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## NOTES

### CRIMINALIZING BULLYING: WHY INDIANA SHOULD HOLD THE BULLY RESPONSIBLE

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#### INTRODUCTION

“P.S. it’s the bullying that killed me.”<sup>1</sup>

In March 2013, fourteen-year-old Angel Green committed suicide.<sup>2</sup> Angel, an eighth-grader in West Lafayette, Indiana, hung herself from a tree by her bus stop.<sup>3</sup> Her mother, Danielle, found a handwritten note addressed to her classmates blaming bullying for her decision to commit suicide.<sup>4</sup> According to Danielle, Angel’s classmates often called her a “slut” and a “whore.”<sup>5</sup> Angel chose the location of her suicide purposefully; Danielle said she hung herself at her bus stop before the bus arrived so that all the bullies who tormented her could see her death.<sup>6</sup> “You told me so much that I started believing it,” Angel wrote in her suicide note.<sup>7</sup> “And I was stupid for doing that. Every morning, day, night [sic] I look in the mirror and cry, and replay the harmful words in my head.”<sup>8</sup>

Angel is not alone. About one out of every four children in the United States is subject to bullying.<sup>9</sup> According to the National Education Association, nearly 160,000 students nationally do not attend school each day because they are afraid

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1. Sasha Goldstein, *Indiana Girl’s Public Suicide and Heartbreaking Note Sparks Anti-bullying Legislation in the State*, N.Y. DAILY NEWS (Apr. 4, 2013), <http://www.nydailynews.com/life-style/health/indiana-girl-suicide-heartbreaking-note-spark-anti-bullying-legislation-article-1.1308060>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. Tammy Sampson Moon, *Analysis of Suicide and Bullying in Indiana Schools*, EXAMINER, Nov. 15, 2011, [www.examiner.com/article/analysis-of-suicide-and-bullying-indiana-schools](http://www.examiner.com/article/analysis-of-suicide-and-bullying-indiana-schools).

of encountering bullies.<sup>10</sup> About twenty percent of American students in grades nine through twelve experienced bullying in 2011.<sup>11</sup>

Indiana faces a similar plight, losing children every year to bullying, including fifteen-year-old Tori Swope in 2012, fourteen-year-old Devon Pritt in 2011, and fifteen-year-old Billy Lucas in 2011.<sup>12</sup> Approximately 280,227 students throughout Indiana are being bullied or have been bullied since beginning to attend school.<sup>13</sup> Indiana ranks third nationally in instances of cyberbullying and bullying on school property.<sup>14</sup>

Indiana has responded to the bullying crisis by passing legislation that takes steps beyond what prior law mandated by requiring the Indiana Department of Education to help school corporations handle bullying.<sup>15</sup> During the 118th General Assembly's First Regular Session in 2013, Indiana passed amended bullying legislation aimed at promoting education and prevention of bullying.<sup>16</sup> The legislation requires the Indiana Department of Education to help school corporations implement bullying prevention programs and reporting procedures, and provided a definition for "bullying."<sup>17</sup> Before 2013, Indiana did not provide a comprehensive definition of bullying.<sup>18</sup> While prior Indiana bullying legislation already required school corporations to include provisions regarding reporting, investigation, and intervention, the legislation did not provide specific and detailed procedures or timetables for school corporations to adopt.<sup>19</sup> The

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10. IND. GOVERNOR'S COUNCIL FOR PEOPLE WITH DISABILITIES, *Ignite Thoughts Into Actions Spark*, 1, 4 (2012), available at [http://www.incasa.org/PDF/2013/Bullying\\_2012\\_SPARK\\_newsletter.pdf](http://www.incasa.org/PDF/2013/Bullying_2012_SPARK_newsletter.pdf).

11. U.S. Dep't of Health & Human Services, *Frequency of Bullying*, STOPBULLYING, [www.stopbullying.gov/what-is-bullying/definition/index.html#frequency](http://www.stopbullying.gov/what-is-bullying/definition/index.html#frequency) (last visited Aug. 26, 2014).

12. Emine Sinmaz, *Parents' Agony After Daughter, 15, is Found Hanged in Her Bedroom After Relentless Bullying at Hands of Classmates*, DAILY MAIL (May 11, 2012, 4:32 PM), <http://www.dailymail.co.uk/news/article-2143096/Girl-15-hanging-scarf-bedroom-enduring-relentless-bullying-classmates.html> (discussing the death of Tori Swope in 2012); see also WTHR, *Friends Say Teen Committed Suicide Over Bullying*, WTHR (Sept. 16, 2011), <http://www.wthr.com/story/15310834/friends-say-teen-committed-suicide-over-bullying> (describing the circumstances surrounding Devon Pritt's 2011 suicide); see also RTV6, *Friends: Bullies Led to 15-Year-Old's Death*, RTV6 (Sept. 13, 2010), <http://www.theindychannel.com/news/friends-bullies-led-to-15-year-old-s-death> (discussing the death of Billy Lucas in 2011).

13. Moon, *supra* note 9.

14. Sue Loughlin, *Hoosier Students 3rd Most-Bullied*, TRIBSTAR.COM, June 23, 2014, [http://www.tribstar.com/news/local\\_news/hoosier-students-rd-most-bullied/article\\_183584a5-fe4d-58e1-a08f-b316e2001b0e.html](http://www.tribstar.com/news/local_news/hoosier-students-rd-most-bullied/article_183584a5-fe4d-58e1-a08f-b316e2001b0e.html).

15. IND. CODE § 20-33-8-13.5 (2013).

16. *Id.*

17. *Id.* § 20-33-8-0.2.

18. *Id.*

19. IND. CODE § 20-33-8-13.5 (2011) (amended 2013).

amended legislation became effective on July 1, 2013.<sup>20</sup>

While Indiana's current bullying legislation should help prevent some bullying, Indiana needs to implement additional measures to provide more protection for children. Indiana's current bullying legislation provides some reform to the previous laws, but the prior legislation already required school corporations to report instances of bullying and provide anti-bullying programming.<sup>21</sup> Legislation enacted in 2011 already required school corporations to "prohibit bullying" and to "include provisions concerning education, parental involvement, reporting, investigation and intervention."<sup>22</sup> The current legislation provides more comprehensive requirements for schools by requiring detailed procedures, but the method of preventing bullying is largely the same as it was previously.<sup>23</sup> Additionally, many schools across the state already had implemented more strict bullying procedures than the previous legislation required.<sup>24</sup> For example, Indianapolis Public School students were required to participate in anti-bullying programs from kindergarten through grade twelve before the legislation passed.<sup>25</sup> Despite anti-bullying measures taken in schools, bullying still occurred.<sup>26</sup> Therefore, Indiana should add a provision within its criminal code making bullying a criminal offense to better deter instances of bullying within the state.

The purpose of this Note is to argue that Indiana should make bullying a criminal offense to further discourage children from bullying each other. Part I of this Note discusses the definition and history of bullying in the United States and Indiana. Part II considers the different approaches Indiana could take to deter bullying. Part III discusses the imposition of criminal liability for bullies, including contemplating deterrence theory, retributivism, and the juvenile justice system. Finally, this Note proposes a criminal provision for bullying that Indiana should adopt to improve Indiana's bullying legislation.

#### I. DEFINITION AND HISTORY OF BULLYING IN THE UNITED STATES AND INDIANA

Because bullies can act in a variety of ways, it is important to determine what types of actions constitute bullying in order to understand what types of behavior needs to be prevented.<sup>27</sup> Indiana defined bullying in its 2013 bullying

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20. IND. CODE § 20-33-8-13.5 (2013).

21. *Id.*

22. *Id.*

23. *Id.*

24. Lindsey Ziliak, *Bullying Reporting Now Required*, KOKOMO TRIB. May 19, 2013, [http://www.kokomotribune.com/news/local\\_news/article\\_ce0e0035-35dd-5255-bdeb-0bebb8524b7d.html](http://www.kokomotribune.com/news/local_news/article_ce0e0035-35dd-5255-bdeb-0bebb8524b7d.html).

25. Adrienne Broadus, *IPS Expulsion Sparks Bullying Debate*, WISH TV (May 8, 2012), <http://www.youtube.com/watch?v=6QUoEcMmr0M&list=PL53CAB7FF4EBB9329&index=30>.

26. *Id.*

27. NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, UNDERSTANDING BULLYING 1

legislation.<sup>28</sup> Additionally, the history of bullying is also important to understand how the problems associated with bullying have evolved to determine the best means to prevent it.<sup>29</sup> This section will discuss the different definitions of bullying and examine the history of bullying across the United States and in Indiana.

### A. Defining Bullying

Although there are many different definitions of bullying, bullying typically includes: “[a]ttack or intimidation with the intention to cause fear, distress or harm; [a] real or perceived imbalance of power between the bully and the victim; and [r]epeated attacks or intimidation between the same children over time.”<sup>30</sup> Bullying can take many forms and can be verbal, physical, or psychological.<sup>31</sup> Physical bullying consists of physical harm or threats of harm, as well as other acts such as stealing, causing property damage, or making someone do something he or she does not want to do by the use of force.<sup>32</sup> Another type of bullying, relationship bullying, occurs when a student spreads a rumor about another student or coerces another student into doing something he or she does not want to do.<sup>33</sup> Verbal bullying is also a problem within schools and consists of teasing, insulting, or calling another student names.<sup>34</sup> Finally, the newest form of bullying is cyberbullying, which utilizes text messages, email, or social media websites to post embarrassing or hurtful things, spread rumors, or send hateful messages.<sup>35</sup> Since the early 1970s, Dr. Dan Olweus has conducted comprehensive studies about bullying.<sup>36</sup> Olweus completed the first scientific study of bullying and is responsible for creating the first systematic intervention program.<sup>37</sup> Olweus provided the most commonly quoted definition of bullying:

A person is being bullied when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other persons. Negative action is when a person intentionally inflicts injury or discomfort upon another person, through physical contact, through

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(2012), available at [www.cdc.gov/violenceprevention/pdf/bullyingfactsheet2012-a.pdf](http://www.cdc.gov/violenceprevention/pdf/bullyingfactsheet2012-a.pdf).

