



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB4506

by Rep. Peter Breen

#### SYNOPSIS AS INTRODUCED:

740 ILCS 21/10

720 ILCS 5/12-7.3

720 ILCS 5/12-7.5

from Ch. 38, par. 12-7.3

Amends the Stalking No Contact Order Act. Provides that stalking does not include an exercise of the right to free speech or assembly that is otherwise lawful or picketing that is otherwise lawful (rather than, "an exercise of the right to free speech or assembly that is otherwise lawful or picketing occurring at the workplace that is otherwise lawful and arises out of a bona fide labor dispute, including any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the making or maintaining of collective bargaining agreements, and the terms to be included in those agreements"). Amends the Criminal Code of 2012. Provides that 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 fear for his or her safety or the safety of a third person (rather than, in addition, to suffer other emotional distress). Provides that a person commits cyberstalking when he or she engages in a course of conduct using electronic communication directed at a specific person, and he or she knows or should know that would cause a reasonable person to fear for his or her safety (rather than, in addition, to suffer other emotional distress). Effective immediately.

LRB100 18625 SLF 33850 b

1 AN ACT concerning stalking.

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

4 Section 5. The Stalking No Contact Order Act is amended by  
5 changing Section 10 as follows:

6 (740 ILCS 21/10)

7 Sec. 10. Definitions. For the purposes of this Act:

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

18 "Emotional distress" means significant mental suffering,  
19 anxiety or alarm.

20 "Contact" includes any contact with the victim, that is  
21 initiated or continued without the victim's consent, or that is  
22 in disregard of the victim's expressed desire that the contact  
23 be avoided or discontinued, including but not limited to being

1 in the physical presence of the victim; appearing within the  
2 sight of the victim; approaching or confronting the victim in a  
3 public place or on private property; appearing at the workplace  
4 or residence of the victim; entering onto or remaining on  
5 property owned, leased, or occupied by the victim; or placing  
6 an object on, or delivering an object to, property owned,  
7 leased, or occupied by the victim.

8 "Petitioner" means any named petitioner for the stalking no  
9 contact order or any named victim of stalking on whose behalf  
10 the petition is brought.

11 "Reasonable person" means a person in the petitioner's  
12 circumstances with the petitioner's knowledge of the  
13 respondent and the respondent's prior acts.

14 "Stalking" means engaging in a course of conduct directed  
15 at a specific person, and he or she knows or should know that  
16 this course of conduct would cause a reasonable person to fear  
17 for his or her safety or the safety of a third person ~~or suffer~~  
18 ~~emotional distress~~. Stalking does not include an exercise of  
19 the right to free speech or assembly that is otherwise lawful  
20 or picketing ~~occurring at the workplace~~ that is otherwise  
21 lawful ~~and arises out of a bona fide labor dispute, including~~  
22 ~~any controversy concerning wages, salaries, hours, working~~  
23 ~~conditions or benefits, including health and welfare, sick~~  
24 ~~leave, insurance, and pension or retirement provisions, the~~  
25 ~~making or maintaining of collective bargaining agreements, and~~  
26 ~~the terms to be included in those agreements.~~

1 "Stalking No Contact Order" means an emergency order or  
2 plenary order granted under this Act, which includes a remedy  
3 authorized by Section 80 of this Act.

4 (Source: P.A. 96-246, eff. 1-1-10.)

5 Section 10. The Criminal Code of 2012 is amended by  
6 changing Sections 12-7.3 and 12-7.5 as follows:

7 (720 ILCS 5/12-7.3) (from Ch. 38, par. 12-7.3)

8 Sec. 12-7.3. Stalking.

9 (a) A person commits stalking when he or she knowingly  
10 engages in a course of conduct directed at a specific person,  
11 and he or she knows or should know that this course of conduct  
12 would cause a reasonable person to: ~~(1) fear for his or her~~  
13 ~~safety or the safety of a third person; or (2) suffer other~~  
14 ~~emotional distress.~~

15 (a-3) A person commits stalking when he or she, knowingly  
16 and without lawful justification, on at least 2 separate  
17 occasions follows another person or places the person under  
18 surveillance or any combination thereof 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 in reasonable apprehension of  
24 immediate or future bodily harm, sexual assault,

1 confinement or restraint to or of that person or a family  
2 member of that person.

3 (a-5) A person commits stalking when he or she has  
4 previously been convicted of stalking another person and  
5 knowingly and without lawful justification on one occasion:

6 (1) follows that same person or places that same person  
7 under surveillance; and

8 (2) transmits a threat of immediate or future bodily  
9 harm, sexual assault, confinement or restraint to that  
10 person or a family member of that person.

