



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2542

Introduced 2/20/2009, by Rep. Karen A. Yarbrough

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 1961. Changes the elements of the offenses of stalking and cyberstalking. 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: (1) fear for his or her safety or the safety of a third person; or (2) suffer other emotional distress. Provides that if the conduct is committed using electronic communication, the offense is cyberstalking. Provides that a person also commits aggravated stalking when he or she, in conjunction with committing the offense of stalking, violates a stalking no contact order or a civil no contact order. Retains the same penalties for the offenses.

LRB096 10797 RLC 21009 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 1961 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. ~~and without~~
15 ~~lawful justification, on at least 2 separate occasions~~
16 ~~follows another person or places the person under~~
17 ~~surveillance or any combination thereof and:~~

18 ~~(1) at any time transmits a threat of immediate or~~
19 ~~future bodily harm, sexual assault, confinement or~~
20 ~~restraint and the threat is directed towards that person or~~
21 ~~a family member of that person; or~~

22 ~~(2) places that person in reasonable apprehension of~~
23 ~~immediate or future bodily harm, sexual assault,~~

1 ~~confinement or restraint; or~~

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

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

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

10 ~~(2) transmits a threat of immediate or future bodily~~
11 ~~harm, sexual assault, confinement or restraint; and~~

12 ~~(3) the threat is directed towards that person or a~~
13 ~~family member of that person.~~

14 (b) Sentence. Stalking is a Class 4 felony. A second or
15 subsequent conviction for stalking is a Class 3 felony.

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

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

1 under this Section.

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

4 (3) "Reasonable person" means a person in the victim's
5 situation.

6 (4) "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 (5) "Electronic communication" means any transfer of
17 signs, signals, writings, sounds, data, or intelligence of
18 any nature transmitted in whole or in part by a wire,
19 radio, electromagnetic, photoelectric, or photo-optical
20 system. "Electronic communication" includes transmissions
21 by a computer through the Internet to another computer.

22 (d) Exemptions.

23 (1) This Section does not apply to picketing occurring
24 at the workplace that is otherwise lawful and arises out of
25 a bona fide labor dispute, including any controversy
26 concerning wages, salaries, hours, working conditions or

1 benefits, including health and welfare, sick leave,
2 insurance, and pension or retirement provisions, the
3 making or maintaining of collective bargaining agreements,
4 and the terms to be included in those agreements.

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

7 ~~(b 5) The incarceration of a person in a penal institution~~
8 ~~who transmits a threat is not a bar to prosecution under this~~
9 ~~Section.~~

10 ~~(c) Exemption. This Section does not apply to picketing~~
11 ~~occurring at the workplace that is otherwise lawful and arises~~
12 ~~out of a bona fide labor dispute, or any exercise of the right~~
13 ~~of free speech or assembly that is otherwise lawful.~~

14 ~~(d) For the purpose of this Section, a defendant "places a~~
15 ~~person under surveillance" by: (1) remaining present outside~~
16 ~~the person's school, place of employment, vehicle, other place~~
17 ~~occupied by the person, or residence other than the residence~~
18 ~~of the defendant; or (2) placing an electronic tracking device~~
19 ~~on the person or the person's property.~~

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

1 ~~(f) For the purposes of this Section and Section 12-7.4,~~
2 ~~"bona fide labor dispute" means any controversy concerning~~
3 ~~wages, salaries, hours, working conditions, or benefits,~~
4 ~~including health and welfare, sick leave, insurance, and~~
5 ~~pension or retirement provisions, the making or maintaining of~~
6 ~~collective bargaining agreements, and the terms to be included~~
7 ~~in those agreements.~~

8 ~~(g) For the purposes of this Section, "transmits a threat"~~
9 ~~means a verbal or written threat or a threat implied by a~~
10 ~~pattern of conduct or a combination of verbal or written~~
11 ~~statements or conduct.~~

12 ~~(h) For the purposes of this Section, "family member" means~~
13 ~~a parent, grandparent, brother, sister, or child, whether by~~
14 ~~whole blood, half blood, or adoption and includes a~~
15 ~~step grandparent, step parent, step brother, step sister or~~
16 ~~step child. "Family member" also means any other person who~~
17 ~~regularly resides in the household, or who, within the prior 6~~
18 ~~months, regularly resided in the household.~~

19 (Source: P.A. 95-33, eff. 1-1-08.)