28. IND. CODE § 20-33-8-0.2 (2013).

29. MARGARET R. KOHUT, *THE COMPLETE GUIDE TO UNDERSTANDING, CONTROLLING, AND STOPPING BULLIES & BULLYING* 13 (2007).

30. NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, *supra* note 27; *see also* KOHUT, *supra* note 29; IND. GOVERNOR'S COUNCIL FOR PEOPLE WITH DISABILITIES, *supra* note 10.

31. NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, *supra* note 27.

32. IND. GOVERNOR'S COUNCIL FOR PEOPLE WITH DISABILITIES, *supra* note 10, at 3.

33. *Id.*

34. *Id.*

35. *Id.*

36. KOHUT, *supra* note 29, at 19.

37. Dan Olweus, *Ph.D.*, HAZELDEN.COM, [http://www.hazelden.org/OA\\_HTML/hazAuthor.jsp?author\\_id=4206](http://www.hazelden.org/OA_HTML/hazAuthor.jsp?author_id=4206) (last visited Aug. 26, 2014).

words, or in other ways. Note that bullying is both overt and covert.<sup>38</sup>

### *B. National Bullying Statistics*

With that definition in mind, bullying remains a common occurrence in schools across the country.<sup>39</sup> Bullying is not a new phenomenon.<sup>40</sup> But “[b]ullying is now recognized as a widespread and often neglected problem in schools that has serious implications for victims of bullying and for those who perpetuate the bullying.”<sup>41</sup> Twenty-three percent of public schools reported that students experienced bullying on a daily or weekly basis during the 2009-2010 academic year.<sup>42</sup> Another study indicated that in 2011, nearly 28% of twelve- to eighteen-year-old students were bullied at school and 9% said they were victims of cyberbullying.<sup>43</sup> Of the nearly 28% of students who reported being bullied at school, 18% reported they were verbally bullied.<sup>44</sup> Eight percent of students said they were bullied physically, while 5% indicated they were threatened with harm.<sup>45</sup> Of the students who reported being bullied at school, nearly 33% said they were bullied inside a classroom, and about 46% said they were bullied in a hallway or stairwell.<sup>46</sup>

In 2011, about 36% of students who experienced bullying at school experienced it at least once or twice a month.<sup>47</sup> These statistics indicate that bullying has remained a problem across the United States.<sup>48</sup> In 2005, nearly 28% of twelve- to eighteen-year-old students indicated they had been bullied, compared to about 31% in 2007, 28% in 2009, and 28% in 2011.<sup>49</sup> According to the American Psychological Association, 70% of middle and high school students have experienced bullying sometime throughout their schooling.<sup>50</sup>

In response to the acts of bullying occurring through the United States, many states have taken action.<sup>51</sup> As of April 2011, forty-six states have anti-bullying

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38. KOHUT, *supra* note 29, at 19-20.

39. *Id.*

40. *Id.* at 13.

41. U.S. DEP'T OF EDUC., INDICATORS OF SCHOOL CRIME AND SAFETY: 2012 44 (2013) [hereinafter INDICATORS], available at [nces.ed.gov/pubs2013/2013036.pdf](http://nces.ed.gov/pubs2013/2013036.pdf).

42. NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, *supra* note 27.

43. INDICATORS, *supra* note 41, at 44.

44. *Id.*

45. *Id.*

46. *Id.* at 47.

47. *Id.* at 48.

48. *Id.* at 51.

49. *Id.*

50. Sandra Graham, *Bullying: A Module for Teachers*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/education/k12/bullying.aspx#> (last updated 2014).

51. U.S. DEP'T OF EDUC., ANALYSIS OF STATE BULLYING LAWS AND POLICIES 15 (2011) [hereinafter ANALYSIS], available at <https://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

legislation, including Indiana.<sup>52</sup> Between 1999 and 2010, more than 120 pieces of legislation were enacted to address bullying in schools.<sup>53</sup> Forty-five states require school districts to adopt policies regarding bullying.<sup>54</sup>

### C. *The Problems Bullying Creates*

With evidence of consistent, repeated instances of bullying occurring across the United States, bullying continues to remain a problem in many schools.<sup>55</sup> A student who is bullied can face a variety of mental, emotional, and physical issues, including emotional distress, and even death.<sup>56</sup> According to a report by Fight Crime: Invest in Kids, eight percent of girls who are frequently bullied are suicidal, and four percent of boys who are frequently bullied are suicidal.<sup>57</sup>

Although only a small fraction of bullied students are suicidal, Indiana has experienced several recent bullying-related suicides of students.<sup>58</sup> Anecdotal evidence supports the conclusion that suicide due to bullying is also a problem in Indiana.<sup>59</sup> As previously mentioned, there have been several instances of teens committing suicide in Indiana due to bullying within the past five years.<sup>60</sup> Like Angel Green, many students feel hopeless because of their victimization, and commit suicide as a means of escape.<sup>61</sup>

In addition to suicide, bullying can have other long-term effects on victims.<sup>62</sup> Some victims face psychological or physical distress and may face depression.<sup>63</sup> Bullying victims also perform poorly academically and harbor negative attitudes for school.<sup>64</sup> Bullied students are more likely to face “depression, anxiety, sleep difficulties, and poor school adjustment.”<sup>65</sup> As one commentator explained, “[a]s the victim grows into adulthood, he or she has little self-esteem to build upon to

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52. *Id.*

53. *Id.*

54. *Id.*

55. CATHERINE P. BRADSHAW ET AL., FINDINGS FROM THE NATIONAL EDUCATION ASSOCIATION’S NATIONWIDE STUDY OF BULLYING: TEACHER AND EDUCATION SUPPORT PROFESSIONAL’S PERSPECTIVES vii (2011), available at [http://www.nea.org/assets/docs/Nationwide\\_Bullying\\_Research\\_Findings.pdf](http://www.nea.org/assets/docs/Nationwide_Bullying_Research_Findings.pdf).

56. NAT’L CTR. FOR INJURY PREVENTION AND CONTROL, *supra* note 26.

57. FIGHT CRIME: INVEST IN KIDS, BULLYING PREVENTION IS CRIME PREVENTION 6 (2003), available at [www.fightcrime.org/wp-content/uploads/sites/default/files/reports/BullyingReport.pdf](http://www.fightcrime.org/wp-content/uploads/sites/default/files/reports/BullyingReport.pdf).

58. WTHR, *supra* note 12.

59. *Id.*

60. *Id.*

61. Goldstein, *supra* note 1.

62. Graham, *supra* note 50.

63. RANA SAMPSON, BULLYING IN SCHOOLS 12 (2002), available at <http://www.cops.usdoj.gov/pdf/e12011405.pdf>.

64. Graham, *supra* note 50.

65. NAT’L CTR. FOR INJURY PREVENTION AND CONTROL, *supra* note 27.

form a happy, healthy future. Diminished social skills, lack of self-confidence, a seething core of internal anger, and a dark depression are ever-present barriers for the victim who suffered through years of bullying.<sup>66</sup> According to the American Psychological Association, eight- to fifteen-year-olds “rank bullying as more of a problem in their lives than violence.”<sup>67</sup> Additionally, “emotional maltreatment” and “social cruelty from peers” are greater concerns for fifth through twelfth graders than anything else.<sup>68</sup>

Bullying can also create long-term effects on the bullies.<sup>69</sup> Bullies are more likely to have substance abuse problems, academic problems, and are more likely to become violent later in life.<sup>70</sup> If a student is identified as a bully by age eight, he or she is six times more likely to be convicted of a crime by age twenty-four than those who are not considered bullies.<sup>71</sup> Bullies are also typically less educated, drop out of school more frequently, and face unemployment more often than those who do not bully.<sup>72</sup>

A 2003 study also found that bullies are more likely to be convicted of crimes than non-bullies.<sup>73</sup> About sixty percent of boys in grades six through nine who researchers classified as bullies were convicted of at least one crime by the age of twenty-four.<sup>74</sup> About forty percent were convicted of three or more crimes by twenty-four.<sup>75</sup> Another study followed bullies as they grew into adulthood and found that those who were classified as bullies as children continued to bully into adulthood.<sup>76</sup> This study also found that bullies were more likely to suffer alcoholism and require government-subsidized treatment.<sup>77</sup> Bullies also suffered from personality disorders and had problems with marital relationships due to violence and instability.<sup>78</sup>

Because of the many problems associated with bullying, Indiana should do its utmost to prevent bullying. Adding provisions to Indiana’s criminal code to make bullying a crime is one way Indiana could better deter students from bullying. There are many other measures that Indiana could take to deter bullying; however, those measures have not proven to be wholly effective.<sup>79</sup>

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66. KOHUT, *supra* note 29, at 35-36.

67. Graham, *supra* note 50.

68. *Id.*

69. NAT’L CTR. FOR INJURY PREVENTION AND CONTROL, *supra* note 27.

70. *Id.*

71. KOHUT, *supra* note 29, at 39.

72. *Id.* at 40.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. BRADSHAW ET AL., *supra* note 55, at 19.

## II. APPROACHES INDIANA COULD ADOPT, INDIANA'S APPROACH, AND ITS EFFECTIVENESS

There are many different approaches states can take to prevent bullying from occurring within school corporations.<sup>80</sup> Although these approaches have been shown to prevent some bullying, there is still a high rate of bullying in schools across the nation.<sup>81</sup> This section surveys the different approaches that Indiana could adopt, and will discuss the effectiveness of each alternative approach. This section will also discuss how Indiana is currently dealing with bullying in schools. Finally, this section will explain why the approach Indiana has currently adopted is insufficient.

