

# AMATEUR SLEUTHS AND ONLINE TRUTHS: DEFAMATION LAWSUITS IN THE INTERNET AGE OF TRUE CRIME

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## ABSTRACT

*True crime today has a large following through social media and podcasts. Armchair detectives and online sleuths are given a platform to speak extensively about true crime cases. These amateur reporters do not always comply with the same ethical considerations as traditional journalists would. Rather, our current online climate has fostered a motivation to create true crime content without regard for the truth; the goal is rather to craft the next viral post or top-charting podcast.*

*This dilemma has led to an increase in defamation litigation as people are negatively impacted by false statements. Defamation litigation is largely controlled by inconsistent state regulations. With little uniform guidance and where no legislation has attempted to regulate non-media defamation in the online space, these suits rarely redress the real-life harms that are felt.*

*To promote uniformity and to foster an updated approach for addressing defamatory statements on the internet, states should adopt a model “online defamation” statute that includes a “correction clause.” When applied in an online true crime context, this statute would help to avoid unnecessary and costly litigation, while also giving those who are actually feeling harm a better chance at receiving a remedy.*

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## I. INTRODUCTION

“Just tell me the facts ma’am, because we didn’t have them fifteen years ago and we still don’t have them now.”<sup>1</sup> These last words, spoken by Sarah Koenig on the true crime podcast *Serial*, at their heart, questioned the truth.<sup>2</sup> The irony was that while Koenig was ending the podcast, she was also beginning a true crime revolution—one where we all would grapple with the truth.<sup>3</sup>

Whereas historically, true crime entertainment was the product of hours of research and fact-checking, people are now able to produce content in the time it takes to film a sixty-second video.<sup>4</sup> Neglecting the ethical considerations that bind traditional journalists, “armchair detectives” and internet sleuths have begun telling true crime stories on social media and in

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1. Sarah Koenig, *Serial: Season 1, Episode 12 Finale: What We Know*, THIS AMERICAN LIFE (Dec. 18, 2014) (downloaded using Spotify).

2. *Id.*

3. *See id.*

4. *See* Delia Cai, *In the Age of TikTok, True Crime Goes Live*, VANITY FAIR (Jan. 19, 2023), <https://www.vanityfair.com/style/2023/01/in-the-age-of-tiktok-true-crime-goes-live>.

podcasts.<sup>5</sup> The truth is not always accurately portrayed in these amateur reportings; as a result, real people are hurt.<sup>6</sup>

For harm arising from false statements of fact, the typical legal recourse is a defamation lawsuit.<sup>7</sup> Yet, when defamation action is brought regarding true crime entertainment, suits are difficult to prove and often fail.<sup>8</sup> It is seldom these cases provide adequate redress, as they are frequently dismissed.<sup>9</sup> Current precedent provides little remedy, even if the real-life effects are actually felt.<sup>10</sup> Protection is unlikely because of the vast inconsistencies in defamation law.<sup>11</sup> Though there are generally accepted defamation principles, state law controls the nuances.<sup>12</sup> As a result, defamation law has become the Wild West—and the online world has only contributed to the mess.<sup>13</sup> Where true crime, the internet, and defamation collide, there is little uniformity, and no viable option exists to adequately tackle this contemporary problem.<sup>14</sup>

To address this unique issue, states should adopt a model “online defamation” statute that would be applicable to non-media online postings.<sup>15</sup> A model statute would be one of the least infringing ways to promote uniformity and update defamation application.<sup>16</sup> The proposed statute would codify both libel and slander, specify who may be subject to liability, evaluate statements in their online context, and allow existing state defenses to remain intact.<sup>17</sup> Additionally, the proposed statute would include a “correction clause” that would allow publishers of allegedly defamatory statements the opportunity to fix inaccuracies.<sup>18</sup> A correction clause will allow parties to resolve issues before costly litigation is commenced, and it will give evidence to knowing disregard for false statements of fact.<sup>19</sup>

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5. *See id.*

6. *See* Bethan Jones, *Forensic Fandom: True Crime, Citizen Investigation and Social Media*, in *TRUE CRIME IN AMERICAN MEDIA* 163, 163–79 (George S. Larke-Walsh ed., 2023).

7. *See* RESTATEMENT (SECOND) OF TORTS § 559 (AM. L. INST. 1977).

8. *See infra* Section II.C (explaining the legal standards that create difficulties with defamation suits regarding online defamation content).

9. *See infra* Section II.C (providing an example of a failed defamation suit regarding online content).

10. *See infra* Section II.C (explaining the legal precedent and how defamation and online content intersect).

11. *See infra* Section II.B (noting the different approaches states have towards defamation law).

12. Ellyn M. Angelotti, *Twibel Law: What Defamation and Its Remedies Look Like in the Age of Twitter*, 13 J. HIGH TECH. L. 430, 442 (2013).

13. *See id.*

14. *See infra* Section II.C (explaining the lack of uniformity and the difficulty obtaining remedies for online defamation suits).

15. *See infra* Section III.A (describing the benefits and providing an example of a model online defamation statute).

16. *See infra* Section III.A (outlining why an online defamation statute is an effective way to establish uniformity in defamation law).

17. *See infra* Section III.A (explaining the details of the proposed model online defamation statute).

18. *See infra* Section III.B (providing the details of the proposed correction clause).

19. *See infra* Section III.B (explaining the benefits of the proposed correction clause).

This Comment argues that a model online defamation statute and correction clause should be implemented to address non-media defamation in online amateur true crime.<sup>20</sup> Part II of this Comment will recount the history of true crime, explore the varying approaches to defamation law, and explain how these two seemingly unrelated concepts intersect.<sup>21</sup> Part III will propose a model online defamation statute to promote uniformity in an outdated area of the law.<sup>22</sup> It also will offer a correction clause, which would reduce costly litigation and give evidence to a publisher's intent.<sup>23</sup> Finally, this Comment will advance that in the context of true crime, a model online defamation statute is necessary to redress the actual harms that are being felt.<sup>24</sup>

## II. AMATEUR TRUE CRIME & DEFAMATION—AN INCREASE IN LITIGATION

True crime is a media genre that tells non-fiction stories about criminal acts.<sup>25</sup> Because of its informative-but-entertaining nature, true crime consumers cling to every word, no matter how accurate the information or how experienced the storyteller.<sup>26</sup> As amateurly-created true crime rises in popularity, defamation litigation has become an increasingly common legal action.<sup>27</sup> However, suits have proven to be an inadequate form of redress due to defamation's outdated and uneven precedent.<sup>28</sup> This dichotomy creates a significant issue in today's internet age where armchair detectives are continuing to unethically create true crime podcasts and social media content that oftentimes lacks truth.<sup>29</sup>

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20. See *infra* Part III (outlining the benefits of adopting a model online defamation statute).

21. See *infra* Part II (explaining the relationship between true crime and defamation law).

22. See *infra* Section III.A (proposing a model online defamation statute).

23. See *infra* Section III.B (suggesting a correction clause and discussing its purpose).

24. See *infra* Section III.C (explaining why a model online defamation statute is necessary in the context of true crime).

25. See Diana Rickard, *Truth or Doubt: Questioning Legal Outcomes in True-Crime Documentaries*, 17 LAW AND HUMS. 60, 61–62 (2023).

26. See *id.* at 61.

27. See Complaint & Demand for Jury Trial, *Scofield v. Guillard*, No. 3:22-cv-00521 (D. Idaho Dec. 21, 2022); Complaint, *Robertson v. Upchurch*, No. 3:23-cv-00770 (M.D. Tenn. July 28, 2023); Complaint, *Tenser v. Ryan*, No. 23SMCV04014 (W.D. Cal. Aug. 28, 2023). Because this Comment focuses on amateur armchair detectives and online sleuths, high-production true crime like that created by Netflix falls outside of this Comment's scope. But these cases are included to flag the increasing frequency of defamation claims being filed in relation to true crime. See generally *Colborn v. Netflix Inc.*, 541 F. Supp. 3d 888 (E.D. Wis. 2021) (describing a case stemming from a true crime documentary); *Fairstein v. Netflix Inc.*, 553 F. Supp. 3d 48 (S.D.N.Y. 2021) (dealing with a defamation claim); Original Petition for (1) Defamation and (2) Misappropriation of Likeness or Right of Publicity, *Hazelwood v. Netflix*, No. DC-23-04695 (191st Dist. Ct., Dallas Cnty., Tex. Apr. 10, 2023) (claiming that a true crime documentary resulted in defamation).

28. See *infra* Section II.B (discussing the varying approaches to defamation law).

29. See *infra* Section II.C (explaining how true crime and defamation law intersect).

A. *The Rise of the True Crime Phenomena*

True crime has drawn the attention of audiences for decades.<sup>30</sup> Beginning in the seventeenth century, “printed versions of crime” in newspapers and books depicted misdeeds by religious sinners.<sup>31</sup> *In Cold Blood*, a novel by Truman Capote, was one of the first major contributions to true crime entertainment as we know it today.<sup>32</sup> Released in 1965, *In Cold Blood* was commercially successful and critically acclaimed.<sup>33</sup> But even this early example of true crime begged a central question—what was the truth?<sup>34</sup>

As technology has advanced, so has the platform for true crime.<sup>35</sup> Documentaries, both film and television series (docuseries), began portraying true crime in the late 1900s and early 2000s and have since continued to be an evolving medium.<sup>36</sup> While true crime gained traction on screen, some of its central themes further developed—solving crimes, scrutinizing investigations, and doubting convictions.<sup>37</sup> Eventually, streaming services promoted “binge-watching,” which thrust forward the true crime genre.<sup>38</sup> In the context of a “high-quality production,” Netflix and other streaming services aid in telling real-world crime stories that challenge criminal justice.<sup>39</sup>

Still, one of the most arguably revolutionizing crime story platforms did not begin sinking its teeth into the genre until 2014.<sup>40</sup> Because let’s face it—one cannot talk about true crime without talking about *Serial*.<sup>41</sup> Where podcasts today are “[o]ne of the fastest growing mediums in the true crime

30. See George S. Larke-Walsh, *Introduction*, in TRUE CRIME IN AMERICAN MEDIA 1, 1 (George S. Larke-Walsh ed., 2023).

31. *Id.* at 1–2.

