
JUVENILE DELINQUENCY LAW — HARASSMENT AND BULLYING — IOWA SUPREME COURT HOLDS THAT EVIDENCE OF TAUNTING IS INSUFFICIENT TO CONSTITUTE CRIMINAL HARASSMENT. — *In re D.S.*, 856 N.W.2d 348 (Iowa 2014).

In the aftermath of a series of highly publicized teenage suicides,¹ the issue of bullying² has garnered national attention. Responding to these deaths, state legislators have vowed to eradicate bullying by enacting specific antibullying statutes or amending existing criminal codes to encompass bullying.³ Their efforts have had limited success, however: many antibullying statutes are merely unfunded mandates,⁴ and other legal channels — such as cyberbullying laws, “status-based” hate-crime laws, and laws providing civil remedies — apply only under certain circumstances.⁵ By contrast, broadly worded criminal ha-

¹ See, e.g., Lyrisa Lidsky & Andrea Pinzon Garcia, *How Not to Criminalize Cyberbullying*, 77 MO. L. REV. 693, 694 (2012) (citing media coverage of suicides of Phoebe Prince, Amanda Todd, and Megan Meier). By one count, there were at least forty suicides of bullied children reported between 2008 and 2011, with over thirty in 2010 alone. Rachel Wayne, *The Social Construction of Childhood Bullying Through U.S. News Media*, 4 J. CONTEMP. ANTHROPOLOGY 36, 39 (2013).

² Norwegian researcher Dan Olweus pioneered the in-depth study of bullying. Lisa C. Connolly, Note, *Anti-Gay Bullying in Schools — Are Anti-Bullying Statutes the Solution?*, 87 N.Y.U. L. REV. 248, 250–51 & n.10 (2012). U.S. researchers have almost universally adopted the Olweus definition of bullying, which has three key prongs: (1) “aggressive behavior or intentional harm toward another” that (2) “is repeated over time” and (3) features an “imbalance of power that renders the victim unable to effectively establish a defense against the aggressive conduct.” Diane M. Holben & Perry A. Zirkel, *School Bullying Litigation: An Empirical Analysis of the Case Law*, 47 AKRON L. REV. 299, 302 (2014).

³ See, e.g., Mark O’Mara, *It’s Time to Outlaw Bullying*, CNN (June 3, 2014, 1:41 PM), <http://www.cnn.com/2014/06/03/opinion/omara-bullying-legislation> [<http://perma.cc/4G8Z-EUUH>]; see also DENA T. SACCO ET AL., AN OVERVIEW OF STATE ANTI-BULLYING LEGISLATION AND OTHER RELATED LAWS 9–10 (Feb. 23, 2012), http://www.meganmeierfoundation.org/cmss_files/attachmentlibrary/State-Anti-Bullying-Legislation-Overview.pdf [<http://perma.cc/Y3G3-NMUE>].

⁴ Forty-nine states have enacted antibullying statutes, *State Anti-Bullying Laws & Policies*, U.S. DEP’T OF HEALTH & HUMAN SERVS., <http://www.stopbullying.gov/laws/index.html> (last visited Mar. 29, 2015) [<http://perma.cc/N9PJ-8DAR>], but many have been challenged as unfunded mandates and have proven largely ineffective. See, e.g., Kathleen Hart, Note, *Sticks and Stones and Shotguns at School: The Ineffectiveness of Constitutional Antibullying Legislation as a Response to School Violence*, 39 GA. L. REV. 1109, 1150–51 & n.268 (2005) (noting that most legislators have “pass[ed] unfunded legislation” to require schools to develop antibullying programs, *id.* at 1150); see also *Anti-Bullying*, N.J. EDUC. ASS’N, <http://www.njea.org/issues-and-political-action/anti-bullying> (last visited Mar. 29, 2015) [<http://perma.cc/2ZZN-X4SP>] (noting that after State Council on Local Mandates struck down New Jersey’s antibullying law as unfunded mandate, state legislators and the Governor created \$1 million fund for school antibullying training programs). For criticism of antibullying legislation, see Daniel B. Weddle, *Still Disconnected: Current Failures of Statutory Approaches to Bullying Prevention in Schools*, 77 MO. L. REV. 761, 761 (2012) (criticizing many statutes as “politically satisfying but ultimately empty gestures”).