### A. Whole-School Approach and Other Bullying Prevention Programs

Bullying remains a problem across the United States, and many school corporations and states have taken various approaches to deter bullying.<sup>82</sup> Long-time bully researcher Dr. Dan Olweus advocates for the whole-school approach.<sup>83</sup> According to Olweus, schools must adopt a model targeting the entire student population.<sup>84</sup> Olweus suggests having a conference day within the school to allow the principal, teachers, counselors, nurses, parents, and students to create a long-term plan for the school.<sup>85</sup> He also suggests making sure that these parties take on a united front against bullying.<sup>86</sup> Olweus argues that educating parents and teachers about school environments that foster bullying increases the chances of creating a bully-free school environment.<sup>87</sup>

George Varnava, another bully researcher, also advocated for a whole-school approach to prevent bullying.<sup>88</sup> Varnava created the following eight step anti-bullying strategy for schools:

1. A whole-school action plan with all sectors of the school community represented in the plan;
2. Establishing a commitment: "We aim to be a bullying-free school.";
3. The commitment is publicized internally and externally, providing a basis for collaboration with parents and the local community;
4. A practical anti-bullying program is introduced in the school;
5. Self-auditing helps schools determine if their program is working;
6. Action is taken to address specific risk areas;
7. A whole-school review of the anti-bullying process is undertaken;
8. Each school formulates its own criteria for evaluating their progress and reducing

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80. *Id.* at vii.

81. *Id.* at 19.

82. *Id.* at vii.

83. KOHUT, *supra* note 29, at 181. *See supra* text accompanying notes 27-29.

84. *Id.*

85. *Id.* at 181-82.

86. *Id.* at 182.

87. *Id.* at 183.

88. *Id.*

bullying.<sup>89</sup>

Varnava focuses on the need for training for staff and children to help create a bully-free environment.<sup>90</sup> The whole-school approach provides that interventions happen at all levels including a school-wide level, class-wide level, and an individual level by teachers, parents, and student peers.<sup>91</sup> According to a 2007 study by Rachel C. Vreeman, MD, and Aaron E. Carroll, MD, MS, the whole-school approach was the most effective school-based approach to bullying prevention.<sup>92</sup>

While the whole-school approach “more often reduced victimization and bullying,” it still faces significant barriers that limit this approach’s effectiveness.<sup>93</sup> Several studies of the whole-school approach have reported small to negligible effectiveness.<sup>94</sup> Two studies evaluating the Olweus whole-school approach conducted in Norway had differing results.<sup>95</sup> One 1993 study, conducted by Olweus, found a decline in both bullying and victimization; however, the other study, also conducted in 1993, found increases in bullying and victimization.<sup>96</sup> Another 2008 study examined whole-school anti-bullying programs in Europe, Canada, and the United States.<sup>97</sup> This study found no changes in bullying behaviors.<sup>98</sup> After synthesizing existing research and evaluations on whole-school bullying programs to determine the overall effectiveness of the approach in 2004, one group of researchers found that “[t]he majority of programs evaluated to date have yielded nonsignificant outcomes on measures of self-reported victimization and bullying, and only a small number have yielded positive outcomes.”<sup>99</sup> This study found that ninety-two percent of bullying outcomes were negligible or negative, and ninety-three percent of victimization outcomes were negative or negligible.<sup>100</sup> While the whole-school approach to bullying can be effective in some instances, these studies indicate that that is not always the case.<sup>101</sup> Indiana should adopt additional measures to ensure a decline in bullying.

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89. *Id.* at 184.

90. *Id.* at 188.

91. SAMPSON, *supra* note 63, at 24.

92. Rachel C. Vreeman & Aaron E. Carroll, *A Systematic Review of School-Based Interventions to Prevent Bullying*, 161 ARCHIVES OF PEDIATRIC ADOLESCENT MED. 86-87 (2007).

93. *Id.*

94. Susan M. Swearer et al., *What Can Be Done About School Bullying? Linking Research to Educational Practice*, 39 EDUC. RESEARCHER 38, 41-42 (2010).

95. *Id.* at 42.

96. *Id.*

97. *Id.*

98. *Id.*

99. J. David Smith et al., *The Effectiveness of Whole-School Antibullying Programs: A Synthesis of Evaluation Research*, 33 SCH. PSYCHOL. REV. 547, 550 (2004).

100. *Id.*

101. Swearer et al., *supra* note 94, at 42.

*B. Other Anti-Bullying Strategies*

While the whole-school approach has had varying degrees of success within schools, researchers found other strategies like conflict resolution and peer mediation training are less effective, and in some instances further victimize bullied children.<sup>102</sup> Peer mediation allows students to resolve minor conflicts among themselves before the conflicts erupt into more serious problems.<sup>103</sup> “When a dispute occurs at school, the mediators, usually in student teams, become neutral third parties and work with the disputants through conflict resolution.”<sup>104</sup> The goal of peer mediation is to help students understand how to handle a small conflict before it becomes a larger problem.<sup>105</sup> Traditionally, this program seeks to bring the bully and the victim to equal ground, providing them each with “equal bargaining power.”<sup>106</sup> However, oftentimes the victim does not feel as powerful as the bully, and this may impact the result of the mediation.<sup>107</sup> Peer mediation involves resolving a conflict by having the bully and the victim work it out between themselves, but peer mediation may re-victimize the bullied student, because the victim is forced to encounter the bully again face-to-face in the mediation session.<sup>108</sup>

Zero tolerance policies, which provide discipline for certain conduct regardless of the circumstances behind it, have also been adopted by many schools.<sup>109</sup> Zero tolerance policies often do not address bullying prevention because they focus on the specific occurrences after instances of bullying have occurred.<sup>110</sup> With a zero tolerance policy, “a student who engages in a bullying act is either suspended or expelled” regardless of the circumstances surrounding the instance of bullying.<sup>111</sup> These policies also often do not inquire into the motivations behind behaviors.<sup>112</sup> By themselves, zero tolerance policies are often not the most effective methods of preventing bullying.<sup>113</sup>

According to a report distributed by the U.S. Department of Education, “[t]en

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102. SAMPSON, *supra* note 63, at 24; *see also* Susan P. Limber & Maury M. Naton, *Bullying Among Children and Youth*, JUVENILE JUSTICE BULLETIN (Apr. 1998), <http://www.ojjdp.gov/jjbulletin/9804/bullying2.html> (explaining that conflict resolution strategies may not be effective because of the power dynamic between the bullied and the bullies).

103. Leah M. Christensen, *Sticks, Stones, and Schoolyard Bullies: Restorative Justice, Mediation and a New Approach to Conflict Resolution in Our Schools*, 9 NEV. L.J. 545, 562 (2009).

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 564.

109. *Id.* at 558.

110. *Id.* at 559.

111. *Id.* at 558-59.

112. *Id.* at 559.

113. *Id.* at 558.

states either mandate or encourage districts to establish bullying prevention task forces, safe schools committees, or other local advisory groups to address school-wide prevention.”<sup>114</sup> Many states also value the training of school staff, and twenty-five states mandate that districts develop and implement such training.<sup>115</sup> Additionally, twenty states have legislation requiring districts to employ bullying prevention, education, and awareness for students.<sup>116</sup> While these provisions have provided some relief for bullied students, these measures are not effective enough.<sup>117</sup>

### C. Reporting

According to the U.S. Department of Education, thirty-six states have legislation requiring school districts to establish reporting procedures.<sup>118</sup> Additionally, twenty-two states have laws requiring school districts to adopt policies that either mandate or encourage school staff to report instances of bullying.<sup>119</sup> Eighteen states have legislation including “language regarding written documentation of bullying complains [sic] and investigations.”<sup>120</sup> Some schools have implemented anti-bully hotlines to provide avenues for students to report bullying.<sup>121</sup> Reporting is an important part of bullying prevention, because it provides states with statistics about the commonality of bullying within their school corporations.<sup>122</sup> These statistics can help states determine whether current anti-bullying programs are effective.<sup>123</sup> Indiana’s legislation has adopted these measures, and while they are an important part of bullying prevention, Indiana should adopt additional measures to ensure the prevention of bullying.<sup>124</sup>

### D. Indiana’s Current Approach to Bullying Prevention

There are many approaches that Indiana could take to prevent bullying. In 2013, Indiana enacted two laws that address bullying.<sup>125</sup> While many school districts have implemented anti-bullying programming, and Indiana and other states have created their own laws, there are no federal laws directly addressing

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114. ANALYSIS, *supra* note 51, at 33.

115. *Id.*

116. *Id.* at 34.

117. *Id.* at 3 (finding that after six years of implementing anti-bullying measures in Washington, “bullying had not declined substantially since the first bullying legislation was passed.”).

118. *Id.* at 36.

119. *Id.*

120. *Id.* at 38.

121. SAMPSON, *supra* note 63, at 21.

122. U.S. Dep’t of Health and Human Services, *Assess Bullying*, STOPBULLYING, <http://www.stopbullying.gov/prevention/at-school/assess-bullying/index.html> (last visited Aug. 26, 2014).