32. See *id.*; see also Peter Feuerherd, *How Truman Capote Advanced the New Journalism*, JSTOR DAILY (Sept. 28, 2018), <https://daily.jstor.org/how-truman-capote-advanced-the-new-journalism/> (discussing the positive and negative effects of *In Cold Blood*).

33. See Feuerherd, *supra* note 32.

34. *Id.* *In Cold Blood* has been criticized for misrepresenting the truth and omitting certain information. See Sarah Weinman, *Truth Is Drifting Away from True Crime*, N.Y. TIMES (Apr. 15, 2023), <https://www.nytimes.com/2023/04/15/opinion/true-crime-crisis.html?searchResultPosition=2>.

35. See Caitlin Shaw, *Chasing the Truth: Making a Murderer, Historical Narrativity and the Global Netflix Event*, in TRUE CRIME IN AMERICAN MEDIA 32, 32 (George S. Larke-Walsh ed., 2023).

36. Larke-Walsh, *supra* note 30, at 2. See Stella Bruzzi, *Making a Genre: The Case of the Contemporary True Crime Documentary*, 10 L. AND HUMS. 249, 249–50 (2016) (giving examples of the evolution of the true crime documentary).

37. See, e.g., Angela J. Aguayo, *Paradise Lost and Found: Popular Documentary, Collective Identification and Participatory Media Culture*, 7 STUDIES IN DOCUMENTARY FILM 233, 234 (2013) (describing *Paradise Lost* as hinting at the wrongful convictions of the “West Memphis Three” and “the existence of another suspect”).

38. See Shaw, *supra* note 35, at 34.

39. *Id.* at 34–36.

40. See Lindsey A. Sherrill, *Beyond Entertainment: Podcasting and the Criminal Justice Reform “Niche,”* in TRUE CRIME IN AMERICAN MEDIA 14, 14 (George S. Larke-Walsh ed., 2023) [hereinafter Sherrill 2023].

41. Koenig, *supra* note 1.

genre,” *Serial* marked a major true crime boom.<sup>42</sup> A podcast by Sarah Koenig for producer This American Life, *Serial* reformed true crime podcasting by conducting a deep-dive, real-time journalistic investigation into the wrongful conviction of Adnan Syed.<sup>43</sup> Combining careful storytelling and call-to-justice advocacy, the podcast set the tone for the next generation of true crime content.<sup>44</sup> One where audiences jumped at the chance to get involved and “fans without training in the law [believed they] could impact the criminal justice system.”<sup>45</sup>

In recent years, newer podcasts like *Crime Junkie* and *My Favorite Murder* have continued to boost the genre, redefining it every step of the way.<sup>46</sup> Today, true crime is among the top-ranked podcasting topics, with 24% of all popular podcasts centering around the subject.<sup>47</sup> Some recent podcasts follow the *Serial* approach, examining wrongful convictions or advocating for reform within the criminal justice system, while others dissect current investigations or attempt to rejuvenate interest in cold cases.<sup>48</sup>

Moreover, as social media has exploded in prevalence and popularity, it has also fostered a platform for true crime.<sup>49</sup> YouTubers (YouTube content creators) film makeup tutorials while detailing a murder case.<sup>50</sup> Reddit proffers a soapbox for users to theorize and swap conspiracy theories.<sup>51</sup> However, not one social media platform has impacted true crime like TikTok has.<sup>52</sup>

TikTok has taken the internet by storm, further tightening social media’s unrelenting grip on society.<sup>53</sup> TikTok is a video sharing platform with a highly specialized algorithm, making hours of videos accessible to users with a quick swipe.<sup>54</sup> The app provides endless filters, sounds, and editing tools to

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42. Lindsey A. Sherrill, *The “Serial Effect” and the True Crime Podcast Ecosystem*, 16 JOURNALISM PRACTICE 1473, 1473–74 (2022) [hereinafter Sherrill 2022].

43. *See id.*

44. *See* Sherrill 2023, *supra* note 40, at 18–19.

45. *Id.* at 15.

46. *See generally* EJ Dickson et al., *The 25 Best True-Crime Podcasts of All Time*, ROLLING STONE (July 3, 2022), <https://www.rollingstone.com/culture/culture-features/best-true-crime-podcasts-all-time-1292829/> (listing today’s popular true crime podcasts).

47. Galen Stocking et al., *A Profile of the Top-Ranked Podcasts in the U.S.*, PEW RESEARCH CENTER (June 15, 2023), <https://www.pewresearch.org/journalism/2023/06/15/a-profile-of-the-top-ranked-podcasts-in-the-u-s/>.

48. *See* Sherrill 2023, *supra* note 40, at 19.

49. *See* Jones, *supra* note 6, at 163.

50. *See* Stella Marie Gaynor, “What Else Can I Add?”: Inverting the Narrative Through Female Perspectives in *Falling for a Killer*, *My Favorite Murder*, and *Murder, Mystery, & Make Up*, in TRUE CRIME IN AMERICAN MEDIA 189, 189 (George S. Larke-Walsh ed., 2023).

51. *See, e.g.*, Jones, *supra* note 6, at 164–66 (providing that the Reddit thread for *Serial* has over 77,000 members, many of whom have commented their own thoughts and theories about the podcast).

52. *See generally* #truecrime, TIKTOK, <https://www.tiktok.com/tag/truecrime?lang=en> (last visited Aug. 29, 2024) (displaying the billions of views the true crime hashtag has on TikTok).

53. John Herrman, *How TikTok Is Rewriting the World*, N.Y. TIMES (Mar. 10, 2019), <https://www.nytimes.com/2019/03/10/style/what-is-tik-tok.html>.

54. *Id.*

create engaging videos, while connecting influencers with millions of viewers through the use of hashtags.<sup>55</sup> True crime has not evaded TikTok's influence.<sup>56</sup> Currently, the hashtag "#truecrime" has over 51.3 billion views and counting.<sup>57</sup> Other variations of the hashtag have similarly high viewership levels.<sup>58</sup>

Armchair detectives and internet sleuths have been a staple of true crime in the past decade.<sup>59</sup> These amateur detectives and sleuths are true crime consumers who not only follow true crime but actively participate.<sup>60</sup> Sleuths scour the corners of the internet and "crowdsource," or join efforts, to find clues and solve crimes.<sup>61</sup> There are many instances where crowdsourcing has been a positive example of the capabilities of true crime entertainment.<sup>62</sup> Whether it be through generating a conversation that renews interest in a case or assisting law enforcement, online true crime has directly impacted real cases.<sup>63</sup>

For example, armchair detectives on YouTube and TikTok helped authorities find Gabby Petito, a missing and murdered girl.<sup>64</sup> Gabby Petito, a young social media influencer, went missing in the summer of 2021.<sup>65</sup> When multiple TikTokers (TikTok users) noticed odd behavior on Petito's social media accounts, they turned to TikTok to relay their findings, wanting "to 'spread accurate information.'"<sup>66</sup> Internet sleuths used social media to crowdsource and locate Petito; one user identified her van in a YouTube video posted by unrelated tourists.<sup>67</sup> The finding allowed law enforcement to narrow their search area.<sup>68</sup> Petito's body was ultimately found deceased, about 1,000 feet away from where armchair detectives had identified the

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55. *Id.*

56. *See* TIKTOK, *supra* note 52.

57. *Id.*

58. *Id.* For example, "#crimetok" has approximately 20.4 billion views, "#truecrimetiktok" has 17.9 billion views, and "#crime" has about 48.1 billion views. *Id.*

59. *See* Sherrill 2023, *supra* note 40, at 23.

60. Andrea Mara, *The Armchair Detectives Using the Web to Catch Criminals*, THE IRISH TIMES (Feb. 4, 2020), <https://www.irishtimes.com/culture/books/the-armchair-detectives-using-the-web-to-catch-criminals-1.4160445>.

61. *See id.*

62. *See, e.g.,* Jones, *supra* note 6, at 167–70 (showing crowdsourcing's effect on the Gabby Petito case); *see also* Emily St. Martin, *A Married Couple Listening to a True-Crime Podcast Led to a Man's Exoneration in the Murder of a Priest*, L.A. TIMES (Oct. 17, 2023, 3:00 AM), <https://www.latimes.com/entertainment-arts/story/2023-10-17/crime-junkie-podcast-murder-exoneration-james-reyos-priest> (demonstrating another positive result of online true crime).

63. Sherrill 2023, *supra* note 40, at 24.

64. Jones, *supra* note 6, at 167–70.

65. *Id.* at 168.

66. *Id.*

67. Adam Scott Wandt, *YouTube, TikTok Helped Police in Gabby Petito Case. How Social Media Can Aid in Others*, NBC NEWS (Oct. 4, 2021), <https://www.nbcnews.com/think/opinion/youtube-tiktok-helped-police-gabby-petito-case-how-social-media-ncna1280522>.

68. *Id.*

van.<sup>69</sup> Estimations surmised the crowdsourcing had reduced search time by potentially weeks or months.<sup>70</sup>

Even with the Petito case being “a win” for true crime, misinformation and sensationalism still plagued the case.<sup>71</sup> To be sure, when subsequently locating Petito’s boyfriend and suspected murderer, there were several misidentifications on TikTok and innocent people were thrown under the bus.<sup>72</sup> Even after the boyfriend was found, also deceased from a presumed suicide, speculation on social media continued to flourish, calling his death a hoax and claiming that he was still alive.<sup>73</sup> Some social media users matter-of-factly connected Petito’s murder to other cases—despite being baseless claims.<sup>74</sup> Some posts even attempted to monetize Petito’s case.<sup>75</sup> Using TikTok’s filters, trending sounds, memes, and “tone-deaf” aesthetics, social media managed to turn the disappearance and murder of a young girl into an unethical grab for profit and influencer-status.<sup>76</sup> Because apparently “[internet] detectives are basically [just] real-life Elle Woods.”<sup>77</sup>

### *B. Defamation Law: The Varying Applications*

The misinformation issue in amateur true crime intersects with defamation law because “there is no constitutional value in false statements of fact.”<sup>78</sup> Defamation is concerned with protecting a person’s reputations from false and damaging statements.<sup>79</sup> In general, the plaintiff has the burden to prove that (1) the defendant published a false and defamatory statement, (2) the statement was published to a third party, (3) there was “fault amounting at least to negligence on the part of the publisher,” and (4) damages or harm occurred.<sup>80</sup> Defamation is actionable by libel, which is printed a statement, or by slander, which is spoken.<sup>81</sup> The area of law is bound by considerations and privileges of the First Amendment.<sup>82</sup>

Defamation liability varies depending on the classification of the plaintiff.<sup>83</sup> In the seminal case of *New York Times Co. v. Sullivan*, the

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69. *Id.*

70. *Id.*

71. See Jones, *supra* note 6, at 173–75.

72. Wandt, *supra* note 67.

73. Jones, *supra* note 6, at 176.

74. Michelle Rennex, *TikTok’s Exploitation of Gabby Petito Highlights Everything Wrong with True Crime Culture*, JUNKEE (Sept. 23, 2021), <https://junkee.com/gabby-petito-tiktok-true-crime/309337>.

