

N.C.P.I.-Crim. 226.65
CYBER-BULLYING WITH INTENT TO [INTIMIDATE] [TORMENT] A MINOR.
MISDEMEANOR.
GENERAL CRIMINAL VOLUME
REPLACEMENT JUNE 2017
N.C. Gen. Stat. § 14-458.1(a)(1)

226.65 CYBER-BULLYING WITH INTENT TO [INTIMIDATE] [TORMENT] A
MINOR. MISDEMEANOR.

NOTE WELL: In State v. Bishop, 368 N.C., 787 S.E. 2d 814, 822 (June 10, 2016), reversing the Court of Appeals, the Supreme Court of North Carolina held that G.S. § 14-458.1(a)(1)(d), which prohibited posting, or encouraging others to post private, personal, or sexual information relating to a minor was unconstitutional under the First Amendment. The court concluded that this section of the statute restricted speech, not merely nonexpressive conduct; that this restriction was content based; and that it was not narrowly tailored to the State's asserted interest in protecting children from the harms of online bullying. Accordingly, G.S. § 14-458.1(a)(1)(d), which had formerly been included as an option within the second element of this offense, has been deleted.

The defendant has been charged with cyber-bullying with intent to [intimidate] [torment] a minor.¹

For you to find the defendant guilty of this offense, the State must prove [three] [four] things beyond a reasonable doubt:

First, that the defendant used a [computer] [computer network].

Second, that while using the [computer] [computer network], the defendant

(a) [built a fake profile² or website]

(b) [posed as a minor in [an internet chatroom³] [an electronic mail message] [an instant message]]

(c) [followed the minor [online] [into an internet chatroom]]

(And) Third, that the defendant acted with the intent⁴ to [intimidate] [torment] a minor.

NOTE WELL: If there is evidence presented that defendant is 18 years of age or older at the time the

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alleged offense was committed, use the following:

((And) Fourth, that the defendant was 18 years of age or older at the time the alleged offense was committed.⁵)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant used a [computer] [computer network] and [built a fake profile or website] [posed as a minor in [an internet chatroom] [an electronic mail message] [an instant message]] [followed the minor [online] [into an internet chatroom]], (and the defendant was 18 years of age or older), it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1 Minor means an individual who is less than 18 years old and is not married or judicially emancipated.

2 Profile means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer. See N.C. Gen. Stat. § 14-458.1.

3 Internet chatroom means a computer service allowing two or more users to communicate with each other in real time.

4 If a definition of intent is needed, see N.C.P.I.—Crim. 120.10. "Acting willfully means acting 'voluntarily, intentionally, purposefully, and deliberately,' indicating a purpose to do it without authority, and in violation of law." *S. v. Whittle*, 118 N.C. App. 130, 132 (1995).

5 The penalty for this offense is higher if the defendant is 18 years old or older. See N.C. Gen. Stat. § 14-458.1(b).