⁵ For instance, “tools-based” laws that ban the use of certain technology for bullying purposes are inapplicable to “offline” bullying. See Tracy Tefertiller, *Out of the Principal’s Office and into the Courtroom: How Should California Approach Criminal Remedies for School Bullying?*, 16

rassment statutes may offer a way to penalize bullying behavior regardless of where it takes place and whether the victim belongs to a protected class.⁶

Recently, in *In re D.S.*,⁷ the Iowa Supreme Court reversed a juvenile court's finding that a fifteen-year-old had criminally harassed her classmate. In demanding that a defendant must initiate contact with a victim, the *D.S.* court adopted a narrow interpretation of Iowa's criminal harassment statute that neither the statutory text nor relevant precedent requires. With this interpretation, the court limited — but did not foreclose — the availability of criminal harassment statutes as one of the most generally applicable channels through which the legal system can address bullying behavior.

After exiting her school bus one afternoon in February 2013, fifteen-year-old D.S. sought to grab the attention of her friend, T.F., by yelling her nickname, “T bitch.”⁸ Their classmate, T.B., mistakenly thought that D.S. was addressing her, so she responded, “What?”⁹ D.S. then replied to T.B.: “I wasn’t talking to you[,] you fat skanky bitch! I’m way better than you [and] prettier than you and I’m not desperate like you to sleep with the bus driver.”¹⁰ D.S. and T.B. stood

BERKELEY J. CRIM. L. 168, 184–86 (2011). Likewise, “status-based” hate-crime laws that hinge on certain characteristics of the bullied victims are available only when victims are members of some protected class. *See id.* at 186–88. Finally, immunity provisions often shield school districts and officials from common law tort suits. *See* Samantha Neiman et al., *Bullying: A State of Affairs*, 41 J.L. & EDUC. 603, 627 (2012). Indeed, bullied plaintiffs who bring civil suits often face overwhelmingly defendant-friendly courts. *See* Holben & Zirkel, *supra* note 2, at 312–14 (reporting that of all federal and state decisions from 1992 to 2011 that fit the Olweus definition of bullying, courts made 742 claim rulings, 62% of which were conclusively for defendants while only 2% were conclusively for plaintiffs).

⁶ Academics disagree on the merits of criminalizing bullying behavior. *Compare, e.g.*, 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, 546–47 (2009) (advocating “Social Inclusion Approach” to bullying intervention, a noncriminalizing approach based on principles of restorative justice), *with* Alicia K. Albertson, Note, *Criminalizing Bullying: Why Indiana Should Hold the Bully Responsible*, 48 IND. L. REV. 243, 256–61 (2014) (arguing that current Indiana antibullying legislation is insufficient and that the state should impose criminal sanctions for bullying). *See also* Xiyin Tang, *Shame: A Different Criminal Law Proposal for Bullies*, 61 CLEV. ST. L. REV. 649, 651 (2013) (proposing criminalization of the act of bullying itself with “shaming” in court as the sentence). This comment does not address the normative debate behind criminalization but instead analyzes the extent to which judicial opinions like *In re D.S.* may impact such efforts.

⁷ 856 N.W.2d 348 (Iowa 2014).

⁸ *Id.* at 349.

⁹ *Id.*

¹⁰ *Id.* (second alteration in original) (internal quotation marks omitted). This account is based on T.B.’s testimony to the police on February 20, the day of the incident at issue. At the delinquency proceeding in May, T.B. added that D.S. had told her, “[Y]ou can go die in a hole.” *Id.* at 350 (internal quotation mark omitted). Because of the inconsistencies in T.B.’s testimonies, however, the juvenile court ruled that this last statement was not credible. *Id.* at 351.

approximately ten feet from each other during this encounter.¹¹ T.B. returned home and cried about the incident.¹² Her mother then reported the encounter to the town's chief of police.¹³

