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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO CRIMINAL OFFENSES - COMPUTER CRIME

Introduced By: Senators Lombardi, and McCaffrey

Date Introduced: February 28, 2013

Referred To: Senate Judiciary

(Attorney General)

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2 Crime" is hereby repealed.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. Section 11-37.1-2 of the General Laws in Chapter 11-37.1 entitled "Sexual
18 Offender Registration and Community Notification" is hereby amended to read as follows:

19 **11-37.1-2. Definitions.** -- (a) "Aggravated offense" means and includes offenses

1 involving sexual penetration of victims of any age through the use of force or the threat of use of
2 force or offenses involving sexual penetration of victims who are fourteen (14) years of age or
3 under.

4 (b) "Board", "board of review", or "sex offender board of review" means the sex
5 offender board of review appointed by governor pursuant to section 11-37.1-6.

6 (c) (1) "Conviction" or "convicted" means and includes any instance where:

7 (i) A judgment of conviction has been entered against any person for any offense
8 specified in subsection (e) or (k) of this section, regardless of whether an appeal is pending; or

9 (ii) There has been a finding of guilty for any offense specified in subsection (e) or (k) of
10 this section, regardless of whether an appeal is pending; or

11 (iii) There has been a plea of guilty or nolo contendere for any offense specified in
12 subsection (e) or (k) of this section, regardless of whether an appeal is pending; or

13 (iv) There has been an admission of sufficient facts or a finding of delinquency for any
14 offense specified in subsection (e) or (k) of this section, regardless of whether or not an appeal is
15 pending.

16 (2) Provided, in the event that a conviction, as defined in this subsection, has been
17 overturned, reversed, or otherwise vacated, the person who was the subject of the conviction shall
18 no longer be required to register as required by this chapter and any records of a registration shall
19 be destroyed. Provided, further that nothing in this section shall be construed to eliminate a
20 registration requirement of a person who is again convicted of an offense for which registration is
21 required by this chapter.

22 (d) [Deleted by P.L. 2003, ch. 162, section 1 and by P.L. 2003, ch. 170, section 1].

23 (e) "Criminal offense against a victim who is a minor" means and includes any of the
24 following offenses or any offense in another jurisdiction which is substantially the equivalent of
25 the following or for which the person is or would be required to register under 42 U.S.C. section
26 14071 or 18 U.S.C. section 4042(c):

27 (1) Kidnapping or false imprisonment of a minor, in violation of section 11-26-1.4, 11-
28 26-1 or 11-26-2, where the victim of the offense is sixteen (16) years of age or older and under
29 the age of eighteen (18) years;

30 (2) Enticement of a child in violation of section 11-26-1.5 with the intent to violate
31 sections 11-37-6, 11-37-8, 11-37-8.1, 11-37-8.3;

32 (3) Any violation of section 11-37-6, 11-37-8, 11-37-8.1, or 11-37-8.3;

33 (4) Any violation of section 11-1-10, where the underlying offense is a violation of
34 chapter 34 of this title and the victim or person solicited to commit the offense is under the age of

1 eighteen (18) years;

2 (5) Any violation of section 11-9-1(b) or (c); or

3 (6) Any violation of section 11-9-1.3;

4 [\(7\) Any violation of section 11-9-1.5;](#)

5 ~~(7)~~[\(8\)](#) Any violation of section 11-37.1-10;

6 ~~(8)~~[\(9\)](#) Any violation of section 11-37-8.8;

7 ~~(9)~~[\(10\)](#) Any violation of section 11-64-2 where the victim is under the age of eighteen
8 (18) years; or

9 ~~(10)~~[\(11\)](#) Murder in violation of section 11-23-1 where the murder was committed in the
10 perpetration of, or attempted perpetration of, kidnapping and where the victim of the offense is
11 under eighteen (18) years of age.

12 (f) "Designated state law enforcement agency" means the attorney general or his or her
13 designee.

14 (g) "Employed, carries on a vocation" means and includes the definition of "employed,
15 carries on a vocation" under 42 U.S.C. section 14071.

16 (h) "Institutions of higher education" means any university, two (2) or four (4) year
17 college or community college.

18 (i) "Mental abnormality" means a congenital or acquired condition of a person that
19 affects the emotional or volitional capacity of the person in a manner that predisposes that person
20 to the commission of criminal sexual acts to a degree that makes the person a menace to the
21 health and safety of other persons.