123. *Id.*

124. IND. CODE § 20-33-8-13.5 (2013).

125. *Id.* §§ 20-33-8-0.2, -13.5.

bullying.<sup>126</sup> In Indiana, Indiana Code section 20-33-8-0.2 provides the definition of bullying.<sup>127</sup> This statute offers a comprehensive definition that can be applied within school districts across the state to address bullying.<sup>128</sup> Another statute, Indiana Code section 20-33-8-13.5, promotes education about and prevention of bullying within schools.<sup>129</sup> This statute offers specific provisions regarding how schools must handle bullying, including reporting measures, disciplinary measures, and follow-up services.<sup>130</sup>

Specifically, Indiana's most recent legislation provides an amendment requiring school corporations to create and implement a detailed bullying plan and reporting mechanisms.<sup>131</sup> Previous legislation did not require specific and detailed plans and implementation.<sup>132</sup> The Indiana Department of Education has issued a Model School Corporation Policy with regard to bullying.<sup>133</sup> This policy offers school corporations within the state an example of how to implement a bullying plan that fits within the amended state statute.<sup>134</sup> The Model School Corporation Policy defines bullying by utilizing Indiana Code section 20-33-8-0.2.<sup>135</sup> The model sets out the policy provisions that school corporations should adopt to deal with bullying.<sup>136</sup> First, the policy recommends school corporations adopt discipline rules in compliance with Indiana Code section 20-33-8-13.5 because these disciplinary actions are essential to ensure that there are no "substantial interferences with school discipline" and no unreasonable threats "to the rights of others to a safe and peaceful learning environment."<sup>137</sup> Then, the model policy suggests principals implement appropriate consequences to incidents of bullying.<sup>138</sup> Next, the policy states the principal at each school should designate a staff member to handle complaints regarding the bullying policy.<sup>139</sup>

The model policy also includes reporting provisions and recommends anyone who is in contact with students verbally report instances of bullying, and

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126. U.S. Dep't of Health & Human Services, *Federal Laws*, STOPBULLYING, [www.stopbullying.gov/laws/federal/index.html](http://www.stopbullying.gov/laws/federal/index.html) (last visited Aug. 26, 2014). (There are federal laws that address discriminatory harassment with regard to sex, race, national origin, disabilities, etc., which can overlap with bullying.)

127. IND. CODE § 20-33-8-0.2 (2013).

128. *See id.*

129. *Id.* § 20-33-8-13.5.

130. *See id.*

131. *Id.*

132. IND. CODE § 20-33-8-13.5 (2011) (amended 2013).

133. IND. DEP'T OF EDUC., MODEL SCHOOL CORPORATION POLICY 1-5 (2013) [hereinafter MODEL POLICY], *available at* [www.doe.in.gov/student-services/anti-bullying-school-policy](http://www.doe.in.gov/student-services/anti-bullying-school-policy).

134. *Id.*

135. *Id.* at 1-2.

136. *Id.* at 2-5.

137. *Id.* at 2.

138. *Id.*

139. *Id.*

subsequently provide a written report regarding the incident within one day of the submission of a verbal report.<sup>140</sup> Additionally, the policy asks that students, parents, and visitors submit a written report of the incident the day it occurred.<sup>141</sup> The written report can be made anonymously, and if a person submits a report, he or she is immune from a cause of action arising from failure to remedy the reported incident.<sup>142</sup> This means if a person submits a report, he or she cannot be sued by the victim for failing to take action with regard to the instance of bullying.<sup>143</sup>

The policy also recommends the principal complete a full investigation within one school day of the report.<sup>144</sup> Moreover, the policy suggests schools record the frequency of bullying in the following four categories: verbal bullying, physical bullying, social/relational bullying, and electronic or written communication bullying.<sup>145</sup> This information should be submitted to the Indiana Department of Education by July 1 of each year.<sup>146</sup> The policy also provides that parents of children who are involved in any bullying investigation shall be informed about the investigation by the principal.<sup>147</sup> Additionally, any person who witnesses or receives a report of bullying must report it or he or she will be subject to disciplinary proceedings.<sup>148</sup> Under the policy, the superintendent of the school corporation has the authority to determine how to handle an instance of bullying, and is responsible for providing the bullying policy to parents each year to educate them about the anti-bullying program.<sup>149</sup> The policy also indicates that the principal will follow the code of student conduct based on the findings of the investigation, and he or she is authorized to respond to false reporting.<sup>150</sup> Any investigation or report made regarding an instance of bullying is not considered a public record.<sup>151</sup>

The policy also indicates that each school within the corporation should create and provide an anti-bullying policy or bullying prevention policy no later than October 15 of each school year.<sup>152</sup> Each school must also provide training on the policy and other bullying prevention and intervention training to corporation and school employees, as well as others who have continuous contact with students.<sup>153</sup> The school board should recognize that bullying prevention will

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140. *Id.* at 3.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* at 4.

149. *Id.* at 5.

150. *Id.*

151. IND. CODE § 20-33-8-13.5 (2013).

152. *Id.*

153. *Id.*

constantly be changing and must adopt new provisions as needed.<sup>154</sup> Additionally, the school board should analyze data and determine where changes need to be made to improve the prevention policy.<sup>155</sup>

In the Model School Corporation Policy the Indiana Department of Education offers schools a list of levels of discipline for bullying for middle and high school students.<sup>156</sup> These levels, though, are only recommendations.<sup>157</sup> The first level provides that students should have conferences with school staff and a parent.<sup>158</sup> Level two provides different intervention options including referrals to school administrators, detentions, and Saturday school.<sup>159</sup> Level three offers in-school alternatives such as in-school suspension, in-school community service, or suspension from class.<sup>160</sup> Level four discusses out-of-school suspension options.<sup>161</sup> Level five offers alternative consequences and programs that include providing the student a modified schedule, school probation with a referral to a community agency, or conditional school.<sup>162</sup> Level six provides for expulsion of the student.<sup>163</sup>

#### *E. Why These Approaches Are Insufficient*

According to a report issued by the U.S. Department of Education, Indiana's bullying legislation is very similar to anti-bullying plans implemented in New Jersey and Georgia, which have some of the most extensive anti-bullying legislation.<sup>164</sup> Indiana's legislation is newly adopted, and there is limited information regarding its effectiveness to date.<sup>165</sup> New Jersey and Georgia's bullying legislation, when compared to Indiana's newly enacted legislation, provide an adequate background to evaluate whether or not Indiana's legislation will reduce the instances of bullying within the state.

*1. New Jersey.*—Indiana's model approach to bullying is based on New Jersey's approach.<sup>166</sup> Indiana and New Jersey have similar anti-bullying

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154. *Id.*

155. *Id.*

156. IND. DEP'T OF EDUC., MS/HS LEVELS OF DISCIPLINARY CONSEQUENCES AND SUPPORT, 1 (2013) [hereinafter DISCIPLINARY], available at [www.doe.in.gov/student-services/anti-bullying-school-policy](http://www.doe.in.gov/student-services/anti-bullying-school-policy).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. ANALYSIS, *supra* note 51, at 41.

165. IND. CODE § 20-33-8-13.5 (2013).

166. MODEL POLICY, *supra* note 133, at 5. (Within the Model School Corporation Policy, the document states, "This document is modeled, in part, on information provided through the following website: [www.state.nj.us/education/parents/bully.htm](http://www.state.nj.us/education/parents/bully.htm)" which indicates that Indiana used

statutes.<sup>167</sup> Indiana's legislation provides a definition of bullying and requires school corporations to adopt anti-bullying programming and reporting procedures.<sup>168</sup> Indiana's defines bullying as:

[V]erbal or written communications or images transmitted in any manner (including digitally or electronically), physical acts committed, aggression, or any other behaviors . . . that places the targeted student in reasonable fear of harm to the targeted student's person or property; has a substantially detrimental effect on the targeted student's physical or mental health; has the effect of substantially interfering with the targeted student's academic performance; or has the effect of substantially interfering with the targeted student's ability to participate in or benefit from the services, activities, and privileges provided by the school.<sup>169</sup>

Similarly, New Jersey's legislation defines bullying as:

[A]ny gesture, any written, verbal or physical act, or any electronic communication . . . that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that . . . will have the effect of physically or emotionally harming a student or damaging the student's property; . . . has the effect of insulting or demeaning any student; . . . [or] creates a hostile educational environment for the student by interfering with the student's education.<sup>170</sup>

New Jersey's legislation also requires school corporations to adopt anti-bullying policies and reporting procedures.<sup>171</sup>

New Jersey first implemented its anti-bullying law in 2002.<sup>172</sup> The legislation was amended in 2007 to include cyberbullying and in 2008 to require school districts to publish their anti-bullying policies on their websites and provide it to parents annually.<sup>173</sup> The legislature also enacted an amendment in 2011, making it one of the most comprehensive bullying laws in the United States.<sup>174</sup> The amendments enacted in 2011 added several additions to the New Jersey anti-bullying laws that do not pertain to Indiana including the appointment of an anti-

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New Jersey as a model for the bullying prevention programming.)

167. *See id.*; *see also* MODEL POLICY AND GUIDANCE FOR PROHIBITING HARASSMENT, INTIMIDATION AND BULLYING ON SCHOOL PROPERTY, AT SCHOOL SPONSORED FUNCTIONS AND ON SCHOOL BUSES 1 (2011) [hereinafter NJMODEL POLICY], *available at* [www.state.nj.us/education/parents/bully.pdf](http://www.state.nj.us/education/parents/bully.pdf).

168. IND. CODE §§ 20-33-8-0.2, -13.5.

169. *Id.* § 20-33-8-0.2

170. N.J. STAT. ANN. § 18A:37-14 (West 2002).

171. N.J. STAT. ANN. § 18A:37-13.1 (West 2011).

172. N.J. STAT. ANN. § 18A:37-13 (West 2002).

173. *Id.* § 18A:37-13.1.