75. *Id.*

76. *Id.*

77. *Id.* (quoting a real comment made by a TikToker on videos about Gabby Petito).

78. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974).

79. RESTATEMENT (SECOND) OF TORTS § 559 (AM. L. INST. 1977).

80. *Id.* § 558.

81. *Id.* § 568.

82. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 285 (1964).

83. See *id.* at 283; *Gertz*, 418 U.S. at 342–45.

Supreme Court held that “public officials” must prove actual malice.<sup>84</sup> That is, actual malice being “with knowledge that [the statement] was false or [was published] with reckless disregard of whether [the statement] was false or not.”<sup>85</sup> Courts subjectively determine whether actual malice intent exists.<sup>86</sup> The Supreme Court revisited plaintiff classifications in *Gertz v. Robert Welch, Inc.*<sup>87</sup> There, the Court identified public figures by “the notoriety of their achievements or the vigor and success with which they seek the public’s attention.”<sup>88</sup> *Gertz* noted that in rare situations public figures could gain the classification through no fault of their own, but rather by merely “assum[ing] roles of especial prominence in the affairs of society.”<sup>89</sup> Together, *New York Times Co.* and *Gertz* effectively provided the media—mainly newspapers at that time—protection from censorship, and attempted to reduce actions aimed at chilling free speech.<sup>90</sup>

Truth is a crucial defense to defamation.<sup>91</sup> If the statement is not false, then it is not typically actionable.<sup>92</sup> Some state regulations carve out a privilege for statements that are “substantially true,” which give protection if the “gist” of the statement is true.<sup>93</sup> Many states also codify a fair reporting privilege.<sup>94</sup> Fair reports apply to publications regarding government proceedings, public purpose meetings, and fair comments on public officials.<sup>95</sup>

Though many aspects of defamation are universally accepted, state law controls the nuances “and specific elements of [the area of law].”<sup>96</sup> However, states have imposed varying applications, both in codified and common law.<sup>97</sup> For example, states have differed in legislating libel and slander, the extent to which there is anti-SLAPP protection, and the available mitigation steps.<sup>98</sup>

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84. *N.Y. Times Co.*, 376 U.S. at 283.

85. *Id.* at 280.

86. *Harvey v. Cable News Network, Inc.*, 48 F.4th 257, 273 (4th Cir. 2022) (citing *N.Y. Times Co.*, 376 U.S. at 287).

87. *Gertz*, 418 U.S. at 325.

88. *Id.* at 342.

89. *Id.* at 345.

90. David Elder, *The Law of Defamation, the First Amendment, and Justice William H. Rehnquist’s Attempts to “Hold[] the Balance True”: A Framework for Assessing the Continuing Viability of New York Times v. Sullivan*, 83 LA. L. REV. 129, 137–140 (2022).

91. RESTATEMENT (SECOND) OF TORTS § 581A (AM. L. INST. 1977).

92. *Id.*

93. *See Neely v. Wilson*, 418 S.W.3d 52, 63–64 (Tex. 2013).

94. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE § 73.002(a); OKLA. STAT. tit. 12, § 1443.1 (1981); N.Y. CIV. RIGHTS § 74 (MCKINNEY 1963); UTAH CODE § 45–2–3 (West 1953) (examples of several state’s “fair reporting” privilege statutes).

95. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE § 73.002(a); UTAH CODE § 45–2–3 (West 1953) (describing the scope of the fair reporting privilege).

96. Angelotti, *supra* note 12.

97. *See id.*

98. *See infra* Section II.B.1–3 (discussing the existing varying applications of defamation law).

### 1. Codified Libel and Slander

Libel and slander are historically separated to account for the “mode[s]” of defamatory statements.<sup>99</sup> Traditionally, libel has been given greater legal protection because written words are more permanent and deliberate.<sup>100</sup> Many states codify both libel and slander, applying the same rules to each.<sup>101</sup> For example, Virginia does not distinguish slander and libel; rather, the state creates a cause of action for defamatory statements that “are construed as insults and tend to [incite] violence and breach of the peace.”<sup>102</sup>

Conversely, other states inconsistently codify libel and slander or apply distinct standards to each.<sup>103</sup> In Texas, libel laws are statutory, whereas slander is defined in common law.<sup>104</sup> California limits actionable slander by creating a cause only for statements that charge a person with a crime or directly impute someone as disqualified to hold positions in their trade or business.<sup>105</sup>

Discourse exists as to whether online statements would be classified as libel or slander.<sup>106</sup> Generally, typed social media posts constitute libel.<sup>107</sup> Whereas, courts are divided as to whether videos and podcasts, which are spoken but are preserved in a permanent online form, would fall under libel or slander.<sup>108</sup> Where the classifications for libel and slander may differ depending on which state a person is in, the distinction is important for pursuing defamation suits.<sup>109</sup>

### 2. Anti-SLAPP Protections

Similar to other defamation nuances, there is a lack of uniformity regarding the reach of anti-SLAPP protection.<sup>110</sup> SLAPP stands for “Strategic Lawsuits Against Public Participation” which are disguised, frivolous actions commenced by deep-pocketed plaintiffs with the intention to “chill” free speech.<sup>111</sup> Anti-SLAPP statutes were enacted to limit the “chill” of

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99. 50 AM. JUR. 2D *Libel and Slander* § 6 (2023).

100. Leslie Y. Garfield Tenzer, *Destroying Defamation*, 14 HARV. J. SPORTS & ENT. L. 329, 341 (2023).

101. 50 AM. JUR. 2D *Libel and Slander* § 6 (2023).

102. VA. CODE ANN. §§ 8.01–45 (West 1977).

103. 50 AM. JUR. 2D *Libel and Slander* § 6 (2023).

104. See TEX. CIV. PRAC. & REM. CODE § 73.001 (codifying libel, but not slander).

105. CAL. CIV. CODE § 46 (West 1872).

106. Garfield Tenzer, *supra* note 100.

107. *Id.*

108. See *id.*

109. See *id.*

110. Daniel A. Horwitz, *The Need for a Federal Anti-SLAPP Law*, N.Y.U. J. LEGIS. & PUB. POL'Y (2020).

111. Collin Seals & Gary D. Brophy, *California's Anti-SLAPP Law in the Ninth Circuit*, 40 L.A. LAW. 14, 14 (2017).

increasingly popular SLAPP lawsuits.<sup>112</sup> Anti-SLAPP proceedings have been described as the equivalent of “David and Goliath” protection.<sup>113</sup> While some states have expansive anti-SLAPP protection, others have not provided any defensive legislation.<sup>114</sup>

California is notable regarding anti-SLAPP statutes, particularly for having very stringent and defendant-friendly provisions.<sup>115</sup> The California statute allows for a special motion to strike proceedings unless the plaintiff can prove “there is a probability that [they] will prevail on the claim.”<sup>116</sup> Essentially, a plaintiff must show their claim is likely to win before litigation gains any traction.<sup>117</sup> California’s codification is broad because protected statements include any communications relating to public interest.<sup>118</sup>

On the other hand, Virginia has very plaintiff-favorable anti-SLAPP statutes.<sup>119</sup> Unlike California, Virginia does not make plaintiffs prove “probability” in order to prevail on a claim.<sup>120</sup> Further, the Virginia statute does not apply to statements made with actual malice.<sup>121</sup> Virginia is significantly friendlier towards plaintiffs than most states because there is no requirement for dismissal, even where a defendant prevails.<sup>122</sup> This contravenes why a defendant may bring such a motion in the first place—they no longer want the case in court.<sup>123</sup> These key differences can make applying anti-SLAPP to internet defamation cases tricky and unevenly executed.<sup>124</sup>

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112. *See id.*

113. Matthew D. Bunker & Emily Erickson, *#Ain’tTurningtheOtherCheek: Using Anti-SLAPP Law as a Defense in Social Media*, 87 UMKCL. REV. 801, 802 (2019).

114. *See generally* N.J. CT. R. and MONT. CT. R. (providing no anti-SLAPP statute).

115. CAL. CIV. PROC. CODE § 425.16 (West 2023).

116. *Id.* § 425.16(b)(1).

117. *See id.*

118. *Id.* § 425.16(e).

119. *See* Lili Levi, *Disinformation and the Defamation Renaissance: A Misleading Promise of “Truth,”* 57 U. RICH. L. REV. 1235, 1281 (2023); *see also* *Why is the Johnny Depp-Amber Heard Trial in Virginia?*, NECN, <https://www.necn.com/entertainment/entertainment-news/why-is-the-johnny-depp-amber-heard-trial-in-virginia/2741123/#:~:text=Heard%20and%20Depp%20are%20Hollywood,a%20defendant%20in%20the%20case> (last updated June 1, 2022, 4:36 PM) (explaining why the defamation case was brought in Virginia rather than California). Though not necessarily “true crime” for the purposes of this Comment, the trial of *Depp v. Heard* was tried in Virginia because of its plaintiff-friendly defamation laws, even though neither party had extensive ties with the state. *Id.* Specifically, Virginia’s lenient anti-SLAPP statute makes the state preferable for plaintiffs. *Id.* Virginia has gained notoriety as a hot spot for litigating defamation claims, contributing to potential forum shopping, or “libel tourism.” *Id.*

120. *See* VA. CODE ANN. §§ 8.01–223.2 (West 2007); CAL. CIV. PROC. CODE § 425.16(b)(3) (West 2023).