11 (b) Sentence. Stalking is a Class 4 felony; a second or  
12 subsequent conviction is a Class 3 felony.

13 (c) Definitions. For purposes of this Section:

14 (1) "Course of conduct" means 2 or more acts, including  
15 but not limited to acts in which a defendant directly,  
16 indirectly, or through third parties, by any action,  
17 method, device, or means follows, monitors, observes,  
18 surveils, threatens, or communicates to ~~or about~~, a person,  
19 engages in other non-consensual contact, or interferes  
20 with or damages a person's property or pet. A course of  
21 conduct may include contact via electronic communications.

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 by a computer through the Internet to another computer.

2 (3) (Blank). ~~"Emotional distress" means significant~~  
3 ~~mental suffering, anxiety or alarm.~~

4 (4) "Family member" means a parent, grandparent,  
5 brother, sister, or child, whether by whole blood,  
6 half-blood, or adoption and includes a step-grandparent,  
7 step-parent, step-brother, step-sister or step-child.  
8 "Family member" also means any other person who regularly  
9 resides in the household, or who, within the prior 6  
10 months, regularly resided in the household.

11 (5) "Follows another person" means (i) to move in  
12 relative proximity to a person as that person moves from  
13 place to place or (ii) to remain in relative proximity to a  
14 person who is stationary or whose movements are confined to  
15 a small area. "Follows another person" does not include a  
16 following within the residence of the defendant.

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

1           (7) "Places a person under surveillance" means: (1)  
2 remaining present outside the person's school, place of  
3 employment, vehicle, other place occupied by the person, or  
4 residence other than the residence of the defendant; or (2)  
5 placing an electronic tracking device on the person or the  
6 person's property.

7           (8) "Reasonable person" means a person in the victim's  
8 situation.

9           (9) "Transmits a threat" means a verbal or written  
10 threat or a threat implied by a pattern of conduct or a  
11 combination of verbal or written statements or conduct.

12           (d) Exemptions.

13           (1) This Section does not apply to any individual or  
14 organization (i) monitoring or attentive to compliance  
15 with public or worker safety laws, wage and hour  
16 requirements, or other statutory requirements, or (ii)  
17 picketing occurring at the workplace that is otherwise  
18 lawful and arises out of a bona fide labor dispute,  
19 including any controversy concerning wages, salaries,  
20 hours, working conditions or benefits, including health  
21 and welfare, sick leave, insurance, and pension or  
22 retirement provisions, the making or maintaining of  
23 collective bargaining agreements, and the terms to be  
24 included in those agreements.

25           (2) This Section does not apply to an exercise of the  
26 right to free speech or assembly that is otherwise lawful.

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

12           (d-5) The incarceration of a person in a penal institution  
13 who commits the course of conduct or transmits a threat is not  
14 a bar to prosecution under this Section.

15           (d-10) A defendant who directed the actions of a third  
16 party to violate this Section, under the principles of  
17 accountability set forth in Article 5 of this Code, is guilty  
18 of violating this Section as if the same had been personally  
19 done by the defendant, without regard to the mental state of  
20 the third party acting at the direction of the defendant.

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

23           (720 ILCS 5/12-7.5)

24           Sec. 12-7.5. Cyberstalking.

25           (a) A person commits cyberstalking when he or she engages



1 in a course of conduct using electronic communication directed  
2 at a specific person, and he or she knows or should know that  
3 would cause a reasonable person to: ~~(1) fear for his or her~~  
4 ~~safety or the safety of a third person; or (2) suffer other~~  
5 ~~emotional distress.~~

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

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

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

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

21 (a-4) A person commits cyberstalking when he or she  
22 knowingly, surreptitiously, and without lawful justification,  
23 installs or otherwise places electronic monitoring software or  
24 spyware on an electronic communication device as a means to  
25 harass another person and:

26 (1) at any time transmits a threat of immediate or

1 future bodily harm, sexual assault, confinement, or  
2 restraint and the threat is directed towards that person or  
3 a family member of that person;

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

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

11 For purposes of this Section, an installation or placement  
12 is not surreptitious if:

13 (1) with respect to electronic software, hardware, or  
14 computer applications, clear notice regarding the use of  
15 the specific type of tracking software or spyware is  
16 provided by the installer in advance to the owners and  
17 primary users of the electronic software, hardware, or  
18 computer application; or

19 (2) written or electronic consent of all owners and  
20 primary users of the electronic software, hardware, or  
21 computer application on which the tracking software or  
22 spyware will be installed has been sought and obtained  
23 through a mechanism that does not seek to obtain any other  
24 approvals or acknowledgement from the owners and primary  
25 users.

