

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.

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

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

14 (2) suffer other emotional distress.

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

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

23 (2) places that person or a family member of that

1 person in reasonable apprehension of immediate or future  
2 bodily harm, sexual assault, confinement, or restraint; or

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

7 (a-4) A person commits cyberstalking when he or she  
8 knowingly, surreptitiously, and without lawful justification,  
9 installs or otherwise places electronic monitoring software or  
10 spyware on an electronic communication device as a means to  
11 harass another person and:

12 (1) at any time transmits a threat of immediate or  
13 future bodily harm, sexual assault, confinement, or  
14 restraint and the threat is directed towards that person or  
15 a family member of that person;

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

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

23 For purposes of this Section, an installation or placement  
24 is not surreptitious if:

25 (1) with respect to electronic software, hardware, or  
26 computer applications, clear notice regarding the use of

1       the specific type of tracking software or spyware is  
2       provided by the installer in advance to the owners and  
3       primary users of the electronic software, hardware, or  
4       computer application; or

5       (2) written or electronic consent of all owners and  
6       primary users of the electronic software, hardware, or  
7       computer application on which the tracking software or  
8       spyware will be installed has been sought and obtained  
9       through a mechanism that does not seek to obtain any other  
10       approvals or acknowledgement from the owners and primary  
11       users.

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

17       (1) which communicates a threat of immediate or future  
18       bodily harm, sexual assault, confinement, or restraint,  
19       where the threat is directed towards that person or a  
20       family member of that person, or

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

24       (3) which knowingly solicits the commission of an act  
25       by any person which would be a violation of this Code  
26       directed towards that person or a family member of that

1 person.

2 (b) Sentence. Cyberstalking is a Class 4 felony; a second  
3 or subsequent conviction is a Class 3 felony.

4 (c) For purposes of this Section:

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

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

24 (2.1) "Electronic communication device" means an  
25 electronic device, including, but not limited to, a  
26 wireless telephone, personal digital assistant, or a

1 portable or mobile computer.

2 (2.2) "Electronic monitoring software or spyware"  
3 means software or an application that surreptitiously  
4 tracks computer activity on a device and records and  
5 transmits the information to third parties with the intent  
6 to cause injury or harm. For the purposes of this paragraph  
7 (2.2), "intent to cause injury or harm" does not include  
8 activities carried out in furtherance of the prevention of  
9 fraud or crime or of protecting the security of networks,  
10 online services, applications, software, other computer  
11 programs, users, or electronic communication devices or  
12 similar devices.

13 (3) "Emotional distress" means significant mental  
14 suffering, anxiety or alarm.

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

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

1 to, property owned, leased, or occupied by the victim.

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

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

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

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

24 (f) It is not a violation of this Section to:

25 (1) provide, protect, maintain, update, or upgrade  
26 networks, online services, applications, software, other

1 computer programs, electronic communication devices, or  
2 similar devices under the terms of use applicable to those  
3 networks, services, applications, software, programs, or  
4 devices;

5 (2) interfere with or prohibit terms or conditions in a  
6 contract or license related to networks, online services,  
7 applications, software, other computer programs,  
8 electronic communication devices, or similar devices; or

9 (3) create any liability by reason of terms or  
10 conditions adopted, or technical measures implemented, to  
11 prevent the transmission of unsolicited electronic mail or  
12 communications.

13 (Source: P.A. 96-328, eff. 8-11-09; 96-686, eff. 1-1-10;  
14 96-1000, eff. 7-2-10; 96-1551, eff. 7-1-11; 97-303, eff.  
15 8-11-11; 97-311, eff. 8-11-11; 97-1109, eff. 1-1-13.)