

HB3289



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3289

Introduced 2/17/2023, by Rep. Anne Stava-Murray

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-7.5

Amends the Criminal Code of 2012. Adds a definition of "anxiety" to the statute defining cyberstalking based upon the Diagnostic and Statistical Manual (DSM-5) definition of anxiety.

LRB103 29877 RLC 56287 b

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
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
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
22 or 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
4 an act by any person which would be a violation of this
5 Code directed towards that person or a family member of
6 that 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
15 or 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
20 an act by any person which would be a violation of this
21 Code directed towards that person or a family member of
22 that 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
15 to 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
22 that person in reasonable apprehension of immediate or
23 future bodily harm, sexual assault, confinement, or
24 restraint, or

25 (3) which knowingly solicits the commission of an act
26 by any person which would be a violation of this Code

1 directed towards that person or a family member of that
2 person.

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

5 (c) For purposes of this Section:

6 (0.5) "Anxiety" means excessive worry and apprehensive
7 expectations, occurring more days than not for at least 6
8 months, about a number of events or activities, such as
9 work or school performance and is associated with 3 or
10 more of the following 6 symptoms with at least some
11 symptoms present for more days than not for the past 6
12 months:

13 (1) restlessness or feeling keyed up or on edge;
14 (2) easily fatigued;
15 (3) difficulty concentrating or mind going blank;
16 (4) irritability;
17 (5) muscle tension; and
18 (6) sleep disturbance such as difficulty falling
19 or staying asleep, or restless and unsatisfying sleep.

20 The anxiety, worry, or physical symptoms cause
21 clinically significant distress or impairment in social,
22 occupational, or other important areas of functioning.

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

1 observes, surveils, threatens, or communicates to or
2 about, a person, engages in other non-consensual contact,
3 or interferes with or damages a person's property or pet.
4 The incarceration in a penal institution of a person who
5 commits the course of conduct is not a bar to prosecution
6 under this Section.

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

16 (2.1) "Electronic communication device" means an
17 electronic device, including, but not limited to, a
18 wireless telephone, personal digital assistant, or a
19 portable or mobile computer.

20 (2.2) "Electronic monitoring software or spyware"
21 means software or an application that surreptitiously
22 tracks computer activity on a device and records and
23 transmits the information to third parties with the intent
24 to cause injury or harm. For the purposes of this
25 paragraph (2.2), "intent to cause injury or harm" does not
26 include activities carried out in furtherance of the

1 prevention of fraud or crime or of protecting the security
2 of networks, online services, applications, software,
3 other computer programs, users, or electronic
4 communication devices or similar devices.

5 (3) "Emotional distress" means significant mental
6 suffering, anxiety or alarm.

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

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

20 (6) "Reasonable person" means a person in the victim's
21 circumstances, with the victim's knowledge of the
22 defendant and the defendant's prior acts.

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

26 (d) Telecommunications carriers, commercial mobile service

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

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

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

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

23 (2) interfere with or prohibit terms or conditions in
24 a contract or license related to networks, online
25 services, applications, software, other computer programs,
26 electronic communication devices, or similar devices; or

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

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