20 (720 ILCS 5/12-7.4) (from Ch. 38, par. 12-7.4)

21 Sec. 12-7.4. Aggravated stalking.

22 (a) A person commits aggravated stalking when he or she, in
23 conjunction with committing the offense of stalking, also does
24 any of the following:

25 (1) causes bodily harm to the victim;

1 (2) confines or restrains the victim; or

2 (3) violates a temporary restraining order, an order of
3 protection, a stalking no contact order, a civil no contact
4 order, or an injunction prohibiting the behavior described
5 in subsection (b)(1) of Section 214 of the Illinois
6 Domestic Violence Act of 1986.

7 (b) Sentence. Aggravated stalking is a Class 3 felony. A
8 second or subsequent conviction for aggravated stalking is a
9 Class 2 felony.

10 (c) Exemption. This Section does not apply to picketing
11 occurring at the workplace that is otherwise lawful and arises
12 out of a bona fide labor dispute, or any exercise of the right
13 of free speech or assembly that is otherwise lawful.

14 (d) For purposes of this Section, "bona fide labor dispute"
15 has the meaning ascribed to it in Section 12-7.3.

16 (Source: P.A. 88-402; 88-677, eff. 12-15-94; 89-377, eff.
17 8-18-95.)

18 (720 ILCS 5/12-7.5)

19 Sec. 12-7.5. Cyberstalking.

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

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

1 (2) suffer other emotional distress.

2 ~~, knowingly and without lawful justification, on at least 2~~
3 ~~separate occasions, harasses another person through the use of~~
4 ~~electronic communication and:~~

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

9 ~~(2) 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) at any time knowingly solicits the commission of an~~
13 ~~act 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 ~~(a 5) A person commits cyberstalking when he or she,~~
17 ~~knowingly and without lawful justification, creates and~~
18 ~~maintains an Internet website or webpage which is accessible to~~
19 ~~one or more third parties for a period of at least 24 hours,~~
20 ~~and which contains statements harassing another person and:~~

21 ~~(1) which communicates a threat of immediate or future~~
22 ~~bodily harm, sexual assault, confinement, or restraint,~~
23 ~~where the threat is directed towards that person or a~~
24 ~~family member of that person, or~~

25 ~~(2) which places that person or a family member of that~~
26 ~~person in reasonable apprehension of immediate or future~~

1 ~~bodily harm, sexual assault, confinement, or restraint, or~~
2 ~~(3) which knowingly solicits the commission of an act~~
3 ~~by any person which would be a violation of this Code~~
4 ~~directed towards that person or a family member of that~~
5 ~~person.~~

6 ~~(b) As used in this Section:~~

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

10 ~~"Third party" means any person other than the person~~
11 ~~violating these provisions and the person or persons towards~~
12 ~~whom the violator's actions are directed.~~

13 ~~"Electronic communication" means any transfer of signs,~~
14 ~~signals, writings, sounds, data, or intelligence of any nature~~
15 ~~transmitted in whole or in part by a wire, radio,~~
16 ~~electromagnetic, photoelectric, or photo optical system.~~

17 ~~"Electronic communication" includes transmissions by a~~
18 ~~computer through the Internet to another computer.~~

19 (b) ~~(e)~~ Sentence. Cyberstalking is a Class 4 felony. A
20 second or subsequent conviction for cyberstalking is a Class 3
21 felony.

22 (c) For purposes of this Section:

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

1 surveils, threatens, or communicates to or about, a person,
2 engages in other non-consensual contact, or interferes
3 with or damages a person's property or pet. The
4 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) "Emotional distress" means significant mental
8 suffering, anxiety or alarm.

9 (3) "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 (4) "Non-consensual contact" means any contact with
13 the victim that is initiated or continued without the
14 victim's consent, including but not limited to being in the
15 physical presence of the victim; appearing within the sight
16 of the victim; approaching or confronting the victim in a
17 public place or on private property; appearing at the
18 workplace or residence of the victim; entering onto or
19 remaining on property owned, leased, or occupied by the
20 victim; or placing an object on, or delivering an object
21 to, property owned, leased, or occupied by the victim.

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

12 (Source: P.A. 95-849, eff. 1-1-09; revised 9-10-08.)