

# When Does Sexual Harassment Cross the Line into Criminal Behavior

AN OVERVIEW

*JENNIFER H. GONZALEZ*

*SUPERVISOR, SEXUAL ASSAULT AND DOMESTIC VIOLENCE*

*COOK COUNTY STATE'S ATTORNEY'S OFFICE*

# Hands Off

- **Assault** 720 ILCS 5/12-1  
Engages in conduct which places another in reasonable apprehension of receiving a battery
- **Aggravated Assault** 720 ILCS 5/12-2  
victim is an employee of the State of Illinois, a municipal corporation therein, or a political subdivision thereof, performing his or her official duties, or the act occurs on or about a public way or public property
- **Battery** 720 ILCS 5/12-3.05  
makes physical contact of an insulting or provoking nature with an individual
- **Aggravated Battery** 720 ILCS 5/12  
Battery occurs on or about a public way or public property, victim is 60 years of age or older, victim is pregnant, victim is an employee of the State of Illinois, a municipal corporation therein, or a political subdivision thereof, performing his or her official duties

# So you put it in writing

(Facebook, Snapchat, email, text)

- **Transfer of Obscene Messages** 720 ILCS 5/26.5-1

Sends messages or uses language or terms which are obscene, lewd or immoral with the intent to offend while using a telephone or computer. The trier of fact may infer intent to offend from the use of language or terms which are obscene, lewd or immoral.

- **Harassment Through Electronic Communications** 720 ILCS 5/26.5-3

Uses electronic communication for any of the following purposes:

Making any comment, request, suggestion or proposal which is obscene with an intent to offend

# What Evidence

- **Harassment by Telephone** 720 ILCS 5/26.5-2

(a) A person commits harassment by telephone when he or she uses telephone communication for any of the following purposes:

(1) Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent with an intent to offend;

(2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number;

(3) Making or causing the telephone of another repeatedly to ring, with intent to harass any person at the called number;

(4) Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number

# You Recorded What???

Unauthorized video recording and live video transmission 720 ILCS 5/26-4

(a) It is unlawful for any person to knowingly make a video record or transmit live video of another person without that person's consent in a **restroom, tanning bed, tanning salon, locker room, changing room, or hotel bedroom**.

(a-5) It is unlawful for any person to knowingly make a video record or transmit live video of another person **in that other person's residence** without that person's consent.

(a-6) It is unlawful for any person to knowingly make a video record or transmit live video of another person in that other person's residence without that person's consent when the recording or **transmission is made outside that person's residence** by use of an audio or video device that records or transmits from a remote location.

(a-10) It is unlawful for any person to knowingly make a video record or transmit live video of another person **under or through the clothing** worn by that other person for the purpose of viewing the body of or the undergarments worn by that other person without that person's consent.

# Every Breath You Take I'll Be Watching You

- Stalking 720 ILCS 5/12-7.3 and CyberStalking 720 ILCS 5/12-7.5
- (a) A person commits stalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to:
  - (1) fear for his or her safety or the safety of a third person
  - (2) Suffer other emotional distress
- (a-3) A person commits stalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions follows another person or places the person under surveillance or any combination thereof and:
  - (1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement or restraint and the threat is directed towards that person or a family member of that person; or
  - (2) places that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint to or of that person or a family member of that person.

# Don't Do This

- "Course of conduct" means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, or threatens a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. A course of conduct may include contact via electronic communications.
- People v. Relerford, 2017 IL 121094, IL Supreme Court 11/30/17

# Sexual conduct

- any knowing touching or fondling by the V or the accused, **either directly or through clothing**, of the sex organs, anus, or breast of the V or the accused, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the V **for the purpose of sexual gratification or arousal of the V or the accused**



# Sexual penetration

~any contact, **however slight**, between the sex organ or anus of one person and an object or the sex organ, mouth, anus of another person, or any intrusion, however slight, of any part of the body of one person, animal, or object into the sex organ or anus of another person.

\*\*Evidence of emission of semen is not required to prove sexual penetration

# Criminal Sexual Assault

720 ILCS 5/11-1.20

A person commits criminal sexual assault if that person commits an act of sexual penetration and

- ~uses force or threat of force, or
- ~knows that the V is unable to give knowing consent, or
- ~is a family member of a V under age 18
- ~is 17 or older and holds a position of trust, authority or supervision over the V aged 13-17

# Criminal Sexual Abuse

720 ILCS 5/11-1.50

~commits an act of sexual conduct by the use of force or threat of force, or

~commits an act of sexual conduct and knows that the V is **unable to give knowing consent**

~commits an act of sexual penetration or sexual conduct with a V 13-16 and the D is less than 5 years older than V

# Was that Consensual

- Too drunk or under the influence
- Asleep

# Burden

- The burden remains on the State to prove beyond a reasonable doubt that the accused KNEW his partner may have been unable to give knowing consent.
  - *People v. Fisher*

# Force

- When the accused threatens to use force or violence on the V or on any other person, and the V under the circumstances reasonably believes that the accused has the ability to execute the threat
- Accused overcomes the V by use of superior strength, size, physical restraint, or physical confinement (loop rapist)

# Affirmative Defenses

720 ILCS 5/11-1.70

~where force/threat of force used, defense if V consented, meaning a freely given agreement to the act of sexual penetration or sexual conduct

# Qualifications to Affirmative Defenses

**\*\*Lack of verbal or physical resistance or submission by the V resulting from the use of force or threat of force SHALL not constitute consent.**

**\*\*The manner of dress of the V at the time of the offense SHALL not constitute consent**

**\*\*A person who initially consents to sexual penetration or conduct is NOT deemed to have consented to any sexual penetration or conduct that occurs after he/she withdraws consent during the course of that act**



# Revenge Porn

720 ILCS 5/11-23.5 Non-Consensual Dissemination of Private Sexual Images

(b) A person commits non-consensual dissemination of private sexual images when he or she:

(1) intentionally disseminates an image of another person:

(A) who is at least 18 years of age; and

(B) who is identifiable from the image itself or information displayed in connection with the image; and

(C) who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part; and

(2) obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and

(3) knows or should have known that the person in the image has not consented to the dissemination.

(f) Sentence. Non-consensual dissemination of private sexual images is a Class 4 felony.

# Protective Orders

- Orders of Protection
- Civil No Contact Orders

# Important Caselaw

- *People v. Donoho* allows proof of Defendant's other crimes to prove not only intent, motive, identity, *modus operandi*, and combat consent
- *BUT* now we can use it to prove **propensity**
- **725 ILCS 5/115-7.3**

# SB 3096

- Rape survivors can now report anonymously
- Sexual Assault Evidence Collection Kits (Rape Kits) must now be kept for 5 years instead of 2 weeks to allow the victim to consent to the testing

# Open Door

Call me anytime

Compliments, complaints, ideas, suggestions

Jennifer H. Gonzalez

Supervisor, Sexual Assault and Domestic Violence Division

Cook County State's Attorney's Office

2650 S California Ave, 11D10/555 W Harrison, 2<sup>nd</sup> Floor

773-674-6492/312-325-6492

[Jennifer.gonzalez@cookcountyil.gov](mailto:Jennifer.gonzalez@cookcountyil.gov)