Jay Howell & Associates
A PROFESSIONAL ASSOCIATION
Attorneys at Law
644 Cesery Boulevard, Suite 300
Jacksonville, Florida 32211
(904) 680-1234 • Fax (904) 680-1238
www.jayhowell.com

HARASSMENT AT SCHOOL- PART II

by Jay C. Howell

This article continues our series on students being harassed at school. At issue is what steps parents and families can take to address this continuing problem in our community. Reports of students being followed, approached, threatened, intimidated, stalked, bullied, touched, and even assaulted have resulted in a new level of concern among parents and families. These actions may take place at the school itself, at school sponsored activities, at the home of the victim, and even at websites on the internet. Parents are asking for help.

In our last article we discussed the role of the Student Code of Conduct and recommended that all parents secure a copy from their local school or School Board.

A second important source of authority regarding this problem are the Florida laws that deal with stalking and making threats. Any help that the criminal justice system can provide to families is often related to the wording of the statutes and the decisions of our courts interpreting the laws. Our citizens are often surprised to find that criminal justice agencies are not always aware of the specific wording of the statutes and the court decisions which have defined their utility as protective devices. Actually, our laws provide some very good protection for children at school as long as the laws are vigorously enforced.

More than a decade ago, almost every state began to enact laws that punished the new crime identified as "stalking." Our Florida legislature passed both misdemeanor and felony stalking statutes. It is important to understand this statute if you are dealing with an incident of harassment at school. The stalking statute (§784.048) makes it a misdemeanor to willfully, maliciously, and repeatedly follow or harass another person. Stalking becomes a felony if an individually willfully, maliciously, and repeatedly follows or

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harasses another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury.

The stalking law also provides that if an individual maliciously and repeatedly follows or harasses another person after a court injunction for protection has been granted, then that too is a felony crime. Finally, any person who willfully, maliciously, and repeatedly follows or harasses a minor under 16 years of age, commits a felony crime.

Under this law, "harass" is defined as a course of conduct directed at a specific person that causes substantial emotional distress and which serves no legitimate purpose. A "credible threat" is defined as a threat made with the intent to cause the targeted individual to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a human being.

There is a very important recent decision from our appeals court on how this stalking statute applies to harassment at schools.

In an Orlando juvenile courtroom, the State presented evidence which established that D.L.D. and J.R. were middle school students in the same class. J.R. testified that D.L.D. had been hitting her, calling her obscene names, jumping on her, pushing her, and threatening her almost every day at school for a period of at least two months. This activity occurred mostly outside the classroom and the victim had not reported this conduct to her teachers because she thought they would not do anything about it. She did, however, complain to her parents, who in turn called the school's resource officer. J.R. had previously reported D.L.D.'s behavior to the resource officer and to her friend, identified as T.S.

One day in January, 2001, J.R. and her friend T.S. went to the office of the school resource officer to report the fact that D.L.D had just called J.R. an ugly name and had hit her, and that he had also pushed

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T.S. While the report was being taken, D.L.D. himself suddenly appeared in the office and disputed their accounts, trying to blame them for having started the altercation. Unable to resolve the matter, the resource officer asked D.L.D. to leave, assuring him he would call him back later to hear his side of the story. D.L.D. became very angry, and before leaving he threatened J.R. with "getting her" when she left the office. J.R., T.S., and the resource officer believed that D.L.D. intended to carry out his threat. At that point, the resource officer arrested D.L.D. He was charged in juvenile court with the felony crime of aggravated stalking.

D.L.D. argued to the trial court that the evidence in the case was not sufficient to convict him of the crime. The trial court rejected his contentions and D.L.D. appealed his case.

In the appellate court D.L.D. argued that the State failed to produce sufficient evidence that D.L.D. harbored malice or ill will against J.R. However, the appellate court noted that the inference of malice or ill will logically followed the continual pattern of harassing behavior engaged in by D.L.D. against J.R. over a two-month period of time. The court also noted that the officer and T.S. were present at the time that D.L.D. became very angry and made a specific threat to "get" J.R. and they testified about this threat. The court concluded that these behaviors provided a sufficient basis to establish malice and ill will on the part of D.L.D. It was not necessary that the State prove why D.L.D. apparently disliked J.R. or the reasons for the continued harassment.

D.L.D. also argued that the State's evidence was not sufficient to establish "harassment" as that word is defined in the stalking statute. D.L.D. said the proof had failed to establish any basis upon which to conclude that J.R. suffered "substantial emotional distress." His attorney argued that she did not testify that she was upset, unable to sleep or eat, or made to cry. Though the prosecutor did ask her, during her

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testimony, about whether she was "scared," D.L.D.'s lawyer objected to such testimony and the objection was sustained.

The appellate court offered their opinion that emotional distress should not be judged on a subjective standard such as whether the victim was in tears or terrified, but on a more objective one - would a reasonable person be put in distress when subjected to such conduct? The court concluded that D.L.D.'s conduct, continuing on an almost daily basis, of pushing and hitting J.R. at school (a place J.R. had to be and could not avoid), and jumping on her and calling her obscene names would likely substantially emotionally upset any normal person. Further, the court declared the fact that J.R. complained repeatedly to her parents and to the officer about D.L.D.'s behavior is sufficient to permit an inference that she was, in fact, emotionally upset by D.L.D's behavior. Even if a subjective standard were applied, a person need not be reduced to tears and hysteria in order to be considered "substantially emotionally distressed."

D.L.D.'s conviction for aggravated stalking was affirmed. Presumably, the same conduct that convicted D.L.D. of aggravated stalking would have also been sufficient for J.R. to secure a protective injunction under the Florida law protecting victims of repeat violence or stalking (Florida Statutes, §784.046). The case is *D.L.D. v. State*, and can be found in legal publications at 815 Southern 2d, page 746 (Fla. 5th D.C.A. 2000).

This is an extremely important case decision because it provides a common sense interpretation of this statute and acknowledges that the provisions of the stalking law will apply to many acts and incidents which occur in the school setting. Parents who are attempting to deal with incidents of harassment at school will need to be knowledgeable of a decision like this because it will help the family convince the school, law enforcement, and prosecution authorities that a crime may indeed have been committed.