The State filed a petition alleging D.S.'s delinquency¹⁴ for harassment in the third degree, in violation of Iowa Code sections 708.7(1)(b) and 708.7(4).¹⁵ In its May 10 "Findings, Conclusions, and Order,"¹⁶ the juvenile court considered whether D.S. had intended to "threaten, intimidate, or alarm" T.B. as required by Iowa's criminal harassment statute. The court first found no evidence that D.S. "threatened" or "alarmed" T.B.¹⁷ Because D.S. was "substantially shorter and weigh[ed] less than T.B.," the court found it "not reasonable to believe T.B. anticipated any physical harm or threat of physical harm from D.S."¹⁸ Despite the lack of threat to physical security, the court found that D.S. had no legitimate purpose in speaking to T.B. and intended to make her "lack self-confidence in her relations with the opposite sex and about her body-build."¹⁹ In turn defining "intimidate" as "to make timid or fearful" and "timid" as "lacking in courage or self-confidence,"

¹¹ *In re* D.S., No. 13-0888, 2014 WL 1495489, at *1 (Iowa Ct. App. Apr. 16, 2014); *see also In re* D.S., 847 N.W.2d 612 (Iowa Ct. App. 2014) (decision published without opinion).

¹² *D.S.*, 2014 WL 1495489, at *1.

¹³ *D.S.*, 856 N.W.2d at 349. Although the court focused solely on the February 20 incident, T.B. purportedly had a long history of similar encounters with D.S. T.B.'s mother stated that she had put her house up for sale "because the harassment [wa]s so bad we d[id]n't know what else to do." *Id.* (internal quotation mark omitted). T.B. likewise testified that D.S. "bullied [her] . . . nonstop" and that she "couldn't even walk home at night without being scared." *Id.* at 350 (alteration in original) (internal quotation marks omitted). She testified that "D.S. made her 'feel insecure,' as though '[she] . . . almost want[ed] to commit suicide.'" *Id.* (alterations in original); *see also D.S.*, 2014 WL 1495489, at *2 (quoting juvenile court's finding that D.S. and T.B. had known each other since kindergarten, that they were friends until the third grade, and that "ill will" between the two children had led to a physical altercation and frequent "mean and hurtful comments").

¹⁴ *D.S.*, 856 N.W.2d at 350. Delinquency proceedings are "special proceedings that serve as an alternative' to [the] criminal prosecution of a child," *id.* at 351 (quoting *In re* J.A.L., 694 N.W.2d 748, 751 (Iowa 2005)), and seek to serve "the best interests of the child," *id.*

¹⁵ *Id.* at 350; *see also* IOWA CODE § 708.7 (2013). Section 708.7(1)(b) sets out:

A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person. As used in this section, . . . "personal contact" means an encounter in which two or more people are in visual or physical proximity to each other.

Id. § 708.7(1)(b). Section 708.7(4) describes harassment in the third degree, which is considered a simple misdemeanor. *Id.* § 708.7(4).

¹⁶ *D.S.*, 856 N.W.2d at 351.

¹⁷ Consulting *Webster's Ninth Collegiate Dictionary*, the juvenile court defined "threaten" as "to utter threats against" and "alarm" as "a sudden sharp apprehension and fear resulting from the perception of imminent danger." *D.S.*, 2014 WL 1495489, at *2-3 (internal quotation marks and citations omitted).

¹⁸ *D.S.*, 856 N.W.2d at 351.

¹⁹ *Id.*; *see also D.S.*, 2014 WL 1495489, at *2-3.

the juvenile court ruled that D.S.'s statements constituted intimidation and that D.S. had committed a delinquent act.²⁰

The Iowa Court of Appeals reversed and remanded, ruling that the juvenile court's definition of "intimidate" erred for three reasons. First, defining "intimidate" to mean "make one lack self[-]confidence" failed to comport with the word's common understanding.²¹ Second, the juvenile court's definition displaced the statutory term from "its structural and syntactic context."²² Because the charged offense appears within a state code that governs assaults, it must "encompass[] something more than words or conduct intended to make the victim feel less confident in herself."²³ Invoking the canon of statutory construction *noscitur a sociis*,²⁴ the court reasoned that "intimidate" must be construed similarly to "threaten" and "alarm."²⁵ Finally, the juvenile court's capacious interpretation of "'intimidate' create[d] constitutional concerns implicating free speech rights and due process rights regarding vagueness."²⁶ In order to avoid potential constitutional infirmity, the court concluded that "intimidation" must be restricted to words of "true threat . . . with the intent of placing the victim in fear of bodily harm or death."²⁷ Employing this narrower definition, the intermediate court found insufficient evidence to prove that D.S. had criminally harassed her schoolmate.²⁸

