



Rep. Christine Winger

**Filed: 4/20/2017**

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LRB100 10504 RLC 25088 a

1 AMENDMENT TO HOUSE BILL 3251

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3251 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by  
5 changing 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

1 separate occasions, harasses another person through the use of  
2 electronic communication and:

3 (1) at any time transmits a threat of immediate or  
4 future bodily harm, sexual assault, confinement, or  
5 restraint and the threat is directed towards that person or  
6 a family member of that person; or

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

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

14 (a-4) A person commits cyberstalking when he or she  
15 knowingly, surreptitiously, and without lawful justification,  
16 installs or otherwise places electronic monitoring software or  
17 spyware on an electronic communication device as a means to  
18 harass another person 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;

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

26 (3) at any time knowingly solicits the commission of an

1 act by any person which would be a violation of this Code  
2 directed towards that person or a family member of that  
3 person.

4 For purposes of this Section, an installation or placement  
5 is not surreptitious if:

6 (1) with respect to electronic software, hardware, or  
7 computer applications, clear notice regarding the use of  
8 the specific type of tracking software or spyware is  
9 provided by the installer in advance to the owners and  
10 primary users of the electronic software, hardware, or  
11 computer application; or

12 (2) written or electronic consent of all owners and  
13 primary users of the electronic software, hardware, or  
14 computer application on which the tracking software or  
15 spyware will be installed has been sought and obtained  
16 through a mechanism that does not seek to obtain any other  
17 approvals or acknowledgement from the owners and primary  
18 users.

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

24 (1) which communicates a threat of immediate or future  
25 bodily harm, sexual assault, confinement, or restraint,  
26 where the threat is directed towards that person or a

1 family member of that person, or

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

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

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

11 (c) For purposes of this Section:

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

22 (2) "Electronic communication" means any transfer of  
23 signs, signals, writings, sounds, data, or intelligence of  
24 any nature transmitted in whole or in part by a wire,  
25 radio, electromagnetic, photoelectric, or photo-optical  
26 system. "Electronic communication" includes transmissions

1 through an electronic device including, but not limited to,  
2 a telephone, cellular phone, computer, or pager, which  
3 communication includes, but is not limited to, e-mail,  
4 instant message, text message, or voice mail.

5 (2.1) "Electronic communication device" means an  
6 electronic device, including, but not limited to, a  
7 wireless telephone, personal digital assistant, or a  
8 portable or mobile computer.

9 (2.2) "Electronic monitoring software or spyware"  
10 means software or an application that surreptitiously  
11 tracks computer activity on a device and records and  
12 transmits the information to third parties with the intent  
13 to cause injury or harm. For the purposes of this paragraph  
14 (2.2), "intent to cause injury or harm" does not include  
15 activities carried out in furtherance of the prevention of  
16 fraud or crime or of protecting the security of networks,  
17 online services, applications, software, other computer  
18 programs, users, or electronic communication devices or  
19 similar devices.

20 (3) "Emotional distress" means significant mental  
21 suffering, anxiety or alarm.

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

25 (5) "Non-consensual contact" means any contact with  
26 the victim that is initiated or continued without the

1 victim's consent, including but not limited to being in the  
2 physical presence of the victim; appearing within the sight  
3 of the victim; approaching or confronting the victim in a  
4 public place or on private property; appearing at the  
5 workplace or residence of the victim; entering onto or  
6 remaining on property owned, leased, or occupied by the  
7 victim; or placing an object on, or delivering an object  
8 to, property owned, leased, or occupied by the victim.

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

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

15 (d) Telecommunications carriers, commercial mobile service  
16 providers, and providers of information services, including,  
17 but not limited to, Internet service providers and hosting  
18 service providers, are not liable under this Section, except  
19 for willful and wanton misconduct, by virtue of the  
20 transmission, storage, or caching of electronic communications  
21 or messages of others or by virtue of the provision of other  
22 related telecommunications, commercial mobile services, or  
23 information services used by others in violation of this  
24 Section.

25 (e) A defendant who directed the actions of a third party  
26 to violate this Section, under the principles of accountability

1 set forth in Article 5 of this Code, is guilty of violating  
2 this Section as if the same had been personally done by the  
3 defendant, without regard to the mental state of the third  
4 party acting at the direction of the defendant.

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

6 (1) provide, protect, maintain, update, or upgrade  
7 networks, online services, applications, software, other  
8 computer programs, electronic communication devices, or  
9 similar devices under the terms of use applicable to those  
10 networks, services, applications, software, programs, or  
11 devices;

12 (2) interfere with or prohibit terms or conditions in a  
13 contract or license related to networks, online services,  
14 applications, software, other computer programs,  
15 electronic communication devices, or similar devices; or

16 (3) create any liability by reason of terms or  
17 conditions adopted, or technical measures implemented, to  
18 prevent the transmission of unsolicited electronic mail or  
19 communications.

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