

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.)