121. *See id.*

122. Lee E. Berlik, *The 2023 Amendments to Virginia’s Anti-SLAPP Statute*, BERLIK LAW: THE VA. DEFAMATION L. BLOG (June 26, 2023), <https://www.virginiadefamationlawyer.com/the-2023-amendments-to-virginias-anti-slap-statute/>.

123. *Id.*

124. *See* Bunker & Erickson, *supra* note 113, at 805.

### 3. Mitigating Defamation

States also differ in providing methods to mitigate potential defamatory statements.<sup>125</sup> New York advances that any information may be tendered to mitigate the circumstances surrounding the publication of an allegedly defamatory statement.<sup>126</sup> Alternatively, Virginia has legislated a special privilege for newspapers that allows for evidence surrounding the news publication to be introduced for mitigation.<sup>127</sup> Essentially, the statute permits newspapers to correct and explain challenged statements.<sup>128</sup>

Texas's Defamation Mitigation Act (DMA) yields extensive opportunities for mitigation.<sup>129</sup> The statute allows for a retraction or correction of a published statement that transmits information in any form.<sup>130</sup> The DMA states:

- (d) A request for a correction, clarification, or retraction is sufficient if it:
  - (1) is served on the publisher;
  - (2) is made in writing, reasonably identifies the person making the request, and is signed by the individual claiming to have been defamed or by the person's authorized attorney or agent;
  - (3) states with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
  - (4) alleges the defamatory meaning of the statement; and
  - (5) specifies the circumstances causing a defamatory meaning of the statement if it arises from something other than the express language of the publication.<sup>131</sup>

Under the DMA, requests for retraction must be submitted within ninety days of first seeing the defamatory post.<sup>132</sup> Once the request is sent, the publisher has thirty days to make a correction.<sup>133</sup> In order to reach a consistent audience, correction is deemed satisfactory if it is published in the same or substantially similar medium or manner as the initial statement.<sup>134</sup> Also, it must acknowledge falsity, clarify the original meaning, or relay the requestor's factual assertion.<sup>135</sup> The caveat is that the requestor must provide "reasonably available information regarding the falsity of the allegedly

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125. See TEX. CIV. PRAC. & REM. CODE §§ 73.054–55; see also VA. CODE ANN. §§ 8.01–48 (West 1977) (taking different approaches to mitigating defamation).

126. N.Y. CIV. RTS. LAW § 78 (McKinney 2023).

127. VA. CODE ANN. §§ 8.01–48 (West 2023).

128. See *id.*

129. See TEX. CIV. PRAC. & REM. CODE §§ 73.051–62.

130. *Id.* §§ 73.054–55.

131. *Id.* § 73.055(d).

132. *Id.* § 73.055(c).

133. *Id.* § 73.057(a).

134. *Id.* § 73.057(b).

135. *Id.*

defamatory statement.”<sup>136</sup> Proffered information has been found to be sufficient if it is “clearly communicated.”<sup>137</sup> Adequate retractions in ordinance with the DMA bar recoverable damages absent actual malice.<sup>138</sup> Requests for correction and a defendant’s compliance or refusal cannot be used as evidence in trial under Texas law.<sup>139</sup> With these varying provisions for mitigating defamation, confusion may persist as to what steps a person must take in order to practice “self-help.”<sup>140</sup>

### C. Where Defamation and Internet True Crime Intersect

Despite the vastness of defamation law, no state distinctly addresses defamation solely occurring on the internet.<sup>141</sup> Virginia codifies “[l]iability for defamatory material on the internet,” but the statute only grants freedom from liability for internet providers and non-publishers.<sup>142</sup> It does not address any of the unique harms that occur online, unlike the many marked state provisions that codify defamation relating to newspapers or radio broadcasts.<sup>143</sup> However, it is not surprising that statutes may address defamation with newspapers because the tort largely exists to protect unrestricted journalism.<sup>144</sup> American society values the free flow of information and encourages commentary on important subjects—a value that stringent defamation laws against newspapers risk chilling.<sup>145</sup>

While the law does its part in providing protections for free speech and free press, traditional journalists in turn take steps to ensure ethical reporting.<sup>146</sup> Journalists verify information before publishing, provide context to avoid misrepresentations, identify sources, and update information as it evolves.<sup>147</sup> They allow the people who are subjects of reports the opportunity to respond before publication.<sup>148</sup> Most importantly, journalists consider the impacts stories may have on individuals—they report with the

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136. *Id.* § 73.056.

137. *See* Warner Bros. Ent., Inc. v. Jones, 611 S.W.3d 1, 12 (Tex. 2020).

138. TEX. CIV. PRAC. & REM. CODE § 73.059.

139. *Id.* § 73.061(a).

140. *See* Gertz v. Robert Welch Inc., 418 U.S. 323, 344 (1974).

141. *See generally* VA. CODE ANN. §§ 8.01–49.1 (West 2024) (being the only statute that somewhat addresses defamation on the internet).

142. *Id.* This provision is essentially Virginia’s state codified version of Section 230 of the Communications Decency Act, which provides protection for internet platform providers. *See* 47 U.S.C. § 230.

143. VA. CODE ANN. §§ 8.01–49.1 (West 2000). Notably, out of all fifty states, this is the only statute with a specific provision that remotely addresses defamation online. *See id.*

144. *See* N.Y. Times Co. v. Sullivan, 376 U.S. 254, 264 (1964).

145. *See* U.S. CONST. amend. I.

146. *SPJ Code of Ethics*, SOC’Y OF PRO. JOURNALISTS, <https://www.spj.org/ethicscode.asp> (last updated Sept. 6, 2014).

147. *Id.*

148. *Id.*

legal rights of others in mind.<sup>149</sup> When traditional journalists realize they have published false information, they generally own up to their mistakes and correct the facts.<sup>150</sup>

Though traditional journalists can and do create true crime podcasts and social media content, that does not mean that true crime storytelling is necessarily journalism.<sup>151</sup> Due to a lack of journalistic values, armchair detectives have arguably blurred “the lines between the producer, consumer, and subject . . . there are fewer restrictions in relation to time and space and online activities have real world, embodied consequences.”<sup>152</sup>

In an era in which people increasingly rely on social media and podcasts for news, it is important that true crime producers post with ethical considerations in mind.<sup>153</sup> Podcast and social media sites generally have their own requirement guidelines, but the vastness of content makes regulating defamatory content difficult.<sup>154</sup> Moreover, the strife for viral notoriety that persists in current internet culture means that any existing guiding principles are an afterthought to fame.<sup>155</sup>

Sensationalized true crime content creates a wildfire effect—a false statement is posted and becomes viral, which causes crowdsourcing in which others contribute to the conversation with their own falsities.<sup>156</sup> So on and so on, the waters become muddied.<sup>157</sup> Buried in a slew of error lies the truth, suffocated by the self-proclaimed detectives.<sup>158</sup>

As the lack of traditional journalistic ethics exists in amateur true crime, the number of defamation cases filed against internet sleuths also rises.<sup>159</sup>

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149. *Id.*

150. *Id.*

151. See Adam Wren, *The Problem with Crime Junkie*, INDIANAPOLIS MONTHLY (Nov. 7, 2019), <https://www.indianapolismonthly.com/longform/the-problem-with-crime-junkie> (mentioning an instance where a podcaster was “careful to not identify as a journalist.”).

152. See Jones, *supra* note 6, at 167.

153. Elisa Shearer, *More Than Eight-in-Ten Americans Get News from Digital Devices*, PEW RSCH. CTR. (Jan. 12, 2021), [https://www.supremecourt.gov/opinions/URLs\\_Cited/OT2021/21A720/21A720-1.pdf](https://www.supremecourt.gov/opinions/URLs_Cited/OT2021/21A720/21A720-1.pdf). Research studies have shown that 53% of adults in the U.S. receive their news from social media and 22% receive their news from podcasts. *Id.* Persons under 50 are more likely to use social media and podcasts to access the news. *Id.*

154. See, e.g., *Apple Podcasts Content Guidelines*, APPLE PODCASTS CREATORS, <https://podcasters.apple.com/support/891-content-and-subscription-guidelines#:~:text=1.%20Inaccurate%2C%20Misleading%2C%20or%20Unauthorized%20Content> (last visited Aug. 24, 2024) (stating that defamatory content may be flagged and labeled).

155. See Rennex, *supra* note 74.

156. See, e.g., Complaint at 3, Robertson v. Upchurch, No. 3:23-cv-00770, 2024 WL 8358839 (M.D. Tenn. July 28, 2023) (No. 1) (alleging members of YouTuber “squad” were directed to involve themselves in searching for a missing girl. One follower went as far as to post videos of the girl’s grandfather’s private place of business to contribute to baseless theories).

157. See *id.*

158. *Id.*

159. See, e.g., Complaint & Demand for Jury Trial, Scofield v. Guillard, No. 3:22-cv-00521 (D. Idaho Dec. 21, 2022); Complaint, Robertson v. Upchurch, No. 3:23-cv-00770, 2024 WL 8358839 (M.D. Tenn. July 28, 2023) (No. 1); Complaint, Tenser v. Ryan, No. 23SMCV04014 (W.D. Cal. Aug. 28, 2023) (giving examples of recently filed lawsuits regarding true crime podcasts or social media posts and defamation).