174. *Id.*

bullying specialist within the schools,<sup>175</sup> a bullying prevention fund,<sup>176</sup> and bullying laws relating to institutions of higher education.<sup>177</sup> Additionally, the New Jersey legislature amended portions of the previous legislation.<sup>178</sup> However, the changes were specific to language usage in certain parts and did not alter the substance of the previous legislation.<sup>179</sup>

Despite the comprehensive nature of the legislation, a report regarding the health of New Jersey high school students indicates that bullying is still a problem within the state.<sup>180</sup> In 2011, after the amended legislation was passed, twenty percent of high school students indicated they were bullied on school property.<sup>181</sup> These statistics are nearly identical to results of the 2009 survey, which indicated that nearly twenty-one percent of high school students reported they were bullied on school property.<sup>182</sup> Additionally, nearly twenty-five percent of students aged fifteen and younger reported being bullied on school property.<sup>183</sup> A comparison between New Jersey students and students nationally reported that students in New Jersey were at an equal risk of being bullied on school property as students nationally, which includes states without stringent anti-bullying legislation.<sup>184</sup>

These statistics indicate, at least initially, that the amendments to the bullying legislation had a limited effect on the prevention of bullying.<sup>185</sup> Additionally, these statistics indicate that the previous versions of the New Jersey anti-bullying legislation, nearly identical to Indiana's legislation, still failed to prevent nearly twenty percent of high school students from being bullied on school property.<sup>186</sup> New Jersey collected surveys from high school students to compile these statistics.<sup>187</sup> Even though the surveys were collected by the New Jersey Department of Education, only eighty-two percent of schools participated in the

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175. N.J. STAT. ANN. § 18A:27-20 (West 2011).

176. *Id.* § 18A:37-2B.

177. *Id.* § 18A:3B-6B.

178. *Id.* § 18A:17-46; *id.* § 18A:37-17; *id.* § 18A:37-15; *id.* § 18A:37-14.

179. *Id.* § 18A:17-46; *id.* § 18A:37-17; *id.* § 18A:37-15; *id.* § 18A:37-14.

180. N.J. DEP'T OF EDUC., NEW JERSEY STUDENT HEALTH SURVEY 2011 34 (2012), available at [www.state.nj.us/education/students/yrbs/2011/full.pdf](http://www.state.nj.us/education/students/yrbs/2011/full.pdf).

181. *Id.*

182. *Id.*

183. *Id.*

184. RUTGERS EDWARD J. BLOUSTEIN SCH. OF PLANNING AND PUB. POLICY, COMPARISON BETWEEN NEW JERSEY STUDENTS AND U.S. STUDENTS 2011 YRBS 1 (2012), available at [www.state.nj.us/education/students/yrbs/2011/comparisons.pdf](http://www.state.nj.us/education/students/yrbs/2011/comparisons.pdf).

185. N.J. DEP'T OF EDUC., *supra* note 180. (This report shows that nearly twenty percent of high school students were still bullied after this legislation was in place. *See id.* Additionally, the comparison between New Jersey students and students nationally demonstrated that New Jersey students were at an equal risk of being bullied. *See id.* Thus, these statistics indicate a limited effect.)

186. *Id.*

187. *Id.* at 6.

survey, and only seventy-three percent of students participated.<sup>188</sup> However, the number of responses are still a representative sample of New Jersey's high school students.<sup>189</sup>

Although New Jersey's legislation may have prevented some bullying, bullying is still an issue that needs to be resolved.<sup>190</sup> Like the anti-bullying laws in New Jersey that have failed to protect children from being bullied, Indiana's anti-bullying legislation will also likely fail to adequately address the problem of bullying within Indiana's schools without additional measures.

2. *Georgia*.—Like New Jersey's anti-bullying legislation, Georgia's anti-bullying legislation is very similar to Indiana's anti-bullying legislation.<sup>191</sup> In 1999, the Georgia General Assembly enacted anti-bullying legislation that "(1) defined bullying; (2) required each school district to adopt policies that prohibit bullying for grades six through 12; and (3) required such prohibition to be included in the student code of conduct."<sup>192</sup> In 2010, the bullying legislation was amended to expand the definition and require schools to notify parents with regard to instances of bullying.<sup>193</sup> Georgia defines bullying, harassment, and intimidation.<sup>194</sup> Georgia's definition of harassment tracks closely with Indiana's definition of bullying. Georgia defines bullying as:

[A]ny gesture or written, verbal, or physical act, or any electronic communication that . . . will have the effect of harming a student or school employee or damaging his or her property; . . . [h]as the effect of substantially interfering with a student's educational performance, or . . . [h]as the effect of having a substantial negative impact on a student's or a school employee's emotional or psychological well-being; or [h]as the effect of insulting or demeaning any student or school employee in such a way as to cause substantial disruption in, or substantial interference with, or the orderly operation of the school.<sup>195</sup>

Additionally, the 2010 amendments required the adoption of a bullying policy for all schools.<sup>196</sup> Georgia has published a student health survey each year, beginning with the 2007-2008 academic year.<sup>197</sup> In the 2007-2008 survey, 16.05% of

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188. *Id.*

189. *Id.*

190. *Id.* at 34.

191. ANALYSIS, *supra* note 51, at 41. See MODEL POLICY, *supra* note 133 at 1; see also NJ MODEL POLICY, *supra* note 167; GA. DEP'T OF EDUC., POLICY FOR PROHIBITING BULLYING, HARASSMENT AND INTIMIDATION 11 (2011) [hereinafter GA. MODEL POLICY], available at [http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/Documents/GaDOE%20Bullying%20Policy\\_August%202011.pdf](http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/Documents/GaDOE%20Bullying%20Policy_August%202011.pdf).

192. GA. MODEL POLICY, *supra* note 191, at 3.

193. *Id.*

194. *Id.*

195. *Id.* at 4-5. See *supra* notes 166-77 for Indiana and New Jersey's definitions of bullying.

196. GA. MODEL POLICY, at 3.

197. GA. DEP'T OF EDUC., STUDENT HEALTH SURVEY II (2009) [hereinafter GA. SURVEY 2009],

students surveyed between grades six and twelve indicated other students had bullied them within the past thirty days.<sup>198</sup> These statistics haven't dramatically changed from the 2007-2008 academic year to the 2012-2013 academic year.<sup>199</sup>

In 2008-2009, 16.39% of students reported having been bullied;<sup>200</sup> in 2009-2010, 16.29% reported being bullied;<sup>201</sup> in 2010-2011, 14.91% reported being bullied;<sup>202</sup> in 2011-2012, 14.51% reported being bullied;<sup>203</sup> and in 2012-2013,

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*available at* <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/GSHS-II/GSHS%20State%20Reports/2009/State%20Report%202009.pdf>. (This statistic was calculated from data from *Table of Grade by Bullied*. The statistic was computed by subtracting the total students who reported being bullied zero days from the total number of students surveyed. The result was then divided by the total number of students surveyed. The result, when multiplied by 100, provided the percentage of students who reported being bullied within thirty days preceding the survey.)

198. *Id.* at 10.

199. GA. DEP'T OF EDUC., STUDENT HEALTH SURVEY II 13 (2013) [hereinafter GA. SURVEY 2013], *available at* <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/GSHS-II/GSHS%20State%20Reports/2013/State%20Report%202013.pdf>. (This statistic was calculated from data from *Table of Grade by Bullied*. The statistic was computed by subtracting the total students who reported being bullied zero days from the total number of students surveyed. The result was then divided by the total number of students surveyed. The result, when multiplied by 100, provided the percentage of students who reported being bullied within thirty days preceding the survey.)

200. GA. SURVEY 2009, *supra* note 197.

201. GA. DEP'T OF EDUC., STUDENT HEALTH SURVEY II 10 (2010) [hereinafter GA. SURVEY 2010], *available at* <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/GSHS-II/GSHS%20State%20Reports/2010/State%20Report%202010.pdf>. (This statistic was calculated from data from *Table of Grade by Bullied*. The statistic was computed by subtracting the total students who reported being bullied zero days from the total number of students surveyed. The result was then divided by the total number of students surveyed. The result, when multiplied by 100, provided the percentage of students who reported being bullied within thirty days preceding the survey.)

202. GA. DEP'T OF EDUC., STUDENT HEALTH SURVEY II 12 (2011) [hereinafter GA. SURVEY 2011], *available at* <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/GSHS-II/GSHS%20State%20Reports/2011/State%20Report%202011.pdf>. (This statistic was calculated from data from *Table of Grade by Bullied*. The statistic was computed by subtracting the total students who reported being bullied zero days from the total number of students surveyed. The result was then divided by the total number of students surveyed. The result, when multiplied by 100, provided the percentage of students who reported being bullied within thirty days preceding the survey.)

203. GA. DEP'T OF EDUC., STUDENT HEALTH SURVEY 13 (2012) [hereinafter GA. SURVEY 2012], *available at* <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/GSHS-II/GSHS%20State%20Reports/2012/State%20Report%202012.pdf>. (This statistic was calculated from data from *Table of Grade by Bullied*. The statistic was computed by subtracting the total students who reported being bullied zero days from the total number of students surveyed. The result was then divided by the total number of students surveyed. The

14.63% reported having been bullied.<sup>204</sup> It appears from these statistics that despite Georgia's bullying legislation seven out of every fifty students are still being bullied today.<sup>205</sup>

While these statistics are not staggering, they are still significant. They indicate that although Georgia's bullying legislation may have helped the problem, bullying continues to occur in Georgia. Georgia's bullying legislation could still be improved with other methods of bullying prevention. Much like Georgia and New Jersey, Indiana's legislation will not adequately reduce instances of bullying. Additional measures should be adopted to provide safer school environments for Indiana students.

### III. IMPOSING CRIMINAL LIABILITY

Indiana needs to adopt criminal sanctions for bullies. This section discusses the effects of criminalizing bullying in Indiana and also discusses other jurisdictions that have adopted or are in the process of adopting criminal sanctions for bullying. Also, this section discusses the potential benefits and consequences of imposing criminal liability on bullies. Finally, this section considers other crimes that are similar to bullying and explains why bullying should be treated as a separate offense.

#### A. Criminalizing Bullying

With the high percentage of bullying occurring within Indiana, the state should adopt criminal sanctions for bullies to help reduce instances of bullying within the state. According to a report from the U.S. Department of Education, there is "a recent trend toward treating the most serious forms of bullying as criminal conduct that should be handled through the criminal justice system."<sup>206</sup> Additionally, the report concluded, "[r]ecent state legislation and policy addressing school bullying has emphasized an expanded role for law enforcement and the criminal justice system in managing bullying on school campuses."<sup>207</sup> The trend is characterized by the growing number of states that require mandatory reporting of bullying offenses that may violate criminal statutes.<sup>208</sup> In 2011, when the U.S. Department of Education released this report, seven states had bullying laws that included provisions for criminal liability for bullying behavior.<sup>209</sup> These laws mandate school officials report bullying instances that potentially violated criminal law or required school bullying policies to include clear instructions to

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result, when multiplied by 100, provided the percentage of students who reported being bullied within thirty days preceding the survey.)