The Iowa Supreme Court both vacated the decision of the Court of Appeals and reversed the judgment of the juvenile court.²⁹ Writing for the court, Justice Zager agreed with the intermediate court's reversal and dismissal of the delinquency petition, but on different grounds. Rather than relying on the proper definition of "intimidate," the court emphasized both the harassment statute's requirement of "purposeful[] . . . personal contact" and its own previous determination that harassment is a specific-intent crime.³⁰ Accordingly, the court first

²⁰ *D.S.*, 856 N.W.2d at 351 (internal quotation marks omitted). The juvenile court also rejected D.S.'s First Amendment defense from an earlier motion. *Id.*

²¹ *D.S.*, 2014 WL 1495489, at *3 (noting that neither "ordinary meaning" nor "case authority" could support this interpretation).

²² *Id.*

²³ *Id.*

²⁴ This canon requires "that associated words in a series should carry the same or similar denotations." *Id.*

²⁵ *Id.*

²⁶ *Id.* at *4. D.S. raised a constitutional challenge in addition to the sufficiency-of-the-evidence challenge. *Id.* at *1.

²⁷ *Id.* at *4 (quoting *Virginia v. Black*, 538 U.S. 343, 360 (2003)) (internal quotation mark omitted).

²⁸ *Id.* Reversing the delinquency adjudication on grounds of insufficient evidence, the court did not address D.S.'s constitutional challenge. *See id.*

²⁹ *D.S.*, 856 N.W.2d at 355.

³⁰ *Id.* at 352 (quoting IOWA CODE § 708.7(1)(b) (2013)).

found that D.S. had not initiated contact with T.B. and thus failed to satisfy the element of “purposeful personal contact.”³¹ Indeed, unlike defendants in earlier harassment cases who had unequivocally initiated verbal and physical contact,³² D.S. had simply exited the school bus as she “had apparently done on every prior occasion without incident.”³³ The court also stressed that D.S. had yelled “T bitch” to her friend, not to T.B., and that the encounter took place only because T.B. had mistakenly believed that D.S. had addressed her.³⁴ Given that D.S. did not initiate conversation with T.B., the court found insufficient evidence for the purposeful personal contact element of harassment.³⁵

Moreover, because D.S. failed to initiate contact with T.B., the court found that she necessarily lacked the specific intent to threaten, intimidate, or alarm T.B. at the time their encounter began.³⁶ The court also did not reach the question of whether D.S.’s taunts constituted “intimidation” because, once again, D.S. did not purposefully or intentionally create her encounter with T.B.³⁷ Put differently, the manner in which the encounter began, rather than the content of the encounter, determined whether D.S. had harassed T.B. Without evidence that D.S. purposefully sought out the incident with T.B., the court did not adjudicate whether their conversation contained potential intimidation that might have constituted harassment.³⁸

Because the relationship between D.S. and T.B. involved longstanding, aggressive behavior,³⁹ the *D.S.* opinion has implications for the availability of criminal harassment statutes to punish bullying be-

³¹ *Id.* at 354.

³² *Id.* Previous cases include *State v. Evans*, 672 N.W.2d 328 (Iowa 2003), where the defendant approached the victim in a store parking lot, asked to examine her shoes, and attempted to grab her foot, *id.* at 330, and *State v. Reynolds*, 670 N.W.2d 405 (Iowa 2003), where the defendant trailed the victim in his SUV and followed her home and to a nearby convenience store, *id.* at 410.

³³ *D.S.*, 856 N.W.2d at 354.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See id.*

³⁷ *Id.* at 354–55.

³⁸ The Iowa Supreme Court also did not reach D.S.’s constitutional claims. *See id.* at 355.