Whether or not litigation will resolve the unprecedented harm is unclear; as previous cases have shown, true crime defamation suits are difficult to prove and are often dismissed at the onset for varying rationales.<sup>160</sup> One reason why true crime suits fail is due to defamation's objective standard.<sup>161</sup>

For example, in *Parker v. Spotify U.S.A., Inc.*, the court held that under Texas's objective review, a reasonable listener would not have concluded that the challenged podcast was defamatory.<sup>162</sup> Attorney and healthcare professional, Dr. Chysathe Parker, brought a defamation suit against multiple producers of the podcast *Son of a Hitman*.<sup>163</sup> *Son of a Hitman* detailed the death of U.S. District Court Judge John J. Wood Jr. and the conviction of Charles Harrelson for his murder.<sup>164</sup> The podcast was backed by two of Harrelson's sons, who allegedly had a history of publicly casting doubt on their father's conviction.<sup>165</sup> The podcast's purpose was to explore the "assassination and . . . larger threats to the American judicial system, Harrelson's criminal activities, and problems in the criminal justice system. . ." <sup>166</sup> Parker, a key witness in Harrelson's trial, stated that the podcast had painted her as a liar and "mudd[ie]d the waters" of what really happened.<sup>167</sup>

The court granted the defendant's 12(b)(6) motion to dismiss in part because the statements were either substantially true, not capable of defamatory meaning, or not "conclusions a reasonable listener would draw."<sup>168</sup> But this objective finding was contradictory to the harms Parker claimed to have been facing.<sup>169</sup> Parker, who as part of her job testified as an expert for court cases, expressed that the podcast had been affecting her expert-witness role.<sup>170</sup> Questions surrounding her judgment and character risked her ability to provide future testimony.<sup>171</sup>

If Parker's reputation was actually being questioned as she asserted, it would imply that even though the court deemed a reasonable listener would not find her to be dishonest and unreliable, in reality those conclusions were

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160. See, e.g., *Parker v. Spotify U.S.A., Inc.*, 569 F. Supp. 3d 519, 531–36 (W.D. Tex. 2021) (granting motion to dismiss because claims were not found to be capable of defamatory meaning, and the implications drawn were not those that a reasonable listener would draw); see also *Dordea v. Freleng*, 213 N.E.3d 773, 778–79 (Ohio Ct. App. 2023) (affirming summary judgment because plaintiff could not show a "reasonable jury could find actual malice with convincing clarity" because plaintiff could not prove defendant "entertained serious doubts as to the truth.").

161. See *Parker*, 569 F. Supp. 3d at 531–36; *Dordea*, 213 N.E.3d at 778–79.

162. *Parker*, 569 F. Supp. 3d at 534.

163. *Id.* at 525–27.

164. *Id.* at 525.

165. *Id.*

166. *Id.* at 535.

167. *Id.* at 525.

168. *Id.* at 530–36.

169. *Id.* at 526–27.

170. *Id.*

171. *Id.*

actually being drawn.<sup>172</sup> With 12(b)(6) motions, Parker's claims should have passed muster as long as they were plausible, not probable or certain.<sup>173</sup> Plausibility is a low standard to meet, especially in a world where there is now a tendency to believe information online.<sup>174</sup> Yet, despite Parker's claim of harm, the court did not find it plausible that reasonable listeners would understand *Son of a Hitman*'s statements to be believable or damaging.<sup>175</sup>

Another issue that embodies the difficulties of a successful true crime defamation suit is the high burden of the actual malice standard.<sup>176</sup> Actual malice is determined subjectively.<sup>177</sup> The burden is high—content creators essentially have to know or should know what “they were saying about people involved in criminal case [was] false.”<sup>178</sup> In *Dordea v. Freleng*, the intent standard was actual malice because the plaintiff was a police chief.<sup>179</sup> The podcast, *Murder in Alliance*, purported multiple times that police chief Larry Dordea had “brought [a] date to [a murder] crime scene.”<sup>180</sup> The implication was that Dordea had likely contaminated the crime scene, contributing to the podcast's overall cast-of-doubt on a murder conviction.<sup>181</sup>

Notably, the podcast *correctly* asserted in a throw-away sentence that the mystery woman was actually part of a police ride-along program.<sup>182</sup> Yet, podcaster Maggie Freleng continued to reiterate the false narrative that the woman was a date.<sup>183</sup> Dordea's attorneys claimed the statements had caused him harm, both personally and professionally.<sup>184</sup> And even though the podcaster *herself knew Dordea* had previously clarified the woman was not a date, she continued to push the false story.<sup>185</sup> Instead, Freleng cited a book

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172. *See id.*

173. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

174. *See* Kalev Leetaru, *Why Do We Believe What We Read on the Internet?*, FORBES (Apr. 18, 2019, 11:37 PM), <https://www.forbes.com/sites/kalevleetaru/2019/04/18/why-do-we-believe-what-we-read-on-the-internet/?sh=33dc2c51383a>.

175. *Parker*, 569 F. Supp. 3d at 539.

176. *See, e.g., Dordea v. Freleng*, 213 N.E.3d 773, 779 (Ohio Ct. App. 2023) (dismissing a case where a false statement was published, but actual malice was not met).

177. *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989). *Cf. Parker*, 569 F. Supp. 3d at 528 (using an objective standard, not to determine intent, but to determine if a statement is capable of having defamatory meaning).

178. Stacey Cameron, *Nashville YouTuber Sued for Defamation Over True Crime Video*, WSMV (Sept. 29, 2023, 5:34 PM), <https://www.wsmv.com/2023/09/29/nashville-youtuber-sued-defamation-over-true-crime-video/> (quoting Jennifer Safstrom, a professor at Vanderbilt Law School).

179. *Dordea*, 213 N.E.3d at 777.

180. *Id.* at 779.

181. *Id.*

182. *See* Paige Bennett, *Ex-Alliance Police Chief Files Suit over Murder Podcast*, THE COLUMBUS DISPATCH (Aug. 18, 2021), <https://www.pressreader.com/usa/the-columbus-dispatch/20210818/281861531579807>.

183. *Dordea*, 213 N.E.3d at 779.

184. *See* Bennett, *supra* note 182.

185. *Id.*

written about the murder as her source.<sup>186</sup> In other words, Freleng trusted a secondary source over the direct, primary accounting by the police chief.<sup>187</sup>

Regardless, the appellate court affirmed summary judgment.<sup>188</sup> It recognized that the statements made were in fact false, but summary judgment was upheld because a reasonable jury could not find “with convincing clarity” actual malice.<sup>189</sup> *Murder in Alliance*, like *Serial* had years before, portrayed itself to be a “real-time investigation” into a potential wrongful conviction.<sup>190</sup> But here, after months of storytelling, the podcast recognized that the convicted person it was advocating for may have actually been guilty.<sup>191</sup> It presumably tarnished an officer’s reputation for the sake of entertainment.<sup>192</sup> Ultimately, the podcast risked harming real people and attempted to cast doubt by criticizing an investigation where there was no proof of misconduct.<sup>193</sup> Even with real-life harm and creators evading accountability, true crime defamation cases are routinely dismissed, leaving a lack of remedy for many blemished reputations.<sup>194</sup>

### III. STATES SHOULD ADOPT A MODEL ONLINE DEFAMATION STATUTE

There comes a time when it is necessary to create uniform rules, where “an *ad hoc* resolution . . . in each particular case is not feasible . . .”<sup>195</sup> Defamation law has been free for decades to evolve without a uniform standard, every case supplying little evolution.<sup>196</sup> The Supreme Court in *Gertz* recognized that there are situations where it is important to have a tangible rule to decide defamation cases—one that could still be crafted to fit case-by-case nuances.<sup>197</sup> As the internet has expanded, the world is instantaneously at the tip of our fingers; everyone has a country-wide megaphone and platform.<sup>198</sup>

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186. *Id.*

187. *Id.*

188. *Dordea*, 213 N.E.3d at 779.

189. *Id.*

190. See Maggie Freleng, *Murder in Alliance*, OBSESSED NETWORK (May–Oct. 2021) (downloaded using Spotify).

191. *Id.*

192. See *id.*

193. See *id.*

194. See, e.g., *Parker v. Spotify U.S.A, Inc.*, 569 F. Supp. 3d 519, 531–36 (W.D. Tex. 2021) (showing a case that never made it to the jury); *Dordea*, 213 N.E.3d at 778–79 (providing another example of a dismissed case).

195. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 343–44 (1974).

196. Crystal Revilla, *As Social Media Continues to Evolve, Online Defamation Laws Remain Stagnant*, FIU L. REV. (Apr. 17, 2017), <https://law.fiu.edu/2017/04/17/social-media-continues-evolve-online-defamation-laws-remain-stagnant/>.

197. *Gertz*, 418 U.S. at 343–44.

198. See *id.*

Defamation law was “implemented . . . for a locally oriented media paradigm, which has since given way to a boundaryless media sphere.”<sup>199</sup> No state or federal body has created uniform legislation defining or providing an approach to internet defamation.<sup>200</sup> To furnish a uniform update that still considers individual state rules, a model online defamation statute should be adopted that codifies both libel and slander, specifies who shall be held liable, allows statements evaluated as a whole based on how they are understood on the internet, and leaves state defenses unchanged.<sup>201</sup> The proposed statute would include a correction clause that strives to avoid costly defamation litigation and give evidence of actual malice.<sup>202</sup> In a true crime context, the statute would remedy the shortcomings of current defamation law to provide redress for real-life harms.<sup>203</sup>

*A. A Model Online Defamation Statute Would Promote Uniformity and Support a Necessary Update to Defamation on the Internet*

A model online defamation statute would be the most effective, non-intrusive solution to updating defamation law—an update that is necessary in today’s chronically-online society. The model statute would read:

- (1) This provision will be applicable to defamatory statements made on the internet by non-media persons. Defamation from online statements is actionable by either libel or slander.
  - (a) Libel is a false and unprivileged publication or posting by writing, picture, or other textual representations, which from their usual construction and construed meaning on the internet, exposes any person to excessive hatred, contempt, ridicule, or obloquy.
  - (b) Slander is a false and unprivileged publication or posting, orally uttered through video or audio recording, which from their usual construction and construed meaning on the internet, exposes any person to excessive hatred, contempt, ridicule, or obloquy.
- (2) No provider or user of an interactive computer service on the internet shall be treated as the publisher or speaker of any information provided to it by another content provider.
- (3) Publications and posts shall be evaluated for defamatory meaning as a whole, including all publications or posts made by the same publisher relating to the same topic on all internet platforms.
- (4) Published and posted statements shall be construed how they are understood in the context of the internet. Statements may be interpreted

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199. Alexandra M. Gutierrez, *The Case for Federal Defamation Regime*, 131 YALE L.J.F. 19, 22 (2021).

200. *See supra* text accompanying note 142 (addressing the lack of state legislation to address internet defamation).

201. *See infra* Section III.A (offering a proposed model statute).

202. *See infra* Section III.B (proposing a model correction clause).