26 (a-5) A person commits cyberstalking when he or she,

1 knowingly and without lawful justification, creates and  
2 maintains an Internet website or webpage which is accessible to  
3 one or more third parties for a period of at least 24 hours,  
4 and which contains statements harassing another person and:

5 (1) which communicates a threat of immediate or future  
6 bodily harm, sexual assault, confinement, or restraint,  
7 where the threat is directed towards that person or a  
8 family member of that person, or

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

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

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

18 (c) For purposes of this Section:

19 (1) "Course of conduct" means 2 or more acts, including  
20 but not limited to acts in which a defendant directly,  
21 indirectly, or through third parties, by any action,  
22 method, device, or means follows, monitors, observes,  
23 surveils, threatens, or communicates to ~~or about,~~ a person,  
24 engages in other non-consensual contact, or interferes  
25 with or damages a person's property or pet. The  
26 incarceration in a penal institution of a person who

1 commits the course of conduct is not a bar to prosecution  
2 under this Section.

3 (2) "Electronic communication" means any transfer of  
4 signs, signals, writings, sounds, data, or intelligence of  
5 any nature transmitted in whole or in part by a wire,  
6 radio, electromagnetic, photoelectric, or photo-optical  
7 system. "Electronic communication" includes transmissions  
8 through an electronic device including, but not limited to,  
9 a telephone, cellular phone, computer, or pager, which  
10 communication includes, but is not limited to, e-mail,  
11 instant message, text message, or voice mail.

12 (2.1) "Electronic communication device" means an  
13 electronic device, including, but not limited to, a  
14 wireless telephone, personal digital assistant, or a  
15 portable or mobile computer.

16 (2.2) "Electronic monitoring software or spyware"  
17 means software or an application that surreptitiously  
18 tracks computer activity on a device and records and  
19 transmits the information to third parties with the intent  
20 to cause injury or harm. For the purposes of this paragraph  
21 (2.2), "intent to cause injury or harm" does not include  
22 activities carried out in furtherance of the prevention of  
23 fraud or crime or of protecting the security of networks,  
24 online services, applications, software, other computer  
25 programs, users, or electronic communication devices or  
26 similar devices.

1           (3) (Blank). ~~"Emotional distress" means significant~~  
2 ~~mental suffering, anxiety or alarm.~~

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

6           (5) "Non-consensual contact" means any contact with  
7 the victim that is initiated or continued without the  
8 victim's consent, including but not limited to being in the  
9 physical presence of the victim; appearing within the sight  
10 of the victim; approaching or confronting the victim in a  
11 public place or on private property; appearing at the  
12 workplace or residence of the victim; entering onto or  
13 remaining on property owned, leased, or occupied by the  
14 victim; or placing an object on, or delivering an object  
15 to, property owned, leased, or occupied by the victim.

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

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

22           (d) Telecommunications carriers, commercial mobile service  
23 providers, and providers of information services, including,  
24 but not limited to, Internet service providers and hosting  
25 service providers, are not liable under this Section, except  
26 for willful and wanton misconduct, by virtue of the

1 transmission, storage, or caching of electronic communications  
2 or messages of others or by virtue of the provision of other  
3 related telecommunications, commercial mobile services, or  
4 information services used by others in violation of this  
5 Section.

6 (e) A defendant who directed the actions of a third party  
7 to violate this Section, under the principles of accountability  
8 set forth in Article 5 of this Code, is guilty of violating  
9 this Section as if the same had been personally done by the  
10 defendant, without regard to the mental state of the third  
11 party acting at the direction of the defendant.

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

13 (1) provide, protect, maintain, update, or upgrade  
14 networks, online services, applications, software, other  
15 computer programs, electronic communication devices, or  
16 similar devices under the terms of use applicable to those  
17 networks, services, applications, software, programs, or  
18 devices;

19 (2) interfere with or prohibit terms or conditions in a  
20 contract or license related to networks, online services,  
21 applications, software, other computer programs,  
22 electronic communication devices, or similar devices; or

23 (3) create any liability by reason of terms or  
24 conditions adopted, or technical measures implemented, to  
25 prevent the transmission of unsolicited electronic mail or  
26 communications.

1 (Source: P.A. 100-166, eff. 1-1-18.)

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.