204. GA. SURVEY 2013, *supra* note 199.

205. *Id.*

206. ANALYSIS, *supra* note 51, at 20.

207. *Id.* at 19.

208. *Id.* at 20.

209. *Id.*

determine when and how violations should be reported to law enforcement.<sup>210</sup> Additionally, some states have put bullying provisions in their criminal codes.<sup>211</sup>

In 2009, North Carolina passed legislation making cyberbullying a misdemeanor.<sup>212</sup> Lawmakers passed this legislation to “protect[] children of this state by making cyber-bullying a criminal offense punishable as a misdemeanor.”<sup>213</sup> North Carolina passed amended legislation in 2012 extending the protections provided by the cyberbullying law.<sup>214</sup> The North Carolina General Assembly stated that the purpose of the amended legislation was “to protect all children from bullying and harassment.”<sup>215</sup> In North Carolina in 2009, more than twenty-three percent of middle school students aged fourteen or older were victims of cyberbullying.<sup>216</sup> A little less than two years after cyberbullying was criminalized, the number dropped to eighteen percent.<sup>217</sup> Additionally, the percentage of middle school females that were victims of bullying decreased by nearly two percent from 2009 to 2011.<sup>218</sup> Between July 2010 and July 2011, twenty-six individuals were charged with cyberbullying in North Carolina.<sup>219</sup> Additionally, eighty-nine individuals faced charges of cyberbullying between July 2011 and June 2013.<sup>220</sup> North Carolina’s Department of Public Instruction provides specific standards of information that students are to receive during the course of their instruction in the state.<sup>221</sup> One set of standards, called the NC

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210. *Id.*

211. *Id.* at 20.

212. *Id.* See N.C. GEN. STAT. § 14-458.1 (2009) (amended 2012). (Because North Carolina passed the law so recently, there is limited data available regarding how many students are victims of cyberbullying.)

213. N.C. GEN. STAT. § 14-458.1 (2009).

214. See generally N.C. GEN. STAT. § 14-458.1 (2012).

215. S. 707, 2011 Gen. Assemb., Reg. Sess. (NC. 2012).

216. N.C. DEP’T OF EDUC., YOUTH RISK BEHAVIOR SURVEY 39 (2009) [hereinafter YOUTH RISK BEHAVIOR SURVEY 2009], available at [www.nchealthyschools.org/docs/data/yrbs/2009/middleschool/statewide/tables.pdf](http://www.nchealthyschools.org/docs/data/yrbs/2009/middleschool/statewide/tables.pdf).

217. NORTH CAROLINA DEPARTMENT OF EDUCATION, YOUTH RISK BEHAVIOR SURVEY 9 (2011) [hereinafter YOUTH RISK BEHAVIOR SURVEY 2011], available at [www.nchealthyschools.org/docs/data/yrbs/2011/middleschool/statewide/tables.pdf](http://www.nchealthyschools.org/docs/data/yrbs/2011/middleschool/statewide/tables.pdf).

218. YOUTH RISK BEHAVIOR SURVEY 2009, *supra* note 216; YOUTH RISK BEHAVIOR SURVEY 2011, *supra* note 217.

219. *Misdemeanor Non-Motor Vehicle Case Activity Report*, THE NORTH CAROLINA COURT SYSTEM (Oct. 4, 2011), [http://www.nccourts.org/Citizens/SRPlanning/Statistics/CARReports\\_fy10-11.asp](http://www.nccourts.org/Citizens/SRPlanning/Statistics/CARReports_fy10-11.asp).

220. *Misdemeanor Non-Motor Vehicle Case Activity Report*, THE NORTH CAROLINA COURT SYSTEM (July 31, 2012), [http://www.nccourts.org/Citizens/SRPlanning/Statistics/CARReports\\_fy11-12.asp](http://www.nccourts.org/Citizens/SRPlanning/Statistics/CARReports_fy11-12.asp); *Misdemeanor Non-Motor Vehicle Case Activity Report*, THE NORTH CAROLINA COURT SYSTEM (July 17, 2013), [http://www.nccourts.org/Citizens/SRPlanning/Statistics/CARReports\\_fy12-13.asp](http://www.nccourts.org/Citizens/SRPlanning/Statistics/CARReports_fy12-13.asp).

221. Linda Brannan, *K-12 Curriculum and Instruction/NC Standard course of Study*, N.C. DEP’T OF PUB. INSTRUCTION, [www.ncpublicschools.org/curriculum/guidance/](http://www.ncpublicschools.org/curriculum/guidance/) (last visited Aug. 26,

Guidance Essential Standards, requires that a school counselor or teacher provide special class discussion focused on timely issues, such as cyberbullying.<sup>222</sup> All staff members are expected to implement these standards in each classroom, to ensure that students are aware of the policies and procedures regarding a variety of issues, including cyberbullying.<sup>223</sup>

Several other states also have criminal statutes regarding bullying.<sup>224</sup> Idaho passed legislation that provides a definition and prohibition of harassment, intimidation and bullying among students.<sup>225</sup> In Kentucky, legislators added “harassing behavior” and “harassing communication” to its criminal code in 2008.<sup>226</sup> The Kentucky Department of Education recently released information regarding trends of high school students from 2011 to 2013.<sup>227</sup>

The trends indicate that cyber-bullying decreased during that time period, falling from 17.4% of high school students having experienced cyberbullying in 2011 to 13.2% in 2013.<sup>228</sup> Virginia also considered expanding its current legislation, making bullying potentially punishable by a \$2,500 fine and up to a year in prison.<sup>229</sup> Several states with laws that allow for the prosecution of cyberbullies experienced a lower percentage of cyberbullying among high school students in 2011 than Indiana.<sup>230</sup> In Indiana, 18.7% of high school students experienced cyberbullying, while only 14.8% high school students in Virginia were cyberbullied during the same time period.<sup>231</sup> Additionally, only 17.4% of Kentucky high school students and 17.0% of Idaho high school students were victims of cyberbullying.<sup>232</sup> Nationally 16.2% of high school students experienced cyberbullying during that same time frame.<sup>233</sup>

Florida legislators are considering making all types of bullying criminally punishable offenses.<sup>234</sup> Called “Rebecca’s Law,” House Bill 451 proposed to

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2014).

222. *Id.*

223. *Id.*

224. ANALYSIS, *supra* note 51, at 20.

225. *See id.* (discussing IDAHO CODE ANN. § 18-917A (2013)).

226. *See id.* (discussing KY. REV. STAT. ANN. § 158.444 (2008) (amended 2013)).

227. Nancy Rodriguez, *Fewer Kentucky Students Engaging in Risky Behaviors*, KY. DEP’T OF EDUC. (Oct. 25, 2013), available at <http://education.ky.gov/comm/news/Documents/R%2013-109-KY%20Youth%20Risk%20Behavior%20Survey.pdf>.

228. *Id.*

229. ANALYSIS, *supra* note 51, at 20.

230. *See generally Youth Online: High School YRBS*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://nccd.cdc.gov/youthonline/App/Results.aspx?TT=C&SID=HS&QID=H23&LID=KY&LID2=SL&YID=2009&YID2=SY&SYID=&EYID=&HT=QQ&LCT=LL&COL=S&ROW1=N&ROW2=N&TST=false&C1=&C2=&SC=DEFAULT&SO=ASC&VA=CI&CS=Y&DP=1&QP=G&FG=1&FR=1&FS=1&TABLECLICKED=1> (last visited Aug. 26, 2014).

231. *Id.*

232. *Id.*

233. *Id.*

234. Alessandra Malito, *Mother of Bullied Teen Hopes to Change Florida’s Laws*, NBC NEWS

make the first bullying offense a misdemeanor.<sup>235</sup> Matt Morgan, an attorney who has covered several high-profile civil justice cases in Florida, believes the legislation will create awareness among parents and students that bullying is a crime.<sup>236</sup> Morgan stated, “We believe that Rebecca’s Law will deter students from bullying others in the future and will potentially save lives.”<sup>237</sup> There was an identical bill in the Florida Senate.<sup>238</sup>

In a recent case in Massachusetts, five students faced criminal charges for the persistent bullying of another student who eventually committed suicide.<sup>239</sup> This was the first visible case involving school bullying where students faced criminal charges.<sup>240</sup> Two of the students pled guilty to criminal harassment<sup>241</sup> and were sentenced to probation and community service.<sup>242</sup> At the time this case was decided, sixty-one percent of registered voters in Massachusetts approved of making school bullying a crime.<sup>243</sup>

### *B. Benefits of Imposing Criminal Liability*

*1. General Discussion About Deterrence Theory.*—As the recent trend toward criminalizing bullying suggests, there are benefits of imposing criminal liability. It is important to understand why criminalizing acts of bullying would be effective in reducing instances of bullying. One argument for the effectiveness of criminalization is the deterrence effect. The primary goal of general deterrence is to punish one person to dissuade others from committing the same or similar crimes.<sup>244</sup> Under general deterrence theory, a person’s punishment is used to reduce instances of similar criminal conduct.<sup>245</sup> Because one person is punished, fear of punishment is instilled in would-be violators of the law, potentially persuading them to act lawfully instead of committing the crime.<sup>246</sup> One important aspect of general deterrence theory is that it “implies a *legal* theory of crime control, that is, a statement about the impact of legal sanctions on the

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(Jan. 17, 2014), [http://usnews.nbcnews.com/\\_news/2014/01/17/22341028-mother-of-bullied-teen-hopes-to-change-floridas-laws?lite](http://usnews.nbcnews.com/_news/2014/01/17/22341028-mother-of-bullied-teen-hopes-to-change-floridas-laws?lite).