203. *See infra* Section III.C (discussing the purpose and impact of the proposed model statute).

based on how a reasonable internet user would understand the statements and how the statements were actually construed.

(5) This provision does not affect any codified, common law, or other currently available defenses to defamation.

The proposed statute would only apply to non-media defendants, which would prevent the press from feeling any chilling effects.<sup>204</sup> Combining California and Virginia's codifications for libel and slander, the statute accounts for the internet-specific modes in which defamatory statements can be published.<sup>205</sup> Online publications often work hand-in-hand; people make videos where the conversation is continued in the comments, and podcasts regularly have associated blogs.<sup>206</sup> Because of the quasi-nature of online statements, it is important that an internet-specific statute would apply the same standards to both libel and slander.<sup>207</sup> Cases would not turn on the pair's distinctions; rather, the focus would be on the harm caused.<sup>208</sup>

Whether in podcasts or on social media, internet jargon at times has a specialized, nuanced meaning compared to everyday speech.<sup>209</sup> By using the usual construction and construed meaning on the internet language, the model statute would allow for defamatory statements to be evaluated case-by-case based on their online context and meaning.<sup>210</sup>

Further, the proposal mirrors Virginia's statute that relates to defamatory content on the internet—the only state statute that currently addresses internet defamation in any way.<sup>211</sup> The purpose of this provision would be to promote uniformity for who shall be liable.<sup>212</sup> While this clause is already federally codified, applying a similar law on the state level would ensure that more cases are being equally decided.<sup>213</sup>

Additionally, the statute would entitle courts to consider the entire picture and use both an objective and subjective standard when determining if a statement is capable of having a defamatory meaning. Courts have traditionally applied only an objective standard to evaluate defamatory meaning—the standard of a reasonable listener or a reasonable social media

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204. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 264 (1964).

205. See CAL. CIV. CODE §§ 44–46 (West 2007); VA. CODE ANN. §§ 8.01–45 (West 1977).

206. See generally Complaint, *Robertson v. Upchurch*, No. 3:23-cv-00770, 2024 WL 8358839 (M.D. Tenn. July 28, 2023) (showing both a YouTube video and preceding statements in the comments section are at issue).

207. See *id.*

208. See *id.*

209. See Jay Hoffman, *What's with All the Internet Slang Anyways?*, THE HIST. OF THE WEB (Dec. 3, 2019), <https://thehistoryoftheweb.com/postscript/origin-of-web-slang/>.

210. See *id.*

211. See VA. CODE ANN. §§ 8.01–49.1 (West 2000).

212. See *id.*

213. See *id.*; see also Communications Decency Act of 1996, 47 U.S.C. § 230 (codifying defamation liability for only the publisher of online content).

user.<sup>214</sup> While in the early stages of the internet it may have been acceptable to believe people will skeptically approach online information,<sup>215</sup> today the internet's prevalence contravenes that assumption.<sup>216</sup>

Increasingly, persons are accepting information obtained online at face-value.<sup>217</sup> And as the news cycle continues to become intertwined in podcasts and social media, people have become more trusting of digitally consumed content.<sup>218</sup> While the proposed online defamation statute would still give courts the option to apply an objective standard, judges would also be able to subjectively consider defamatory meaning.<sup>219</sup> In tandem with evaluating the publisher's statements as a whole, courts would be able to gather a complete picture of allegedly defamatory statements.<sup>220</sup> Using a subjective inquiry, the capability of defamatory meaning would be better addressed to determine if consumers actually believed online statements and if that belief caused harm.<sup>221</sup>

Some courts may not want to deviate from traditional standards—that is, courts will continue to only apply an objective standard.<sup>222</sup> To account for any judicial resistance, the option to consider cases subjectively would not be mandatory, and courts could apply either or both standards at their discretion.<sup>223</sup> Judges would have the option to balance approaches, while furthering a modernized process to deciding defamation suits in the internet age.<sup>224</sup>

The proposed statute would not have any effect on state anti-SLAPP laws—the protections garnered by anti-SLAPP provisions are essential in

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214. See, e.g., *Parker v. Spotify U.S.A, Inc.*, 569 F. Supp. 3d 519, 539 (W.D. Tex. 2021) (applying an objective standard).

215. Scott Isherwood, *Social Media and Anti-SLAPP Motion to Strike: Context Does Matter*, CONTRA COSTA CNTY. BAR ASS'N (Mar. 2022), <https://www.cccbba.org/article/social-media-and-anti-slapp-motion-to-strike-context-does-matter/>. See Shari Claire Lewis, *Online and Social Media Defamation in Today's Age*, N.Y.L.J. (Feb. 17, 2017, 2:03 PM), <https://www.law.com/newyorklawjournal/almID/1202779335224/> [<https://www.bloomberglaw.com/document/x5cukttts000000>] (citing *Jacobus v. Trump*, where a New York court discussed social media's lack of credibility and alluded to the likelihood of social media posts to be found “nonactionable opinions”).

216. See generally Ani Petrosyan, *Internet Usage in the United States – Statistics & Facts*, STATISTA (Mar. 13, 2024), <https://www.statista.com/topics/2237/internet-usage-in-the-united-states/#topic> Overview (emphasizing that over 90% of the U.S. population uses the internet and the number of users has consistently been on the rise for the past two decades; specifically, the U.S. has a high number of social media users).

217. See Leetaru, *supra* note 174.

218. See Shearer, *supra* note 153.

219. See *Parker*, 569 F. Supp. 3d at 539.

220. See generally Complaint & Demand for Jury Trial, *Scofield v. Guillard*, No. 3:22-cv-00521 (D. Idaho Dec. 21, 2022) (demonstrating that not one single TikTok video is at issue, but a series of TikTok videos made by the same publisher on the same platform that contributed to the potential defamatory meaning).

221. See *id.*

222. See generally *Parker*, 569 F. Supp. 3d at 528 (applying only the objective standard as rooted in Texas law).

223. See generally *id.* (providing an example of a court applying an objective standard).

224. See *id.*

promoting state sovereignty and deterring frivolous lawsuits.<sup>225</sup> States adopt anti-SLAPP protections and other defenses to accomplish their goals regarding the reach of defamation.<sup>226</sup> Despite the vast variations in which states have adopted and applied anti-SLAPP protection, it is necessary that states continue to adhere to their own policy decisions.<sup>227</sup> The internet can be hostile; internet defamation codifications could increase meritless lawsuits that are used to silence speech when people merely are stating disliked opinions.<sup>228</sup> The proposed statute should not be a vehicle for unwarranted claims, but rather a valid redress to those most extreme cases where obscene falsities are being told.<sup>229</sup>

If all states were to adopt the proposed statute, then defamation litigation would be taking strides towards much needed uniformity.<sup>230</sup> The majority of the defamation claims are filed in state courts.<sup>231</sup> Because the internet undoubtedly keeps growing, it is inevitable that online defamation suits will continue to rise in frequency.<sup>232</sup> Also, citizens of different states will increasingly file defamation claims against each other as the internet connects people globally.<sup>233</sup> Despite state law dominating the subject, federal litigation will continue to look to states to provide defamation law guidance.<sup>234</sup>

As defamation is so pervasively intertwined in state law, any update must come from the state level.<sup>235</sup> A model statute will allow practitioners to better predict the laws of other states and to litigate country wide claims.<sup>236</sup> There would be no need to sift through decades of varying common law—rather, litigators will be better prepared to advocate with a model statute.<sup>237</sup> This will also reduce any potential forum shopping that internet connectedness has allowed to occur.<sup>238</sup>

Of course, the proposed statute would apply to overall internet libel cases and would not be limited to armchair detectives and sleuths.<sup>239</sup> Beyond true crime, there is an increasing call for reform to address defamation in the

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225. See Seals & Brophy, *supra* note 111.

226. See Caitlin E. Daday, *(Anti)-SLAPP Happy in Federal Court?: The Applicability of State Anti-SLAPP Statutes in Federal Court and the Need for Federal Protection Against SLAPPS*, 70 CATH. UNIV. L. REV. 441, 449–54 (2021).

227. See generally *id.* (discussing differing state anti-SLAPP holdings).

228. See Isherwood, *supra* note 215.

229. See *id.*

230. See *id.*

231. See Gutierrez, *supra* note 199, at 31 n.86.

232. See Revilla, *supra* note 196.

233. See *id.*

234. See, e.g., Mark Curriden, *The Defame Game*, AM. BAR J. (Oct. 1, 2023), <https://www.abajournal.com/magazine/article/the-defame-game-libel-cases-are-on-the-rise-and-increasingly-politicized> (describing the increasing trend of defamation litigation).

235. See Angelotti, *supra* note 12.

236. See Revilla, *supra* note 196.

237. See *id.*

238. See Levi, *supra* note 119, at 1290.

239. See Levi, *supra* note 119, at 1290–91.

online space.<sup>240</sup> Often, there is hesitance to modify defamation standards; the Americans are encouraged to speak freely regarding political issues, prominent figures, and world events, and stringent defamation laws risk chilling that speech.<sup>241</sup> To address this risk, the proposal specifies that state defenses and carveouts shall not be infringed.<sup>242</sup> States may at their discretion allow for certain publications to be privileged communication.<sup>243</sup> States are free to adopt defenses like fair-reporting privileges, and other sovereignties who have not provided for such exceptions may continue to abstain.<sup>244</sup>

A model defamation law would not necessarily promote 100% uniform application, but it should not regardless.<sup>245</sup> Defamation law nuances still require a case-by-case review.<sup>246</sup> Courts must still determine plaintiff classifications and attempt to evaluate the defendant's inner intent.<sup>247</sup> While complete uniformity is unlikely to be achieved, there would be greater consistency than what currently exists.<sup>248</sup>

Alternate propositions for creating uniformity include adopting a federal codified defamation law.<sup>249</sup> But the federal government will likely never legislate defamation law—it would arguably be an infringement of people's First Amendment rights as well as a federalism overreach.<sup>250</sup> Even though specifically true crime defamation suits are increasingly being filed in federal court and a federal statute may benefit these situations, the Constitutional implications are likely too great.<sup>251</sup> Federal legislation risks chilling constitutionally protected speech and could be counterintuitive to the progression of defamation law.<sup>252</sup> Due to this, a model state statute would be the least infringing way to modernize and promote uniformly applied defamation law.<sup>253</sup>

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240. See *Levi*, *supra* note 119, at 1241 (discussing the various calls for a “defamation renaissance” in the age of anti-disinformation interests, including calls for reform by Justice Thomas and Justice Gorsuch).