³⁹ The dynamic of the two children’s relationship arguably satisfies Olweus’s three-pronged definition of bullying. *See supra* note 2. First, T.B.’s testimony put forth at least a colorable argument that D.S. engaged in “aggressive behavior or intentional harm.” She repeatedly called the victim names, engaged in at least one physical altercation with her, and potentially even threatened her. *See supra* note 13. Second, the juvenile court found that D.S.’s behavior spanned numerous years. *See supra* note 13. Finally, T.B.’s testimony about her insecurity resulting from encounters with D.S., her mother’s testimony about putting their house up for sale so that T.B. could escape D.S.’s behavior, and even an observation from D.S.’s mother that T.B. “has no friends” reasonably suggest a power imbalance between the two children. *See D.S.*, 856 N.W.2d at 349–50.

havior. Declining to adopt an available broader reading of Iowa's criminal harassment statute, the Iowa Supreme Court emphasized instead that D.S. must have initiated contact with T.B. to meet the "purposeful personal contact" element even though the statutory text and applicable precedent do not require such a reading. The emphasis on initiation further shaped the analysis of requisite intent, with the court concluding that D.S. must have harbored specific intent to threaten, alarm, or intimidate T.B. at the initiation of their encounter. With this narrow interpretation of Iowa's criminal harassment statute, the court limited one of the most generally applicable legal mechanisms for antibullying intervention.

The statutory language did not require the court's conclusion that there was no "purposeful personal contact" unless D.S. initiated contact with her schoolmate. Indeed, the statutory definition of "personal contact" requires only that "two or more people are in visual or physical proximity to each other. 'Personal contact' does not require a physical touching or oral communication, although it may include these types of contacts."⁴⁰ The text is silent on the issue of initiation and thus does not require courts to define "purposeful personal contact" in such a way.

Nor does applicable precedent impose an initiation requirement. In fact, notwithstanding the court's efforts to distinguish *State v. Button*,⁴¹ that case featured an alternative way to satisfy the "purposeful personal contact" requirement. In *Button*, the defendant argued that he could not have initiated purposeful personal contact with — and thereby could not have harassed — a police officer while handcuffed and detained against his will.⁴² Although the defendant had not initiated his arrest or detention, the court nonetheless found requisite personal contact because he "chose to make the threats, turning the communication into harassment."⁴³ It was sufficient that Button purposefully continued to engage with his arresting officer, even though he had not initiated the encounter. In fact, the *Button* court explicitly stated that initiation was not the main criterion for "purposeful personal contact": "This element of harassment goes more toward Button's control of his own actions than it does to who sought out the interaction. Button was the master of his threatening statements, and he controlled his conduct at all times. . . . Button purposefully expanded his detention into a threatening encounter."⁴⁴ The same logic could have applied to D.S. Although she did not initiate contact with T.B.,

⁴⁰ IOWA CODE § 708.7(1)(b) (2013).

⁴¹ 622 N.W.2d 480 (Iowa 2001).

⁴² See *id.* at 482.

⁴³ *Id.* at 485.

⁴⁴ *Id.* at 484 (emphasis added).

she chose to engage and escalate their encounter. Indeed, rather than inform T.B. that the call for “T bitch” was not directed at her, D.S. hurled names at her. From this perspective, D.S., like Button, purposefully engaged in conduct leading to personal contact with T.B. The court, however, held D.S. to a different standard, holding that only through initiation could she have established purposeful personal contact.⁴⁵

Beyond the inquiry into purposeful personal contact, the court’s focus on initiation played a determinative role in its conclusion that D.S. did not harbor the requisite intent to threaten, alarm, or intimidate. The court grounded the specific intent analysis again on the initiation of contact, rather than the content of D.S.’s speech. Based on D.S.’s use of words like “fat” and “skanky,” as well as her insinuation that the victim engaged in inappropriate sexual relations,⁴⁶ the juvenile court’s finding that D.S. intended T.B. to “lack self-confidence in her relations with the opposite sex and about her body-build” seems reasonable.⁴⁷ The Iowa Supreme Court, however, did not analyze whether such a finding was sufficient for criminal harassment. Instead, the court established the relevant timeframe at which D.S. must have harbored the requisite specific intent as the initiation of the encounter, rather than the time at which D.S. made the statement at issue.⁴⁸ Of course, without evidence that D.S. purposefully initiated the encounter, there could also be no evidence that she had any sort of intent at the moment the encounter began. By having the intent inquiry turn on initiation of contact, the court further narrowed its interpretation of the harassment statute, finding no need to adjudicate the proper definition of “intimidate.”⁴⁹

⁴⁵ Professor Eugene Volokh similarly criticizes the court’s emphasis on the initiation of contact, pointing out that “though D.S. may not have purposefully initiated the conversation, she did purposefully continue the conversation. . . . [I]f someone has ‘personal contact’ with someone else with the intent to intimidate, it should be punishable regardless of who started the broader conversation.” Eugene Volokh, *Is It a Crime to Say Things that Make Someone “Lack Self-Confidence in Her Relations with the Opposite Sex and About Her Body-Build”?*, WASH. POST: VOLOKH CONSPIRACY (Nov. 24, 2014), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/11/24/is-it-a-crime-to-say-things-that-make-someone-lack-self-confidence-in-her-relations-with-the-opposite-sex-and-about-her-body-build> [<http://perma.cc/NR39-4W6H>].

