

HB3278



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3278

Introduced 2/19/2021, by Rep. Terra Costa Howard

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.

LRB102 10548 KMF 15877 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
5 changing 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
22 or 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
8 person 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,
25 including but not limited to acts in which a defendant
26 directly, indirectly, or through third parties, by any

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

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 by a computer through the Internet to another computer.

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

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

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

1 a following within the residence of the defendant.

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

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

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

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

23 (d) Exemptions.

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

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

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

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

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

26 (d-10) A defendant who directed the actions of a third

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

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

8 (720 ILCS 5/12-7.4) (from Ch. 38, par. 12-7.4)

9 Sec. 12-7.4. Aggravated stalking.

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

12 (1) causes bodily harm to the victim;

13 (2) confines or restrains the victim; or

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

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

1 (b) Sentence.

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

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

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

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

18 (Source: P.A. 96-686, eff. 1-1-10; 96-1551, eff. 7-1-11;
19 97-311, eff. 8-11-11; 97-468, eff. 1-1-12; 97-1109, eff.
20 1-1-13.)

21 (720 ILCS 5/12-7.5)

22 Sec. 12-7.5. Cyberstalking.

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

1 would cause a reasonable person to:

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

4 (2) suffer other emotional distress.

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

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

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

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

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

25 (1) at any time transmits a threat of immediate or
26 future bodily harm, sexual assault, confinement, or

1 restraint and the threat is directed towards that person
2 or a family member of that person;

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

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

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

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

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

25 (a-5) A person commits cyberstalking when he or she,
26 knowingly and without lawful justification, creates and

1 maintains an Internet website or webpage which is accessible
2 to one or more third parties for a period of at least 24 hours,
3 and which contains statements harassing another person and:

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

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

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

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

23 (3) If the victim of cyberstalking is under 18 years
24 of age at the time of the offense, cyberstalking is a Class
25 3 felony for a first conviction and a Class 2 felony for a
26 second or subsequent conviction.

1 (c) For purposes of this Section:

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

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

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

25 (2.2) "Electronic monitoring software or spyware"
26 means software or an application that surreptitiously

1 tracks computer activity on a device and records and
2 transmits the information to third parties with the intent
3 to cause injury or harm. For the purposes of this
4 paragraph (2.2), "intent to cause injury or harm" does not
5 include activities carried out in furtherance of the
6 prevention of fraud or crime or of protecting the security
7 of networks, online services, applications, software,
8 other computer programs, users, or electronic
9 communication devices or similar devices.

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

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

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

25 (6) "Reasonable person" means a person in the victim's
26 circumstances, with the victim's knowledge of the

1 defendant and the defendant's prior acts.

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

5 (d) 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 (e) A defendant who directed the actions of a third party
16 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 (f) It is not a violation of this Section to:

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

1 devices;

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

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

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