241. See *N.Y. Times Co. v. Sullivan*, 367 U.S. 254, 301–02 (Goldberg, J., concurring) (“[I]n order to maintain the opportunity for free political discussion.”).

242. *Id.* at 301.

243. See, e.g., TEX. CIV. PRAC. & REM. CODE § 73.002(b) (creating a fair-report privilege).

244. See *id.*

245. See Jennifer Meredith Liebman, *Defamed by a Blogger: Legal Protections, Self-Regulation and Other Failures*, U. ILL. J.L. TECH. & POL’Y 343, 364–65 (2006).

246. See *id.*

247. See *N.Y. Times Co.*, 376 U.S. at 285; see also *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 335 (1974) (addressing plaintiff classifications).

248. See *Gutierrez*, *supra* note 199.

249. See *id.* at 19.

250. U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech”).

251. See Complaint & Demand for Jury Trial at 7, *Scofield v. Guillard*, No. 3:22-cv-00521 (D. Idaho Dec 21, 2022); see Complaint at 2, *Robertson v. Upchurch*, No. 3:23-cv-00770, 2024 WL 8358839 (M.D. Tenn. July 28, 2023) (No. 1).

252. See U.S. CONST. amend. I.

253. See *Gutierrez*, *supra* note 199.

*B. Including a Correction Clause Will Prevent Unnecessary Litigation and Will Give Evidence to the Creator's Intent*

In addition, the model online defamation statute allows for a correction of the original statement.<sup>254</sup> This “correction clause” reads:

- (1) This provision applies to internet content including social media posts, blogs, websites, videos, audio files, or any other form of online content.
- (2) A person may maintain an action for defamation only if:
  - (a) the person has made a timely and sufficient request for a correction, clarification, or retraction within fourteen days of receiving knowledge of the posting; and
  - (b) the defendant has not made a correction, clarification, or retraction within fourteen days of the request.
- (3) A request for a correction, clarification, or retraction is sufficient if it:
  - (a) is served on the publisher in writing;
  - (b) reasonably identifies the person making the request, and is signed by the requestor or their agent;
  - (c) states with particularity the statement alleged to be false and defamatory and, to the extent known, the time and means of publication;
  - (d) reasonably alleges the defamatory meaning of the statement; and
  - (e) specifies the circumstances causing a defamatory meaning of the statement if it arises from something other than the express language of the publication.
- (4) A correction, clarification, or retraction is sufficient if it is published in a manner and medium reasonably likely to reach substantially the same audience, that is, the same website or internet application account.
- (5) If a correction, clarification, or retraction is made in accordance with this chapter, a person may not recover exemplary damages unless the publication was made with actual malice.
- (6) A request for a correction, clarification, or retraction and the acceptance or refusal of the request are admissible evidence. The burden shall fall on the defendant to provide mitigating evidence.

This clause significantly mirrors the Texas DMA, with some internet specific variations.<sup>255</sup> In Texas, the extensive legislation has proven to accomplish its stated goals.<sup>256</sup> A model correction clause would work similarly in other states because it would initially reduce filing defamation suits, while still allowing for states to proffer individual mitigating tactics.<sup>257</sup>

Contrary to the DMA, the proposed statute gives defendants fourteen days rather than thirty days to make any requested corrections.<sup>258</sup> Due to the

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254. See TEX. CIV. PRAC. & REM. CODE §§ 73.054–61.

255. See TEX. CIV. PRAC. & REM. CODE §§ 73.054–61.

256. See Warner Bros. Ent., Inc. v. Jones, 611 S.W.3d 1, 12 (Tex. 2020).

257. See VA. CODE ANN. §§ 8.01–48 (West 1977).

258. See TEX. CIV. PRAC. & REM. CODE § 73.057(a).

overwhelming amount of content on the internet, fourteen days would be more efficient in reaching and impacting audiences, as the previous posting would still be relevant to users.<sup>259</sup> Also, the model statute differs from the DMA because it allows evidence of requests, and compliance or noncompliance with requests, to be used at trial.<sup>260</sup> Allowing compliance to be used as evidence would give support to the intent prong of defamation claims—specifically the actual malice standard of intent.<sup>261</sup>

In true crime entertainment, actual malice is often the standard because it either criticizes public officials of mishandling cases or hints that someone has committed a crime (which would be a matter of public concern if that person possibly committed the crime).<sup>262</sup> Several true crime defamation suits have been dismissed either during the pleadings or summary judgment phases because actual malice cannot be proved.<sup>263</sup> Rather, the court decides that a reasonable jury would not be able to find actual malice.<sup>264</sup> By providing an opportunity for correction, armchair detectives will no longer be able to hide behind the blanket that knowledge of “fals[ity] or . . . reckless disregard of” truth provides.<sup>265</sup> Publishers would be given firsthand knowledge of the truth from the original source; if afterwards they ignored the correction request, it would then support reckless disregard.<sup>266</sup> Thus giving claims a better chance to get past dismissal and address the actual harm.<sup>267</sup>

Defamation litigation can be costly and extensive.<sup>268</sup> Mere laypersons, whether plaintiff or defendant, may not have the resources to commence such lengthy litigation.<sup>269</sup> A large reason anti-SLAPP statutes gained traction in the first place was to combat the threats of chilling speech through expensive, frivolous litigation.<sup>270</sup> By allowing for statements to be corrected at the onset, the need for initial litigation will be reduced.<sup>271</sup> If defamation issues are first handled privately, it will combat litigation ignorance and promote the truthful spread of information on the internet.<sup>272</sup> Because of ignorance to the law or poor judgment, persons may not necessarily recognize their post’s

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259. *See id.*

260. *See* TEX. CIV. PRAC. & REM. CODE § 73.061(a).

261. *See generally* N.Y. Times Co. v. Sullivan, 376 U.S. 254, 280 (1964) (providing the standard for actual malice).

262. *See, e.g.,* Dordea v. Freleng, 213 N.E.3d 773, 778 (Ohio Ct. App. 2023) (using the actual malice standard because plaintiff was a police officer).

263. *See id.* at 779.

264. *Id.*

265. *See N.Y. Times Co.*, 376 U.S. at 279–80.

266. *See id.*

267. *See id.*

268. Angelotti, *supra* note 12, at 467.

269. *See id.*

270. Seals & Brophy, *supra* note 111.

271. *See* Shirley Henderson, *The Internet Has Countless Wannabe Detectives Who Have Helped—and Hindered—Criminal Investigations*, 109 A.B.A. J. 40, 44 (2023) (quoting Kermit Roosevelt III, Professor at University of Pennsylvania Carey Law School).

272. *See id.*

defamatory nature.<sup>273</sup> Notice and opportunity for correction gives those who are unaware the chance to fix unintentional defamation.<sup>274</sup>

One issue that may arise with the proposed correction clause is the amount of information plaintiffs would be required to provide regarding the nature of the defamatory statement.<sup>275</sup> Under the Texas DMA, correction requests have been found sufficient when the reasonably available information of the falsity of statements has been “clearly communicated.”<sup>276</sup> This standard is a fairly low one and does not require the requestor to provide confidential or private information.<sup>277</sup> The “clearly communicated” standard is supportive in true crime cases because plaintiffs should not be required to proffer classified case information or admit to guilt or innocence.<sup>278</sup> By clearly communicating the defamatory meaning, plaintiffs would be able to adequately correct falsities that with no proof risk diminishing the integrity of investigations or people’s character.<sup>279</sup>

Further, where the correction clause may be used in litigation, defendants would also be able to defensively use the evidence in their favor.<sup>280</sup> When providing notice of reasonably available information as to a statement’s falsity, there is a risk that the plaintiff does not provide truthful information or is motivated to chill speech.<sup>281</sup> As state anti-SLAPP laws would not be affected by this model defamation statute, the correction clause would be able to be used as evidence to support anti-SLAPP protections.<sup>282</sup> Thus increasing the likelihood that unnecessary lawsuits are not permitted to thrive.<sup>283</sup>

Additionally, because of the vast nature of the internet, issues can arise as to finding the location or identity of the person posting the defamatory statements.<sup>284</sup> It is difficult to serve a person notice if they hide behind anonymity.<sup>285</sup> But notice issues arise typically when an unknown source is using a fake or private social media page.<sup>286</sup> In true crime, people want

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273. *Id.* But see Complaint at 7, Robertson v. Upchurch, No. 3:23-cv-00770 (M.D. Tenn. July 28, 2023) (showing that even the risk of litigation may not deter internet accusations).

274. Complaint at 7, Robertson v. Upchurch, No. 3:23-cv-00770 (M.D. Tenn. July 28, 2023).

275. See Warner Bros. Ent., Inc. v. Jones, 611 S.W.3d 1, 12–13 (Tex. 2020).

276. See *id.*

277. See *id.*

278. See *id.*; Dordea v. Freleng, 213 N.E.3d 773, 777 (Ohio Ct. App. 2023).

279. See Dordea, 213 N.E.3d at 777.

280. See generally Seals & Brophy, *supra* note 111 (showing how plaintiffs have in the past attempted to chill speech through meritless SLAPP litigation).

281. See *id.*

282. See *id.*

283. See *id.*

284. *Internet Defamation*, KATZ L. GRP., P.C., <https://www.katzlawgroup.com/internet-defamation#:~:text=Defamation%20may%20involve%20written%20statements,while%20libel%20is%20written%20defamation> (last visited Aug. 29, 2024).