22 (j) "Predator" means a person whose act(s) is (are) or was (were) directed at a stranger,
23 or at a person with whom a relationship has been established or promoted for the primary purpose
24 of victimization.

25 (k) "Sexually violent offense" means and includes any violation of section 11-37-2, 11-
26 37-4, 11-37-6, 11-37-8, 11-37-8.1, 11-37-8.3, or 11-5-1 where the specified felony is sexual
27 assault, or section 11-23-1 where the murder was committed in the perpetration of, or attempted
28 perpetration of, rape or any degree of sexual assault or child molestation, or any offense in
29 another jurisdiction which is substantially the equivalent of any offense listed in this subsection or
30 for which the person is or would be required to register under 42 U.S.C. section 14071 or 18
31 U.S.C. section 4042(c).

32 (l) "Sexually violent predator" means a person who has been convicted of a sexually
33 violent offense and who has a mental abnormality or personality disorder that makes the person
34 likely to engage in predatory sexually violent offenses.

1 (m) "Student" means and includes the definition of "student" under 42 U.S.C. section
2 14071.

3 (n) "Parole board" means the parole board or its designee.

4 SECTION 3. Section 11-52-1 of the General Laws in Chapter 11-52 entitled "Computer
5 Crime" is hereby amended to read as follows:

6 **11-52-1. Definitions.** -- As used in this chapter:

7 (1) "Access" means to approach, instruct, communicate with, store data in, enter data in,
8 retrieve data from, or otherwise make use of any resources of, a computer, computer system, or
9 computer network.

10 (2) "Computer" means an electronic, magnetic, optical, hydraulic or organic device or
11 group of devices which, pursuant to a computer program, to human instruction, or to permanent
12 instructions contained in the device or group of devices, can automatically perform computer
13 operations with or on computer data and can communicate the results to another computer or to a
14 person. The term "computer" includes any connected or directly related device, equipment, or
15 facility which enables the computer to store, retrieve or communicate computer programs,
16 computer data or the results of computer operations to or from a person, another computer or
17 another device.

18 (3) "Computer data" means any representation of information, knowledge, facts,
19 concepts, or instructions which is being prepared or has been prepared and is intended to be
20 processed, is being processed, or has been processed in a computer or computer network.
21 "Computer data" may be in any form, whether readable only by a computer or only by a human
22 or by either, including, but not limited to, computer printouts, magnetic storage media, punched
23 cards, or data stored internally in the memory of the computer.

24 (4) "Computer network" means a set of related, remotely connected devices and any
25 communications facilities including more than one computer with the capability to transmit data
26 among them through the communications facilities.

27 (5) "Computer operation" means arithmetic, logical, monitoring, storage or retrieval
28 functions and any combination of them, and includes, but is not limited to, communication with,
29 storage of data to, or retrieval of data from any device or human hand manipulation of electronic
30 or magnetic impulses. A "computer operation" for a particular computer may also be any function
31 for which that computer was generally designed.

32 (6) "Computer program" means a series of instructions or statements or related data that,
33 in actual or modified form, is capable of causing a computer or a computer system to perform
34 specified functions in a form acceptable to a computer, which permits the functioning of a

1 computer system in a manner designed to provide appropriate products from the computer
2 systems.

3 (7) "Computer services" includes computer time or services, data processing services,
4 Internet service providers' networks and facilities located in the state or information or data stored
5 in connection with them.

6 (8) "Computer software" means a set of computer programs, procedures, and associated
7 documentation concerned with the operation of a computer, computer program or computer
8 network.

9 (9) "Computer system" means a set of related, connected or unconnected, computer
10 equipment, devices, and software.

11 (10) "Confidential information" means data that is protected from disclosure on the
12 protected computer, computer program, computer system or computer network and that the
13 computer, computer program, computer system or computer network does not transmit or
14 disclose unless initiated by the owner of such protected computer, computer program, computer
15 system or computer network.

16 ~~(10)~~(11) "Data" means any representation of information, knowledge, facts, concepts, or
17 instructions which are being prepared or have been prepared and are intended to be entered,
18 processed, or stored, are being entered, processed, or stored or have been entered, processed, or
19 stored in a computer, computer system, or computer network.