235. *HB451-Bullying*, FLORIDA HOUSE OF REPRESENTATIVES, <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=51583> (last visited Aug. 26, 2014).

236. Malito, *supra* note 234.

237. *Id.*

238. *HB451-Bullying*, *supra* note 235. (The bill did not pass in 2014.)

239. ANALYSIS, *supra* note 51, at 20.

240. *Id.*

241. Denise Lavoie, *5 Charged in Mass. Bullying Case Strike Deals*, ASSOCIATED PRESS, (May 4, 2011), [www.nbcnews.com/id/42898390/ns/us\\_news-crime\\_and\\_courts/t/two-teens-mass-bullying-case-plead-guilty/#UleuClafgfE](http://www.nbcnews.com/id/42898390/ns/us_news-crime_and_courts/t/two-teens-mass-bullying-case-plead-guilty/#UleuClafgfE).

242. ANALYSIS, *supra* note 51, at 20.

243. *Id.*

244. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 15 (2012).

245. *Id.*

246. *Id.*

incidence of crime.”<sup>247</sup>

The thrust of general deterrence stems from the threat or fear of the punishment itself, for example, a person refrains from committing a crime for fear of being incarcerated.<sup>248</sup> Additionally, general deterrence relies on weighing the expected costs and rewards with regard to criminal activity.<sup>249</sup> In addition to fearing punishment, some would-be criminals fear the stigma of being arrested.<sup>250</sup> “If persons anticipate that others will disapprove of their arrest for committing a certain act, and they refrain from that activity because they fear the stigma of being caught.”<sup>251</sup>

Another important aspect of general deterrence is the concept of attachment costs.<sup>252</sup> Attachment costs refer to the “negative consequences for relationships with close friends and relatives.”<sup>253</sup> What many find “[m]ore important than that actual response of significant others is the perception of what their response is likely to be.”<sup>254</sup> This assumes that the close relationships between family and friends and the would-be criminal are in actual jeopardy, not just the person’s reputation.<sup>255</sup> If a person fears his or her relationship is in jeopardy due to a criminal act, he or she may be deterred from acting.<sup>256</sup>

In addition to general deterrence, would-be repeat criminals often face individual deterrence when they face the consequences of the court system.<sup>257</sup> With individual deterrence, the punishment is meant to prohibit the criminal from committing future misconduct.<sup>258</sup>

2. *Detering Bullies.*—Criminalizing bullying would provide a deterrent effect and would help reduce the instances of bullying in Indiana.<sup>259</sup> While it is difficult to prove or measure deterrence effects, a 2005 study suggests that sanctions for juvenile offenders do have deterrent effects.<sup>260</sup> The study

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247. Kirk R. Williams & Richard Hawkins, *Perceptual Research on General Deterrence: A Critical Review*, 20 LAW & SOC’Y REV. NO. 4 545, 547 (1986).

248. *Id.*

249. *Id.*

250. *Id.* at 562.

251. *Id.* at 562-63.

252. *Id.* at 564.

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. DRESSLER, *supra* note 244.

258. *Id.*

259. *See generally id*; *see also* RICHARD E. REDDING, JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY? (2010), *available at* <https://www.ncjrs.gov/pdffiles1/ojdp/220595.pdf>; Steven D. Levitt, *Juvenile Crime and Punishment*, 106 J. OF POL. ECON. NO. 6 1156 (1998) Morgan O. Reynolds, *Does Punishment Deter?*, POL’YBACKGROUNDERS NO. 148 (1998); Williams & Hawkins, *supra* note 247.

260. REDDING, *supra* note 259, at 3.

considered the effects of arrest rates on juvenile crime rates.<sup>261</sup> The study also found that “the arrest rate had a general deterrent effect on the crimes of drug dealing and assault.”<sup>262</sup> Additionally, the study found that the likelihood that juveniles would sell drugs decreased by nearly four percent for each additional arrest, and the likelihood that juveniles would commit assault decreased by nearly seven percent.<sup>263</sup> If criminal liability were imposed on children who committed acts of bullying, there would almost certainly be a general deterrent effect on other would-be bullies.<sup>264</sup> After North Carolina passed the legislation that made cyberbullying a crime, cyberbullying declined within two years.<sup>265</sup> Kentucky also saw a decline.<sup>266</sup> Additionally, students would be generally deterred because they would fear the harm that criminal liability would impose upon their reputations.<sup>267</sup> By age eleven or twelve, children are aware of the importance of their reputations and the desirability of friendship.<sup>268</sup> Because students value their reputation, they are likely to be deterred from criminal activity that will damage their reputation.<sup>269</sup>

Students would also fear the stigma of arrest.<sup>270</sup> General deterrence theory suggests that if students believe that other students, parents, or teachers will disapprove of the arrest then students will be deterred from committing the act due to that fear.<sup>271</sup> The juvenile justice system may cause youths to “experience stigmatization during interpersonal interactions with peers, guards, judges, lawyers, or social workers as he goes through the juvenile justice system.”<sup>272</sup> Students would also fear the harm that criminal liability may impose upon their relationships with family members and friends.<sup>273</sup> Students may fear that important relationships may suffer if they are held criminally liable for bullying.<sup>274</sup> “Decisions to commit crimes . . . are influenced not just by the price of the crime, but also by individuals’ perceptions of others’ behavior and attitudes; these perceptions are shaped by the social meaning of law and private conduct.”<sup>275</sup>

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261. *Id.*

262. *Id.*

263. *Id.*

264. Williams & Hawkins, *supra* note 247, at 565.

265. See YOUTH RISK BEHAVIOR SURVEY 2009, *supra* note 216; see also YOUTH RISK BEHAVIOR SURVEY 2011, *supra* note 217.

266. Rodriguez, *supra* note 227.

267. Williams & Hawkins, *supra* note 247, at 562-63.

268. Bernice L. Neugarten, *Social Class and Friendship Among School Children*, 51 AM. J. SOC. NO. 4 305, 313 (1946).

269. Williams & Hawkins, *supra* note 247, at 565.

270. *Id.* at 562.

271. *Id.* at 562-63.

272. Anne R. Mahoney, *The Effect of Labeling Upon Youths in the Juvenile Justice System: A Review of the Evidence*, 8 LAW & SOC’Y REV. NO. 4, at 583, 587 (1974).

273. Williams & Hawkins, *supra* note 247, at 564.

274. *Id.*

275. Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349,

Finally, since juvenile records may not be erased, the ramifications for their actions may further deter bullying.<sup>276</sup> Although students may be punished under the current system, the punishments are less severe and less likely to impact the future of the student.<sup>277</sup> For example, since universities may have access to juvenile records, a high school student that plans to attend college may fear that a criminal sanction could cause problems with admittance.<sup>278</sup> Furthermore, students may also fear that criminal sanctions would prohibit them from participating in future activities which they enjoy.

Criminalizing bullying would provide many benefits to Indiana, including crime reduction and lower cost to the public. According to a report by Fight Crime: Invest in Kids, “[e]ach high-risk juvenile prevented from adopting a life of crime could save the country between \$1.7 million and \$2.3 million.”<sup>279</sup> Sixty percent of boys who bully are more likely to commit crimes and have at least one conviction by age twenty-four.<sup>280</sup> The same report indicated that forty percent of boys who engaged in bullying behaviors are more likely to have three or more convictions by age twenty-four.<sup>281</sup>

3. *Retributivism Theory*.—In addition to deterrence, retributivism is another theory that supports criminalizing bullying. Retributivism stems from the idea that those who commit crimes deserve to be punished for them.<sup>282</sup> Retribution and punishment are “deserved when the wrongdoer freely chooses to violate society’s rules.”<sup>283</sup> Retributivism is based on the idea that humans have free will and should be blamed when they choose to commit a crime.<sup>284</sup> One type of retributivism, “victim vindication,”<sup>285</sup> focuses on punishment believing that it allows the criminal justice system to “right a wrong.”<sup>286</sup> Because bullying may have significant effects on its victims, such as depression or poor academic performance,<sup>287</sup> under retributivism theory, the bullies should face the consequences of their actions.<sup>288</sup>

4. *Accountability for Bullies*.—Another reason Indiana should adopt legislation criminalizing bullying is because bullies should be held accountable

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386 (1997).

276. THE YOUTH LAW T.E.A.M. OF IND., A GUIDE FOR PARENTS TO THE JUVENILE JUSTICE SYSTEM IN INDIANA: “YOUR CHILD AND JUVENILE COURT” 26-27 (2010), available at [www.youthlawteam.org/files/2010%20Parent's%20Handbook.pdf](http://www.youthlawteam.org/files/2010%20Parent's%20Handbook.pdf).

277. DISCIPLINARY, *supra* note 156.

278. THE YOUTH LAW T.E.A.M. OF IND., *supra* note 276, at 25.

279. FIGHT CRIME: INVEST IN KIDS, *supra* note 57, at 15.

280. *Id.* at 8.

281. *Id.*

282. DRESSLER, *supra* note 244, at 16.

283. *Id.*

284. *Id.*

285. *Id.* at 18.

286. *Id.*

287. NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, *supra* note 27.

288. Graham, *supra* note 50.

for their actions. Bullying is similar to crimes of intimidation, harassment, and stalking.<sup>289</sup> Criminal sanctions for bullying should be similar to those imposed for these types of crimes. Criminal sanctions would force bullies to face the consequences of their decisions. Although there are other ways to punish bullies, the criminal justice system is the most effective because allows for both deterrence and retribution.

