

HB3022



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3022

by Rep. Yehiel M. Kalish

SYNOPSIS AS INTRODUCED:

| | |
|-------------------|--------------------------|
| 720 ILCS 5/12-7.3 | from Ch. 38, par. 12-7.3 |
| 720 ILCS 5/12-7.4 | from Ch. 38, par. 12-7.4 |
| 720 ILCS 5/12-7.5 | |

Amends the Criminal Code of 2012. Increases the penalties for stalking, aggravated stalking, and cyberstalking by one class if the victim of the offense is under 18 years of age at the time of the offense.

LRB101 06970 SLF 52003 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 Sections 12-7.3, 12-7.4, and 12-7.5 as follows:

6 (720 ILCS 5/12-7.3) (from Ch. 38, par. 12-7.3)

7 Sec. 12-7.3. Stalking.

8 (a) A person commits stalking when he or she knowingly
9 engages in a course of conduct directed at a specific person,
10 and he or she knows or should know that this course of conduct
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 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

1 immediate or future bodily harm, sexual assault,
2 confinement or restraint to or of that person or a family
3 member of that person.

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

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

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

12 (b) Sentence.

13 (1) Except as otherwise provided in paragraphs (2) and
14 (3) of this subsection (b), stalking ~~Stalking~~ is a Class 4
15 felony. ~~†a~~

16 (2) Except as otherwise provided in paragraph (3) of
17 this subsection (b), a second or subsequent conviction for
18 stalking is a Class 3 felony.

19 (3) If the victim of stalking is under 18 years of age
20 at the time of the offense, stalking is a Class 3 felony
21 for a first conviction and a Class 2 felony for a second or
22 subsequent conviction.

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

24 (1) "Course of conduct" means 2 or more acts, including
25 but not limited to acts in which a defendant directly,
26 indirectly, or through third parties, by any action,

1 method, device, or means follows, monitors, observes,
2 surveils, threatens, or communicates to or about, a person,
3 engages in other non-consensual contact, or interferes
4 with or damages a person's property or pet. A course of
5 conduct may include contact via electronic communications.

6 (2) "Electronic communication" means any transfer of
7 signs, signals, writings, sounds, data, or intelligence of
8 any nature transmitted in whole or in part by a wire,
9 radio, electromagnetic, photoelectric, or photo-optical
10 system. "Electronic communication" includes transmissions
11 by a computer through the Internet to another computer.

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

14 (4) "Family member" means a parent, grandparent,
15 brother, sister, or child, whether by whole blood,
16 half-blood, or adoption and includes a step-grandparent,
17 step-parent, step-brother, step-sister or step-child.
18 "Family member" also means any other person who regularly
19 resides in the household, or who, within the prior 6
20 months, regularly resided in the household.

21 (5) "Follows another person" means (i) to move in
22 relative proximity to a person as that person moves from
23 place to place or (ii) to remain in relative proximity to a
24 person who is stationary or whose movements are confined to
25 a small area. "Follows another person" does not include a
26 following within the residence of the defendant.

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

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

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

19 (9) "Transmits a threat" means a verbal or written
20 threat or a threat implied by a pattern of conduct or a
21 combination of verbal or written statements or conduct.

22 (d) Exemptions.

23 (1) This Section does not apply to any individual or
24 organization (i) monitoring or attentive to compliance
25 with public or worker safety laws, wage and hour
26 requirements, or other statutory requirements, or (ii)

1 picketing occurring at the workplace that is otherwise
2 lawful and arises out of a bona fide labor dispute,
3 including any controversy concerning wages, salaries,
4 hours, working conditions or benefits, including health
5 and welfare, sick leave, insurance, and pension or
6 retirement provisions, the making or maintaining of
7 collective bargaining agreements, and the terms to be
8 included in those agreements.

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

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

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

25 (d-10) A defendant who directed the actions of a third
26 party to violate this Section, under the principles of

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

5 (Source: P.A. 96-686, eff. 1-1-10; 96-1551, eff. 7-1-11;
6 97-311, eff. 8-11-11; 97-1109, eff. 1-1-13.)

7 (720 ILCS 5/12-7.4) (from Ch. 38, par. 12-7.4)

8 Sec. 12-7.4. Aggravated stalking.

9 (a) A person commits aggravated stalking when he or she
10 commits stalking and:

11 (1) causes bodily harm to the victim;

12 (2) confines or restrains the victim; or

13 (3) violates a temporary restraining order, an order of
14 protection, a stalking no contact order, a civil no contact
15 order, or an injunction prohibiting the behavior described
16 in subsection (b)(1) of Section 214 of the Illinois
17 Domestic Violence Act of 1986.