285. *Id.*

286. *Id.*

notoriety and influence that comes with speaking about the subject.<sup>287</sup> Anonymous accounts typically are not an issue within the true crime genre, and the issues providing notice would be minimal.<sup>288</sup>

The correction clause is essential to the overall model statute. As effective as anti-SLAPP provisions can be, litigation must commence before action can be taken.<sup>289</sup> Thus, the proposed correction clause would be a cost-effective way to prevent unnecessary online defamation claims from arising while also giving evidence to actual malice intent.<sup>290</sup>

### *C. A Uniform Statute Must Be Implemented Because in the Context of True Crime, Online Sleuthing Differs from Traditional Journalism*

Applying the model online defamation statute to amateur true crime, the proposal will give those harmed a better chance to redress real-life injuries, as current defamation law is doing little to protect those adversely affected individuals.<sup>291</sup> Harm occurs when profit and glorified entertainment outweigh the experiences and lives of actual people.<sup>292</sup> Armchair detectives and online sleuths often are motivated by the chance of their content going viral—“[if they] get subscribers, [they] get clicks, and [then they] might get money.”<sup>293</sup>

Posting social media posts and podcasts for popularity, rather than awareness, causes creators to produce for-profit true crime content—even if that motivation is subliminal.<sup>294</sup> Social media creators can gain income from telling sensationalized stories.<sup>295</sup> Podcasters can increase revenue by hooking more listeners to make them feel involved.<sup>296</sup> And unlike actual journalists, these creators are not always backed by fact-checking entities or considering the legal rights of others when striving for virality.<sup>297</sup>

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287. See Jillian Gray, *The True Crime Genre Is Popular—But Is It Ethical?*, UNIV. OF OR. SCH. OF JOURNALISM AND COMMUN. (Aug. 28, 2023), <https://journalism.uoregon.edu/news/true-crime-genre-ethics>.

288. *Id.*

289. See CAL. CIV. PROC. CODE § 425.16 (West 2023).

290. See *Dordea v. Freleng*, 213 N.E.3d 773, 778 (Ohio Ct. App. 2023) (dismissing a case where actual malice was not established).

291. See *supra* Section II.B (discussing inadequate protection provided by current defamation law).

292. Lauren Bentley, *The Internet's True Crime Obsession Has Gone Too Far*, THE DIAMONDBACK (Mar. 31, 2023), <https://dbknews.com/2023/03/31/internet-tiktok-true-crime-documentary-criminal-subculture/>.

293. Stacey Cameron, *Nashville YouTuber Sued for Defamation over True Crime Video*, WSMV (Sept. 29, 2023), <https://www.wsmv.com/2023/09/29/nashville-youtuber-sued-defamation-over-true-crime-video/> (referencing attached video).

294. See Wren, *supra* note 151.

295. See Kenneth Niemeyer, *A Lawsuit from a History Professor Claims a Tarot-Reading TikTok Sleuth Accused Her of Ordering the 'Execution' of 4 University of Idaho Students*, BUS. INSIDER (Dec. 24, 2022), <https://www.insider.com/idaho-university-students-killings-professor-lawsuit-tiktoker-sleuth-2022-12>.

296. See Wren, *supra* note 151.

297. See *SPJ Code of Ethics*, *supra* note 146.

True crime is not meant to be the news, and its creators are not typically journalists—they are not even always trying to be.<sup>298</sup> Internet sleuths may be disadvantaged in their ignorance of the complexities of the law, especially the variances of defamation.<sup>299</sup> They typically are not creating content with the threat of litigation in mind.<sup>300</sup> To open up these average, inexperienced persons to lawsuits by expanding defamation law could be burdensome.<sup>301</sup>

Yet, while some amateur postings may be explainable or justified by ignorance, some creators do not care about the negative outcomes of their content.<sup>302</sup> There can be feelings of immunity amongst some sleuths as they detach themselves from the people they are telling stories about.<sup>303</sup> An attitude is generated that there is no possibility one could be subjected to lawsuits when hiding behind the cloak of the internet.<sup>304</sup> What matters is that the views and profits keep coming.<sup>305</sup> This viewpoint fosters a toxic online culture that causes tangible and emotional harms to the victims of such content.<sup>306</sup> Whereas the creators are often average people, so are the victims.<sup>307</sup> They are not asking for people to make YouTube videos, TikToks, or podcasts about their lives.<sup>308</sup> Victims usually only want to find justice for their loved ones, perform their jobs, or resent being accused of committing crimes.<sup>309</sup>

Defamation law must be revised to protect the innocent bystanders who fall victim to online entertainment cloaked in a veil of asserted fact.<sup>310</sup> As others make a profit, victims are left to the mercy of the version of their personal lives that internet sleuths choose to tell.<sup>311</sup> It is not always certain that true crime creators will consult people before posting content, and even if they do, it is not guaranteed that creators will adhere to the wishes or information given.<sup>312</sup> The law should be protecting victims, and these cases

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298. See Wren, *supra* note 151.

299. Maria Fischer, *When “True” Crime Podcasts Air False Information About Real People*, BROOKLYN SPORTS & ENT. L. BLOG (Feb. 28, 2022), <https://sports-entertainment.brooklaw.edu/media/when-true-crime-podcasts-air-false-information-about-real-people/>.

300. See Shirley Henderson, *supra* note 271.

301. See *id.*

302. See Complaint at 8, Robertson v. Upchurch, No. 3:23-cv-00770, 2024 WL 8358839 (M.D. Tenn. Aug. 1, 2023) (demonstrating that when a content creator was warned that their content could subject them to defamation lawsuits, the response was that “[they] can slander these nuts. Lol.”).

303. See *id.*

304. See *id.*

305. See *id.*

306. *Id.*

307. See *id.*

308. See *id.*

309. See *id.*

310. See generally *id.* (showing how a victim’s family was harmed due to a YouTube content creator spreading false information about the victim’s disappearance online).

311. Melissa Chan, *Real People Keep Getting Re-Traumatized.* *The Human Cost of Binge-Watching True Crime Series*, TIME MAG. (Apr. 24, 2020, 8:17 AM), <https://time.com/5825475/true-crime-victim-families/>.

312. See *id.*

should be overcoming the stringent standards of defamation.<sup>313</sup> Consideration is not being given to the rights of the people being reported on and the amateur detective work cannot be said to be a form that journalism defamation law is intended to protect.<sup>314</sup>

The proposed statute would apply to amateur true crime cases by allowing courts to consider true intent—to tell accurate stories or to entertain at whatever cost.<sup>315</sup> Evaluating online posts as a whole, courts will be better able to understand the inner motivations of sleuths.<sup>316</sup> Courts could determine if online sleuths are creating content to generate streams, or whether the intent is to spread factual awareness.<sup>317</sup>

Due to this, giving courts the opportunity to look at cases subjectively is essential.<sup>318</sup> In true crime, it is more important not what a “reasonable [ ] listener” might comprehend, but what the audience actually understands.<sup>319</sup> Unless someone is a fan of true crime, they may not realize the weight that consumers give to the words of creators—audiences assume all assertions are true.<sup>320</sup> There is a fascination that fans could be the heroes of sensationalized true crime stories, causing a hyper-fixation on the pain people are experiencing.<sup>321</sup> Courts must be able to consider the actual implications that crowdsourced true crime content is having to be able to adequately resolve the resulting harm.<sup>322</sup>

With the lack of legal knowledge in many online true crime cases, the correction clause would notify influencers and podcasters of the potential harms their content is producing.<sup>323</sup> Despite the harm caused, it does not necessarily mean that creators should be subjected to costly and lengthy defamation litigation.<sup>324</sup> The correction clause aids in preventing lawsuits from commencing at the onset due to ignorance of the law.<sup>325</sup> While anti-SLAPP provisions are an effective way of deterring frivolous and toothy claims, the correction clause would, in essence, reduce the number of claims

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313. See generally *SPJ Code of Ethics*, *supra* note 146 (discussing a journalist’s code of ethics).

314. See *id.*

315. See generally Jeannie Suk Gersen, *The Dark Side of Defamation*, *THE NEW YORKER* (May 11, 2023), <https://www.newyorker.com/magazine/2023/05/22/the-dark-side-of-defamation-law>.

316. See *id.* (noting that an issue with defamation is understanding a defendant’s “state of mind”).

317. See *id.*

318. See *supra* notes 216–21 and accompanying text (explaining the significance of allowing courts to apply a subjective standard to defamation cases).

319. See *Parker v. Spotify U.S.A., Inc.*, 569 F. Supp. 3d 519, 534, 539 (W.D. Tex. 2021).

320. See *Leetaru*, *supra* note 174.

321. See *Jones*, *supra* note 6, at 164–67.

322. See *supra* notes 216–21 and accompanying text (advocating for a subjective standard to be used in defamation cases).

323. See *supra* Section III.B (discussing the impact a model correction clause would have in defamation litigation).

324. See *Angelotti*, *supra* note 12, at 467.

325. See *supra* notes 266–68 and accompanying text (addressing how a correction clause would influence ignorance in the law).

that are initially filed as a whole.<sup>326</sup> Thus, a model online defamation statute would be the most effective way to address the growing implications that amateur true crime entertainment ensures.<sup>327</sup>

#### IV. CONCLUSION

Armchair detectives and online sleuths are not Elle Woods.<sup>328</sup> They are not even always journalists or consider the implications that can result from their content.<sup>329</sup> And though factual information may be included in true crime, the purpose is mainly to entertain.<sup>330</sup> A model online defamation statute must be adopted to account for these new issues that the online world and internet sleuthing has progressed.<sup>331</sup> It would promote uniformity among suits, while also being a less infringing way to update defamation law.<sup>332</sup>

Additionally, states should implement the proposed correction clause because it gives creators the opportunity to avoid costly litigation and address statements not intended to be defamatory.<sup>333</sup> If creators do not comply with the correction clause, then this can be used as evidence of defamatory intent.<sup>334</sup> In the true crime context, the proposed statute would advance the remedies for those feeling real-life harms, which are not being adequately addressed by current defamation law.<sup>335</sup>

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326. See Seals & Brophy, *supra* note 111.

327. See *id.*

328. See Rennex, *supra* note 74.

329. See Wren, *supra* note 151.

330. See Maria Fischer, *supra* note 299.

331. See *supra* Section III.A (proposing a model online defamation statute).

332. See *supra* Section III.A (explaining the purpose of the proposed statute).

333. See *supra* Section III.B (allowing for a correction clause to be implemented).

334. See *supra* Section III.B (describing the anticipated results of the correction clause).

335. See *supra* Section III.C (applying the proposed statute to amateur true crime entertainment).