### *C. Consequences of Imposing Criminal Liability*

If Indiana adopted criminal liability for bullies, the bullies would face the juvenile court system which was created in the interest of the child.<sup>290</sup> Indiana's juvenile court system has three important matters to consider: the child's and society's interest; the custody or control of the offender; and the deterrence or reduction juvenile delinquency.<sup>291</sup> The financial expense of putting a bully through the juvenile justice system, as well as the limited facilities, must also be considered when utilizing the juvenile justice system.<sup>292</sup> In 2009, Indiana spent about \$154 per day for each juvenile in residential placement, and in total, costing the state approximately \$286,953 per day.<sup>293</sup> In comparison, Indiana's total cost per day for the total adult prison population is more than \$1.5 million.<sup>294</sup>

Although there are costs associated with using the juvenile justice system, the system helps hold juveniles accountable for their behavior.<sup>295</sup> While juvenile court systems may punish juveniles, the court system may also offer rehabilitation.<sup>296</sup> The juvenile justice system promotes “‘quality prevention programs’ that address[] the therapeutic needs of juveniles amenable to treatment, as well as programs that increase[] ‘juvenile accountability’ for their crimes.”<sup>297</sup>

An argument against criminalizing bullying is that children do not have the requisite mental capacity to be held liable for their actions.<sup>298</sup> Although children

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289. IND. CODE §§ 35-45-10-1, -2 (2013); *id.* § 35-45-2-1.

290. Joseph B. Sanborn, Jr., *The Juvenile, the Court or the Community: Whose Best Interests Are Currently Being Promoted in Juvenile Court*, 17 THE JUST. SYS. J. NO.2 249 (1994).

291. *Id.* at 252.

292. *Id.* at 254.

293. JUSTICE POLICY INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 4 (2009), available at [www.justicepolicy.org/images/upload/09\\_05\\_rep\\_costsofconfinement\\_jj\\_ps\\_pdf](http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps_pdf).

294. VERA INST. OF JUSTICE, THE PRICE OF PRISONS: INDIANA (2012), available at [www.vera.org/files/price-of-prisons-indiana-fact-sheet.pdf](http://www.vera.org/files/price-of-prisons-indiana-fact-sheet.pdf).

295. Sanborn, *supra* note 290, at 257-58.

296. *Id.* at 260.

297. Elizabeth Brown, *Crime, Governance, and Knowledge Production: The “Two-Track Common-Sense Approach” to Juvenile Criminality in the United States*, 36 SOC. JUST. NO. 1 102 (2009) (referring to changes in the Juvenile Justice and Delinquency Prevention Act).

298. Thomas Grisso et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. NO.4, at 333, 334 (2003).

under fifteen are more likely than older adolescents to have a lower mental capacity, nearly eighty percent of children ages eleven to thirteen are not significantly impaired. Similarly, approximately eighty-five percent of children ages fourteen and fifteen do not have a reduced mental capacity and may be held accountable for their actions.<sup>299</sup> Additionally, nearly ninety-five percent of children age sixteen to seventeen are not significantly impaired in their capacity to be held liable for their actions.<sup>300</sup>

#### *D. Similar Criminal Sanctions*

Indiana should enact a statute that makes bullying itself a crime.<sup>301</sup> With regard to student discipline, Indiana provided a definition of bullying with specific behaviors that must be addressed by school corporations.<sup>302</sup> While schools have attempted to address the problem,<sup>303</sup> as indicated previously, there is still a significant amount of bullying that occurs throughout the state, and the state of Indiana can do better.<sup>304</sup> Like New Jersey and Georgia, Indiana's bullying laws by themselves are not enough.<sup>305</sup> While bullying has decreased some, there is still room for improvement, and adding additional legislation that makes bullying a criminal offense would likely help Indiana to better deter bullying.<sup>306</sup>

Indiana should create a criminal statute against acts of bullying modeled after the definition provided in Indiana Code section 20-33-8-0.2.<sup>307</sup> This statute should include several elements. First, the statute should only punish "overt, unwanted, repeated acts or gestures."<sup>308</sup> Second, these acts must be "committed by a student or group of students against another student."<sup>309</sup> Third, the acts must be committed with "the intent to harass, ridicule, humiliate, intimidate, or harm the targeted student and create for the targeted student an objectively hostile school environment."<sup>310</sup> The school environment can be hostile in several ways, and the statute should include the following factors, which address hostility. A school environment is hostile if it:

- (1) [P]laces the targeted student in reasonable fear of harm to the targeted student's person or property;
- (2) has a substantially detrimental effect on the targeted student's physical or mental health;
- (3) has the effect of

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299. *Id.* at 347.

300. *Id.*

301. *See generally* IND. CODE §§ 35-45-10-1, -2 (2013); *id.* § 35-45-2-1.

302. *Id.* § 20-33-8-0.2.

303. *Id.*

304. Loughlin, *supra* note 14.

305. N.J. DEP'T OF EDUC., *supra* note 180.

306. *Id.*

307. IND. CODE § 20-33-8-0.2 (2013).

308. *Id.*

309. *Id.*

310. *Id.*

substantially interfering with the targeted student's academic performance; or (4) has the effect of substantially interfering with the targeted student's ability to participate in or benefit from the services, activities, and privileges provided by the school.<sup>311</sup>

The statute should provide that a student who engages in acts of bullying will be held criminally liable and may face punishments including: probation, community service, or mandatory anger management or counseling services depending on the severity of the bullying. The offender should first be punished without jail time, but should be put through the juvenile justice system's programming to hold them accountable for their actions.<sup>312</sup> If the child commits the offense multiple times, the punishment imposed should grow increasingly more severe, and could include time in detention facilities.<sup>313</sup>

Indiana could model their statute after Florida's proposed statute, House Bill 451.<sup>314</sup> This proposed bill states in part that "[a] person who willfully, maliciously, and repeatedly harasses or cyberbullies another person commits the offense of bullying, a misdemeanor of the first degree."<sup>315</sup> Additionally, the proposed legislation goes on to state that "[a] person who willfully, maliciously, and repeatedly harasses or cyberbullies another person and makes a credible threat to that person commits the offense of aggravated bullying, a felony of the third degree."<sup>316</sup>

A bullying statute imposing criminal liability would provide a more comprehensive approach for law enforcement to address bullying within the juvenile justice system because Indiana's definition of bullying already includes harassment and intimidation.<sup>317</sup> Although similar, bullying should be treated differently than harassment because harassment is "motivated by characteristics of the targeted victim."<sup>318</sup> Harassment includes "repeated or continuing impermissible conduct that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress."<sup>319</sup> Stalking and intimidation are defined in another statute similar to bullying.<sup>320</sup> Stalking includes repeated conduct which causes the victim to "feel terrorized, frightened, intimidated, or threatened."<sup>321</sup> Intimidation centers on threatening the

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311. *Id.*

312. Brown, *supra* note 297.

313. Matt Morgan, *Matt Morgan: Rebecca's Law Will Deter Students from Bullying, Save Lives*, MORGAN & MORGAN (Jan. 23, 2014), <http://www.forthepeople.com/blog/matt-morgan-rebeccas-law-will-deter-students-from-bullying-save-lives>.

314. *HB451-Bullying*, *supra* note 235.

315. H.B. 451, 2014 Reg. Sess. (Fl. 2014).

316. *Id.*

317. IND. CODE § 20-33-8-0.2 (2013).

318. ANALYSIS, *supra* note 51, at 17.

319. IND. CODE § 35-45-10-2 (2013).

320. *Id.* § 35-45-10-1.

321. *Id.*

victim.<sup>322</sup> Students can be charged with these similar crimes, however, they are not as specific as the proposed bullying statute, which is more precisely defined and focuses on the impact of bullying within the school environment.<sup>323</sup> Florida's proposed legislation provides some insight into the importance of a separate law criminalizing bullying.<sup>324</sup> Florida State Representative Heather Fitzhagen, sponsor for House Bill 451, said she hopes that providing consequences for bullying will help attain national attention for the movement.<sup>325</sup> Fitzhagen stated, "I think this is going to raise awareness because now there is a consequence to this type of behavior."<sup>326</sup>

#### CONCLUSION

Although Indiana's current bullying legislation has taken a step in the right direction, Indiana needs to implement additional measures to provide more protection for children. By making bullying a criminal offense, Indiana will be better able to deter bullying. Indiana should utilize its existing definition of bullying and integrate it into the Indiana Criminal Code. When youths are accused of bullying, they should face Indiana's juvenile justice system.

Bullying is still a significant problem in the state of Indiana and across the nation. Nationally, eight percent of girls who are frequently bullied and four percent of boys who are frequently bullied are suicidal.<sup>327</sup> Both the victims and the bullies face long term consequences and lasting effects of bullying.

Making bullying a criminal offense in Indiana would be beneficial for two main reasons. First, it would create general and individual deterrence against bullying.<sup>328</sup> Second, it would hold the bully accountable for his or her actions.<sup>329</sup> While there are already similar statutes within the state, a criminal bullying provision would be a more comprehensive way for law enforcement officers to address the issue of bullying in the criminal context.

Through recent legislation, Indiana has attempted to remedy the problem of bullying, but like Georgia and New Jersey, Indiana's current bullying legislation still leaves many instances of bullying unpunished.<sup>330</sup> By creating a criminal statute that directly addresses bullying, the criminal justice system can work with school corporations to best prevent bullying from occurring.

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322. *Id.* § 35-45-2-1.

323. *Manchester Regional High School Student Charged with Harassment for Cyberbullying*, NEWS 12 NEW JERSEY (June 14, 2013), <http://newjersey.news12.com/news/manchester-regional-high-school-student-charged-with-harassment-for-cyberbullying-1.5485693>.

324. Morgan, *supra* note 313.

325. *Id.*

326. *Id.*

327. FIGHT CRIME: INVEST IN KIDS, *supra* note 57.

328. DRESSLER, *supra* note 244.

329. *Id.* at 16.

330. N.J. DEP'T OF EDUC., *supra* note 180.