



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB2935

Introduced 2/23/2011, by Rep. Emily McAsey - Sidney H. Mathias

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-7.5
720 ILCS 135/1-2

Amends the Criminal Code of 1961 and the Harassing and Obscene Communications Act. Provides that "electronic communication" includes transmissions through an electronic device including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mail, instant message, text message, or voice mail (rather than transmissions by a computer through the Internet to another computer). Effective immediately.

LRB097 06237 RLC 51035 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 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 or
22 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 an
4 act by any person which would be a violation of this Code
5 directed towards that person or a family member of that
6 person.

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

12 (1) which communicates a threat of immediate or future
13 bodily harm, sexual assault, confinement, or restraint,
14 where the threat is directed towards that person or a
15 family member of that person, or

16 (2) which 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) which knowingly solicits the commission of an act
20 by any person which would be a violation of this Code
21 directed towards that person or a family member of that
22 person.

23 (b) Sentence. Cyberstalking is a Class 4 felony. A second
24 or subsequent conviction for cyberstalking is a Class 3 felony.

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 ~~by a computer~~
19 ~~through the Internet to another computer.~~

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 (Source: P.A. 95-849, eff. 1-1-09; 96-328, eff. 8-11-09;
26 96-686, eff. 1-1-10; 96-1000, eff. 7-2-10.)

1 Section 10. The Harassing and Obscene Communications Act is
2 amended by changing Section 1-2 as follows:

3 (720 ILCS 135/1-2)

4 Sec. 1-2. Harassment through electronic communications.

5 (a) Harassment through electronic communications is the
6 use of electronic communication for any of the following
7 purposes:

8 (1) Making any comment, request, suggestion or
9 proposal which is obscene with an intent to offend;

10 (2) Interrupting, with the intent to harass, the
11 telephone service or the electronic communication service
12 of any person;

13 (3) Transmitting to any person, with the intent to
14 harass and regardless of whether the communication is read
15 in its entirety or at all, any file, document, or other
16 communication which prevents that person from using his or
17 her telephone service or electronic communications device;

18 (3.1) Transmitting an electronic communication or
19 knowingly inducing a person to transmit an electronic
20 communication for the purpose of harassing another person
21 who is under 13 years of age, regardless of whether the
22 person under 13 years of age consents to the harassment, if
23 the defendant is at least 16 years of age at the time of
24 the commission of the offense;

1 (4) Threatening injury to the person or to the property
2 of the person to whom an electronic communication is
3 directed or to any of his or her family or household
4 members; or

5 (5) Knowingly permitting any electronic communications
6 device to be used for any of the purposes mentioned in this
7 subsection (a).

8 (b) As used in this Act:

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

19 (2) "Family or household member" includes spouses,
20 former spouses, parents, children, stepchildren and other
21 persons related by blood or by present or prior marriage,
22 persons who share or formerly shared a common dwelling,
23 persons who have or allegedly share a blood relationship
24 through a child, persons who have or have had a dating or
25 engagement relationship, and persons with disabilities and
26 their personal assistants. For purposes of this Act,

1 neither a casual acquaintanceship nor ordinary
2 fraternization between 2 individuals in business or social
3 contexts shall be deemed to constitute a dating
4 relationship.

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

15 (Source: P.A. 95-849, eff. 1-1-09; 95-984, eff. 6-1-09; 96-328,
16 eff. 8-11-09.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.