20 ~~(11)~~(12) "Electronic mail service provider" means any business or organization qualified
21 to do business in the state of Rhode Island that provides registered users the ability to send or
22 receive electronic mail through equipment located in this state and that is an intermediary in
23 sending or receiving electronic mail.

24 ~~(12)~~(13) "Financial instrument" includes, but is not limited to, any check, draft, warrant,
25 money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card
26 transaction authorization mechanism, marketable security, or any computerized representation of
27 any of these.

28 ~~(13)~~(14) "Owner" means an owner or lessee of a computer or a computer network or an
29 owner, lessee, or licensee of computer data, computer programs, or computer software.

30 ~~(14)~~(15) "Person" shall include any individual, partnership, association, corporation or
31 joint venture.

32 ~~(15)~~(16) "Property" includes, but is not limited to:

33 (i) Real property;

34 (ii) Computers and computer networks;

1 (iii) Financial instruments, computer data, computer programs, computer software and
2 all other personal property regardless of whether they are:

3 (A) Tangible or intangible;

4 (B) In a format readable by humans or by a computer;

5 (C) In transit between computers or within a computer network or between any devices
6 which comprise a computer; or

7 (D) Located on any paper or in any device on which it is stored by a computer or by a
8 human; and

9 (E) Computer services.

10 (iv) A person "uses" a computer or computer network when he or she:

11 (A) Attempts to cause or causes a computer or computer network to perform or to stop
12 performing computer operations;

13 (B) Attempts to cause or causes the withholding or denial of the use of a computer,
14 computer network, computer program, computer data or computer software to another user; or

15 (C) Attempts to cause or causes another person to put false information into a computer.

16 (v) A person is "without authority" when: (A) he or she has no right or permission of the
17 owner to use a computer, or, he or she uses a computer in a manner exceeding his or her right or
18 permission or (B) he or she uses an Internet service e-mail system offered by a Rhode Island
19 based Internet service provider in contravention of the authority granted by or in violation of the
20 policies set by the Internet service provider.

21 (vi) Transmission of electronic mail from an organization to its members shall not be
22 deemed to be unsolicited bulk electronic mail.

23 ~~(16)~~(17) "Services" includes, but is not limited to, computer time, data processing, and
24 storage functions.

25 (18) "Social network site" means: (i) A service accessible on a world wide web domain
26 whose primary purpose is to facilitate online social interaction among groups of members for
27 primarily social purposes, and which integrates the following features within the unique profile
28 web pages of its registered members:

29 (A) The ability of members, including minors, to post a name or nickname in
30 combination with, photographs, multimedia and other personal information about the member on
31 the profile web page;

32 (B) The ability for members, including minors, to establish interactive links from their
33 profile web pages to one or more profile web pages of other members of the same social
34 networking service;

1 (C) The ability for members of, or visitors to, the social networking service to leave
2 messages or comments on a member's profile web page that are visible to all or some visitors to
3 that page;

4 (D) The ability of members of, or visitors to, the social networking service to search for
5 members according to their age, gender, location, or interests in combination with age; and

6 (E) The ability of members to communicate through an embedded electronic mail feature.

7 (b) A social networking site does not include:

8 (i) Discrete email, instant message, chat room, message board or other communication
9 functionalities; or

10 (ii) A service whose primary purpose is the facilitation of commercial transactions
11 between its members or visitors.

12 ~~(17)~~(19) "Source document" means an original document or record which forms the
13 basis of every electronic entry put into a computer, computer system, or computer network.

14 SECTION 4. Section 11-64-1 of the General Laws in Chapter 11-64 entitled "Electronic
15 Imaging Devices" is hereby amended to read as follows:

16 **11-64-1. Definitions.** -- (1) For the purposes of this section the following definitions
17 apply:

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

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

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

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

26 (e) "Publish" means to:

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

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

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

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

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

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

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

7 (ii) Bestiality;

8 (iii) Masturbation; or

9 (iv) Sadistic or masochistic abuse.

10 SECTION 5. Chapter 11-9 of the General Laws entitled "Children" is hereby amended
11 by adding thereto the following section:

12 **11-9-1.5. Electronically disseminating indecent material to minors prohibited. – (a)**

13 Definitions as used in this section:

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

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

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

19 (4) "Indecent visual depiction" means any digital image or digital video depicting one or
20 more persons engaging in sexually explicit conduct, and includes: (i) Data stored on any
21 computer, telecommunication device, or other electronic storage media that is capable of
22 conversion into a visual image; or (ii) Digital video depicting sexually explicit conduct
23 transmitted live over a computer online service, internet service, or local electronic bulletin board
24 service.

