of A Device*, allowing the offender to communicate with the victim.

There is no single state that has legislation that protects citizens by incorporating all of the themes/sub-themes into the legislation. However, the four states mentioned above seem to be closest to providing a comprehensive definition of CH/CS in their legislation. On the other hand, two states seem to be lagging behind the others in development of comprehensive legislation protecting its citizens from CH/CS.

2. Least comprehensive legislation

The state of Nebraska at this time has no legislation in place prohibiting CH/CS. As noted earlier, the traditional stalking statute in place in Nebraska may be broadly applied to prohibit CH/CS, but is not recognized by legal scholars (Fukuchi, 2011; Goodno, 2007) as doing so. Arizona does have a CH statute in place, but the usefulness of this statute may be limited by its vagueness. Only three of the 16 themes and sub-themes identified here were present in Arizona: *Intent*, *Anonymity*, and *Alarm/Distress/Fear*. Given that *mens rea* (here conceptualized as *INTENT*) and *actus reus* (the behavior causing *Alarm/Distress/Fear*) are both required elements of a crime, Arizona's statute has only one additional theme, *Anonymity*. Because of its brevity (fewer than 100 words), this statute could exclude many activities that would be recognized as CH/CS in other states, thereby leaving citizens unprotected.

Conclusion

When used properly, new technologies, social networking sites, and electronic devices are beneficial tools. However, in the hands of a potential criminal, these tools can be used to exploit and cause harm. This research suggests that some states have recognized the impact of technology on social interaction throughout the U.S. and made efforts to update legislation to protect its citizens. Other states still have substantial gaps in the creation and implementation of legislation that fills the cracks created by the incorporation of the Internet into everyday life. There are obvious hardships associated with investigating and prosecuting CS and CH. There is also a need for well-written legislation that details the protections and penalties for CS and CH in the U.S.

A lack of adequate legal protections may unintentionally help an offender to trap a victim in a state of terror, to cause a victim to feel defenseless, and to cause a victim to be threatened or in danger, while at the same time empowering the offender. Lack of proper protection may also lead citizens to retaliate through vigilante justice. It is clear that CS and CH laws have developed substantially in recent years, but there is still room for improvement. Given the severity of these crimes and the potential for CH/CS to escalate

into damaging or even fatal situations, this research suggests that CS and CH legislation across the 50 states is in need of a review that incorporates protection from the harm that technology can have when used by a perpetrator unconstrained by physical boundaries.

Acknowledgement

We wish to thank Vaughn S. Millner, Dean of the University of South Alabama's School of Continuing Education and Special Programs, for her encouragement on this project and helpful revisions on early drafts.

References

- Annese, J. A. (July 18, 2013). FBI: Stalker terrorized Harry Potter fan author, a former Staten Island Advance reporter, for years. *Staten Island Advance*. Retrieved from: http://www.silive.com/news/index.ssf/2013/07/fbi_stalker_terrorized_harry_p.html.
- Baer, M. (2010). CS and the internet landscape we have constructed. *Virginia Journal of Law & Technology*, 15, 153-172.
- Fukuchi, A. (2011). A balance of convenience: The use of burden-shifting devices in criminal cyberharassment law. *Boston College Law Review*, 52, 289-338.
- Goodno, N. H. (year). CS, a new crime: Evaluating the effectiveness of current state and federal laws. *Missouri Law Review*, 72, 125-197.
- Kids be Safe Online. (2009). *State Legislation*. Retrieved from <http://www.kidsbesafeonline.com/state-legislation.html>
- Merriam, S. B. (2009). *Qualitative research: A guide to design and implementation*. San Francisco, CA: Jossey-Bass.
- National Conference of State Legislatures. (2013). *State Cyberstalking and Cyberharassment Laws*. Retrieved from <http://www.ncsl.org/issues-research/telecom/cyberstalking-and-cyberharassment-laws.aspx>
- Nunnally, S. W. (1994). *Stalking Laws*. Retrieved from http://www.baddteddy.com/stalkers/stalker_laws.htm
- Sheridan, L. P., & Grant, T. (2007). Is cyberstalking different? *Psychology, Crime, & Law*, 13(6), 627-640.
- Recupero, P. R. (2008). Forensic evaluation of problematic internet use. *Journal of the American Academy of Psychiatry Law*, 36, 505-514.
- Reyns, B. W., Henson, B., & Fisher, B. S. (2012). Stalking in the twilight zone: Extent of cyberstalking victimization and offending among college students. *Deviant behavior*, 33, 1-25. doi: 10.1080/01639625.2010.538364
- Steinhauer, J. (November 24, 2008). Closing arguments in trial of mother in cyberbullying that ended in girl's suicide. *The New York Times*. Retrieved from <http://www.nytimes.com/2008/11/25/us/25myspace.html?ref=meganmeier>
- United States Department of Justice. (1999). 1999 report on cyberstalking: A new challenge for law enforcement and industry. Retrieved from <http://www.justice.gov/criminal/cybercrime/CS.htm>