JAY HOWELL & ASSOCIATES, P.A.

ATTORNEYS AT LAW
644 Cesery Boulevard, Suite 250
Jacksonville, FL 32211
(904) 680-1234 Fax (904) 680-1238

By Jay Howell

THE POWER TO STOP BULLYING

There is no doubt that bullying is a pervasive and destructive behavior that has challenged communities, schools and parents in recent years. Bullying has been condemned at all levels of society, Florida school districts have been required to establish "no tolerance" policies to deal with it and still it continues. Fortunately, the Florida Appellate Courts have carved out a new remedy which may have the power to deal effectively with the schoolyard bully.

During the mid-90's, Florida and many other states enacted new laws to deal with the crime of stalking. The decisions of the Florida courts interpreting the new law, have now established the stalking statute as a remedy for many incident of bullying. In 2000, the Florida 5th District Court of Appeals ruled in an Orlando case that a middle school student who hit the victim, called her obscene names, jumped on her, pushed her, and threatened her almost every day at school committed the felony crime of aggravated stalking. That appellate decision, listed in legal publications as 815 So.2d 746, concluded that the defendant's conduct, continuing on an almost daily basis, at school (a place where the victim had to be and could not avoid) would likely substantially upset any normal person and thus constituted the crime of aggravated stalking. This was an important appellate decision that put a traditional case of

"bullying" right in the crosshairs of the Florida criminal statute.

A second Florida appellate decision has now added additional weight to the protection that the stalking statute provides to victims of bullying. In a Palm Beach case, a 17 year old juvenile was found guilty of the offense of misdemeanor stalking. He appealed his conviction, complaining that the evidence was insufficient to establish the crime. The offense took place at a mall where the victim worked at a skincare kiosk. The defendant walked past the kiosk, looked at the victim, and in an angry tone uttered a homophobic slur. Fifteen to twenty minutes later, the defendant yelled a similar slur from the second floor of the mall, directly above the victim. Some shoppers laughed and smirked and others looked sympathetically at him. An hour later, the defendant again approached the kiosk with a group of kids and taunted the victim with similar slurs. According to the victim, they were all laughing. The security guard that was contacted by the victim confirmed that the victim was very upset. The victim himself testified it was embarrassing and hurtful.

The appellate court concluded that the defendant acted three times, with each incident separated from the others by the passage of time; 15 to 20 minutes between the first and second incidents, and the third, by another hour. Recognizing that offensive speech alone does not subject the speaker to criminal sanctions, the appellate court noted previous court rulings declaring that conduct which amounts to stalking under the criminal statute, whether by word or deed, is not protected by the first amendment and free speech. Finally, the court ruled that while many persons would not react in the same way as this victim, nonetheless, the words were likely to cause

emotional upset. The court decided that a rational trier of fact (a judge or a jury) could find that the elements of the misdemeanor stalking statute had been established beyond a reasonable doubt. The conviction was affirmed. The case is titled, *TB vs. The State* and was decided on September 10, 2008 by the 4th District Court of Appeals.

These two appellate decisions, taken together, provide a strong legal foundation for criminal stalking charges in many cases of school bullying. It will be up to police and prosecutorial authorities to use these decisions to provide protection for victims of bullying in school.