25 (5) "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;

31 (iv) Sadistic or masochistic abuse; or

32 (v) Graphic or lascivious exhibition of the genitals or pubic area of any person.

33 (b) No person shall knowingly and intentionally use a computer or telecommunication
34 device to transmit an indecent visual depiction to a person he or she knows is, or believes to be, a

1 minor.

2 (c) No minor shall be charged under this section if his or her conduct falls within section
3 11-9-1.4, "Minor electronically disseminating indecent material to another person – "Sexting
4 prohibited."

5 (d) The fact that an undercover operative or law enforcement officer was involved in the
6 detection and investigation of an offense under this section shall not constitute a defense to a
7 prosecution under this section.

8 (e) Whoever violates this section shall be subject to sex offender registration
9 requirements set forth in section 11-37.1-1 et seq., entitled "Sexual offender registration and
10 community notification act."

11 (f) Whoever violates this section shall be guilty of a felony and may be imprisoned for
12 not more than five (5) years or fined not more than five thousand dollars (\$5,000), or both.

13 SECTION 6. Chapter 11-52 of the General Laws entitled "Computer Crime" is hereby
14 amended by adding thereto the following sections:

15 **11-52-3.1. Unauthorized access to confidential information.** -- (a) Whoever
16 intentionally, without authorization or in excess of one's authorization, directly or indirectly
17 accesses a protected computer, computer program, computer system, or computer network with
18 the intent to either view, obtain, copy, or download any confidential information contained in or
19 stored on such computer, computer program, computer system, or computer network, shall be
20 guilty of a felony and shall be subject to the penalties set forth in section 11-52-5.

21 (b) Nothing in this section shall apply to any monitoring of, or interaction with, a
22 subscriber's internet or other network connection or service, or a protected computer, by a
23 telecommunications carrier, cable operator, computer hardware or software provider, or provider
24 of information service or interactive computer service for network or computer security purposes,
25 diagnostics, technical support, repair, advertising, authorized updates of software or system
26 firmware, authorized remove system management, providing, operating, or improving a service
27 used, requested, or authorized by an individual, or detection or prevention of the unauthorized use
28 of or fraudulent or other illegal activities in connection with a network, service, or computer
29 software.

30 **11-52-4.4. Cyberstalking and cyberharassment prohibited.** – (a) Definitions. As used
31 in this section:

32 (1) "Conduct" means either: (i) A single act which causes a person to be repeatedly
33 contacted by others in a manner which seriously alarms, annoys, or bothers the person, or (ii) two
34 (2) or more acts over a period of time, evidencing a continuity of purpose, which seriously

1 alarms, annoys, or bothers the person.

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

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

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

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

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

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

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

22 **11-52-7.1. Offense of online impersonation. --** (a) Definitions, as used in this section:

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

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

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

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

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

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

3 (iv) Telecommunication identifying information or access device.

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

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

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

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

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

22 (c) Whoever violates this section shall be guilty of a felony and subject to imprisonment
23 for not more than three (3) years or fined not more than two thousand dollars (\$2,000), or both.

24 SECTION 7. 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 eighteen (18) years of age or older
29 engaged in sexually explicit conduct or of the intimate areas of another person, with or without
30 that other person's knowledge and consent under circumstances in which that other person would
31 have a reasonable expectation of privacy and, thereafter, without the consent of the person or all
32 persons depicted in the visual image, intentionally disseminates, publishes, or sells such visual
33 image or images.

34 (b) Constitutionally protected activity is not subject to the provisions of this section.

1 (c) Whoever violates this section shall not be subject to sex offender registration
2 requirements set forth in section 11-37.1-1 et seq., entitled "Sexual offender registration and
3 community notification act."

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

6 SECTION 8. Nothing in this act may be construed to provide a basis for a private right of
7 action against an interactive computer service, as defined in 47 U.S.C. section 230, or a
8 telecommunications carrier as used by another person to violate this act, for content provided by
9 such person or by another information content provider.

10 SECTION 9. 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 amend various chapters of the general laws to create additional offenses
2 relating to internet activity.

3 This act would take effect upon passage.

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