18 (a-1) A person commits aggravated stalking when he or she
19 is required to register under the Sex Offender Registration Act
20 or has been previously required to register under that Act and
21 commits the offense of stalking when the victim of the stalking
22 is also the victim of the offense for which the sex offender is
23 required to register under the Sex Offender Registration Act or
24 a family member of the victim.

25 (b) Sentence.

1 (1) Except as otherwise provided in paragraphs (2) and
2 (3) of this subsection (b), aggravated ~~Aggravated~~ stalking
3 is a Class 3 felony.†

4 (2) Except as otherwise provided in paragraph (3) of
5 this subsection (b), a second or subsequent conviction for
6 aggravated stalking is a Class 2 felony.

7 (3) If the victim of aggravated stalking is under 18
8 years of age at the time of the offense, aggravated
9 stalking is a Class 2 felony for a first conviction and a
10 Class 1 felony for a second or subsequent conviction.

11 (c) Exemptions.

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

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

26 (3) Telecommunications carriers, commercial mobile

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

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

17 (Source: P.A. 96-686, eff. 1-1-10; 96-1551, eff. 7-1-11;
18 97-311, eff. 8-11-11; 97-468, eff. 1-1-12; 97-1109, eff.
19 1-1-13.)

20 (720 ILCS 5/12-7.5)

21 Sec. 12-7.5. Cyberstalking.

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

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

3 (2) suffer other emotional distress.

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

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

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

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

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

24 (1) at any time transmits a threat of immediate or
25 future bodily harm, sexual assault, confinement, or
26 restraint and the threat is directed towards that person or

1 a family member of that person;

2 (2) 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) at any time knowingly solicits the commission of an
6 act 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 For purposes of this Section, an installation or placement
10 is not surreptitious if:

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

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

24 (a-5) A person commits cyberstalking when he or she,
25 knowingly and without lawful justification, creates and
26 maintains an Internet website or webpage which is accessible to

1 one or more third parties for a period of at least 24 hours,
2 and which contains statements harassing another person and:

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

7 (2) which 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) which knowingly solicits the commission of an act
11 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 (b) Sentence.

15 (1) Except as otherwise provided in paragraphs (2) and
16 (3) of this subsection (b), cyberstalking ~~Cyberstalking~~ is
17 a Class 4 felony.

18 (2) Except as otherwise provided in paragraph (3) of
19 this subsection (b), a second or subsequent conviction for
20 cyberstalking is a Class 3 felony.

21 (3) If the victim of cyberstalking is under 18 years of
22 age at the time of the offense, cyberstalking is a Class 3
23 felony for a first conviction and a Class 2 felony for a
24 second or subsequent conviction.

25 (c) For purposes of this Section:

26 (1) "Course of conduct" means 2 or more acts, including

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

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

19 (2.1) "Electronic communication device" means an
20 electronic device, including, but not limited to, a
21 wireless telephone, personal digital assistant, or a
22 portable or mobile computer.

23 (2.2) "Electronic monitoring software or spyware"
24 means software or an application that surreptitiously
25 tracks computer activity on a device and records and
26 transmits the information to third parties with the intent

1 to cause injury or harm. For the purposes of this paragraph
2 (2.2), "intent to cause injury or harm" does not include
3 activities carried out in furtherance of the prevention of
4 fraud or crime or of protecting the security of networks,
5 online services, applications, software, other computer
6 programs, users, or electronic communication devices or
7 similar devices.

8 (3) "Emotional distress" means significant mental
9 suffering, anxiety or alarm.

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

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

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

26 (7) "Third party" means any person other than the

1 person violating these provisions and the person or persons
2 towards whom the violator's actions are directed.

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

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

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

20 (1) provide, protect, maintain, update, or upgrade
21 networks, online services, applications, software, other
22 computer programs, electronic communication devices, or
23 similar devices under the terms of use applicable to those
24 networks, services, applications, software, programs, or
25 devices;

26 (2) interfere with or prohibit terms or conditions in a

1 contract or license related to networks, online services,
2 applications, software, other computer programs,
3 electronic communication devices, or similar devices; or

4 (3) create any liability by reason of terms or
5 conditions adopted, or technical measures implemented, to
6 prevent the transmission of unsolicited electronic mail or
7 communications.

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