

# HB3251



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3251

by Rep. Christine Winger

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-7.5

Amends the Criminal Code of 2012. Creates the offense of illegal electronic monitoring in the statute concerning cyberstalking. Provides that a person commits illegal electronic monitoring when he or she knowingly installs, conceals, or otherwise places an electronic tracking software or spyware on an electronic communication device without the consent of all owners and primary users of the device for the purpose of monitoring or following the user or users of the software. Provides exceptions. Provides that a first violation is a Class 4 felony and a second or subsequent conviction is a Class 3 felony. Defines "electronic communication device" and "electronic tracking software or spyware".

LRB100 10504 RLC 20719 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing  
5 Section 12-7.5 as follows:

6 (720 ILCS 5/12-7.5)

7 Sec. 12-7.5. Cyberstalking and illegal electronic  
8 monitoring.

9 (a) A person commits cyberstalking when he or she engages  
10 in a course of conduct using electronic communication directed  
11 at a specific person, and he or she knows or should know that  
12 would cause a reasonable person to:

13 (1) fear for his or her safety or the safety of a third  
14 person; or

15 (2) suffer other emotional distress.

16 (a-3) A person commits cyberstalking when he or she,  
17 knowingly and without lawful justification, on at least 2  
18 separate occasions, harasses another person through the use of  
19 electronic communication and:

20 (1) at any time transmits a threat of immediate or  
21 future bodily harm, sexual assault, confinement, or  
22 restraint and the threat is directed towards that person or  
23 a family member of that person; or

1           (2) places that person or a family member of that  
2 person in reasonable apprehension of immediate or future  
3 bodily harm, sexual assault, confinement, or restraint; or

4           (3) at any time knowingly solicits the commission of an  
5 act by any person which would be a violation of this Code  
6 directed towards that person or a family member of that  
7 person.

8           (a-5) A person commits cyberstalking when he or she,  
9 knowingly and without lawful justification, creates and  
10 maintains an Internet website or webpage which is accessible to  
11 one or more third parties for a period of at least 24 hours,  
12 and which contains statements harassing another person and:

13           (1) which communicates a threat of immediate or future  
14 bodily harm, sexual assault, confinement, or restraint,  
15 where the threat is directed towards that person or a  
16 family member of that person, or

17           (2) which places that person or a family member of that  
18 person in reasonable apprehension of immediate or future  
19 bodily harm, sexual assault, confinement, or restraint, or

20           (3) which knowingly solicits the commission of an act  
21 by any person which would be a violation of this Code  
22 directed towards that person or a family member of that  
23 person.

24           (a-10) Except as provided in subsection (c-5), a person  
25 commits illegal electronic monitoring when he or she knowingly  
26 installs, conceals, or otherwise places an electronic tracking

1 software or spyware on an electronic communication device  
2 without the consent of all owners and primary users of the  
3 device for the purpose of monitoring or following the user or  
4 users of the software.

5 (b) Sentence. Cyberstalking and illegal electronic  
6 monitoring is a Class 4 felony; a second or subsequent  
7 conviction is a Class 3 felony.

8 (c) For purposes of this Section:

9 (1) "Course of conduct" means 2 or more acts, including  
10 but not limited to acts in which a defendant directly,  
11 indirectly, or through third parties, by any action,  
12 method, device, or means follows, monitors, observes,  
13 surveils, threatens, or communicates to or about, a person,  
14 engages in other non-consensual contact, or interferes  
15 with or damages a person's property or pet. The  
16 incarceration in a penal institution of a person who  
17 commits the course of conduct is not a bar to prosecution  
18 under this Section.

19 (2) "Electronic communication" means any transfer of  
20 signs, signals, writings, sounds, data, or intelligence of  
21 any nature transmitted in whole or in part by a wire,  
22 radio, electromagnetic, photoelectric, or photo-optical  
23 system. "Electronic communication" includes transmissions  
24 through an electronic device including, but not limited to,  
25 a telephone, cellular phone, computer, or pager, which  
26 communication includes, but is not limited to, e-mail,

1 instant message, text message, or voice mail.

2 (2.1) "Electronic communication device" means an  
3 electronic device, including, but not limited to, a  
4 wireless telephone, personal digital assistant, or a  
5 portable or mobile computer, that is capable of  
6 transmitting images or pictures.

7 (2.2) "Electronic tracking software or spyware" means  
8 a computer program that tracks computer activity and is  
9 capable of recording and transmitting the information to  
10 third parties.

11 (3) "Emotional distress" means significant mental  
12 suffering, anxiety or alarm.

13 (4) "Harass" means to engage in a knowing and willful  
14 course of conduct directed at a specific person that  
15 alarms, torments, or terrorizes that person.

16 (5) "Non-consensual contact" means any contact with  
17 the victim that is initiated or continued without the  
18 victim's consent, including but not limited to being in the  
19 physical presence of the victim; appearing within the sight  
20 of the victim; approaching or confronting the victim in a  
21 public place or on private property; appearing at the  
22 workplace or residence of the victim; entering onto or  
23 remaining on property owned, leased, or occupied by the  
24 victim; or placing an object on, or delivering an object  
25 to, property owned, leased, or occupied by the victim.

26 (5.1) "Person" does not include the manufacturer of the

1 electronic software or spyware, or a retail mercantile  
2 establishment as provided in paragraph (4) of subsection  
3 (c-5) of this Section.

4 (6) "Reasonable person" means a person in the victim's  
5 circumstances, with the victim's knowledge of the  
6 defendant and the defendant's prior acts.

7 (7) "Third party" means any person other than the  
8 person violating these provisions and the person or persons  
9 towards whom the violator's actions are directed.

10 (c-5) It is not a violation of this Section:

11 (1) if the installing, concealing, or placing of  
12 electronic tracking software or spyware on an electronic  
13 communication device is by, or at the direction of, a peace  
14 officer in furtherance of a criminal investigation and is  
15 carried out in accordance with applicable State and federal  
16 law;

17 (2) if the installing, concealing, or placing of  
18 electronic tracking software or spyware on an electronic  
19 communication device is by, or at the direction of, a  
20 parent or legal guardian who owns the device, and if the  
21 device is used solely for the purpose of monitoring the  
22 minor child of the parent or legal guardian when the child  
23 is the user of the device;

24 (3) if the electronic tracking software or spyware was  
25 installed by the manufacturer of the electronic  
26 communication device; or

1           (4) for a retail mercantile establishment, as defined  
2           in Section 16-0.1 of this Code, to track the location of  
3           customers within its establishment for commercial  
4           purposes.

5           (d) Telecommunications carriers, commercial mobile service  
6 providers, and providers of information services, including,  
7 but not limited to, Internet service providers and hosting  
8 service providers, are not liable under this Section, except  
9 for willful and wanton misconduct, by virtue of the  
10 transmission, storage, or caching of electronic communications  
11 or messages of others or by virtue of the provision of other  
12 related telecommunications, commercial mobile services, or  
13 information services used by others in violation of this  
14 Section.

15           (e) A defendant who directed the actions of a third party  
16 to violate this Section, under the principles of accountability  
17 set forth in Article 5 of this Code, is guilty of violating  
18 this Section as if the same had been personally done by the  
19 defendant, without regard to the mental state of the third  
20 party acting at the direction of the defendant.

21           (Source: P.A. 96-328, eff. 8-11-09; 96-686, eff. 1-1-10;  
22 96-1000, eff. 7-2-10; 96-1551, eff. 7-1-11; 97-303, eff.  
23 8-11-11; 97-311, eff. 8-11-11; 97-1109, eff. 1-1-13.)