⁴⁶ D.S., 856 N.W.2d at 349.

⁴⁷ *Id.* at 351. Of course, the de novo standard of review does not bind the Iowa Supreme Court to the juvenile court’s findings. *Id.*

⁴⁸ *See id.* at 354 (“[T]he State must prove beyond a reasonable doubt D.S. had formed the intent to threaten, intimidate, or alarm T.B. when she purposefully sought out the encounter.” (emphasis added)).

⁴⁹ *See id.* at 354–55. *But see* Volokh, *supra* note 45 (expressing skepticism about how the court could reasonably conclude that D.B. lacked specific intent to intimidate without deciding what “intimidate” means).

For antibullying advocates, the *D.S.* outcome stands to limit a potentially powerful, generally applicable means of legal intervention against bullying. In particular, as the recent political attention and legislative action around bullying were triggered by the highly publicized suicides of teenagers subject to emotional taunting,⁵⁰ antibullying advocates have sought to address bullying behavior resulting specifically in nonphysical, emotional, or psychological harm.⁵¹ With the limited applicability of other existing legal remedies,⁵² criminal harassment laws offer a generally applicable tool for legal intervention against such emotional bullying.⁵³ Notably, the 1980 Model Penal Code worded the model harassment statute in a “‘designedly general way’ to further ‘its purpose to proscribe forms of harassment that cannot be anticipated and precisely stated in advance.’”⁵⁴ In contrast to hate-crime laws that apply only to members of protected classes or technology-based laws that can address only cyberbullying, criminal harassment statutes hold promise as an intervention mechanism precisely because of their broadly applicable nature.

By focusing on initiation as a determinative element of both “purposeful personal contact” and specific intent, the *D.S.* court limited the range of bullying behaviors that harassment statutes may capture. Of course, the decision does not categorically foreclose the Iowa harassment statute’s application to bullying behavior. But it may suggest that such application will depend on the technicalities of initiation. Those bullies who happen upon opportunities to bully, rather than initiating such encounters, may face no judicial sanction for their behavior. While the merits of criminalizing bullying behavior are up for debate,⁵⁵ proponents of this approach may find that the decision disappointingly hampers one of the few generally applicable channels through which the legal system can address bullying behavior.

⁵⁰ See sources cited *supra* note 1.

⁵¹ See, e.g., *People v. Marquan M.*, 24 N.Y.3d 1, 6–7 (2014) (observing that Albany County’s cyberbullying statute, ultimately declared unconstitutional, had goal of addressing problem of “non-physical bullying behaviors transmitted by electronic means” that “inflict significant emotional harm” (first quoting Albany County, N.Y., Local Law No. 11, § 1 (2010); then quoting *id.* § 2) (internal quotation mark omitted)).

⁵² See *supra* notes 4–5.

⁵³ Criminal harassment statutes originated as laws that banned unwanted telephone and postal contact with private citizens. See Eugene Volokh, *One-to-One Speech vs. One-to-Many Speech, Criminal Harassment Laws, and “Cyberstalking,”* 107 NW. U. L. REV. 731, 740–42 (2013). Over time, the statutes developed a broader scope to encompass conduct ranging from “in-sults . . . likely to provoke violent or disorderly response” to “any other course of alarming conduct serving no legitimate purpose of the actor.” Aaron H. Caplan, *Free Speech and Civil Harassment Orders*, 64 HASTINGS L.J. 781, 791 (2013) (quoting MODEL PENAL CODE § 250.4 (1980)).

⁵⁴ Caplan, *supra* note 53, at 791 (quoting MODEL PENAL CODE § 250.4 cmt. 5).

⁵⁵ See, e.g., sources cited *supra* note 6.