

# Introducing the New Illinois Stalking Law

## Some Stalking Statistics

3.4 million people are stalked each year in the US,  
54 stalking prosecutions in Illinois in 2008

Nearly 3 out of every 4 stalking victims know their offender.

76% of women who were murdered by their domestic abuser were stalked by that abuser prior to their deaths.

## Our new stalking law

A person commits stalking when they

1. engage in a course of conduct directed against another person
2. which they know or should know will cause a reasonable person to fear for their safety or safety of a third party or cause a victim emotional distress

What's missing? Threat element no longer necessary under new law.

It is replaced by fear or emotional distress element, which will be easier to prove.

## Course of Conduct: 2 or more acts

Individual acts in a course of conduct often are not illegal.

- Directly, indirectly or through 3rd parties
- By any action, method, device
- Follows, monitors, observes, surveils, threatens
- Communicates to or about person
- Interferes with or damages property or pet
- Includes use of electronic communications
- Other non-consensual contact
  - Contact w/ victim initiated or continued without consent:
  - Appearing in sight or physical presence
  - Approaching or confronting at public or private place
  - Appearing at work or home
  - Entering or remaining on victim's property (owned, leased or occupied).
  - Placing or delivering an object to victim's property (owned, leased or occupied).

## Exclusions

- Strikes & labor actions
- Other protests & free speech
- Telecommunication providers

## Terms defined in new law

Reasonable person: Person in the victim's situation

Victim's circumstances & Victim's knowledge of the defendant

Fear for safety of victim or any third party  
Not just victim or immediate family anymore  
Includes new partner, boss, neighbor, anyone

Emotional distress  
Significant mental suffering, anxiety or alarm

### **Some terms defined in old law and case law**

Following  
Move in relative proximity as that person moves OR  
Remain in proximity to a person that is stationary or confined within a small area  
Not within defendant's residence

Surveillance  
Remaining present outside victim's school, job, vehicle, residence or other place  
(again, but not defendant's residence)  
Electronic tracking device on victim or property

### **Aggravated Stalking**

Stalking +    1. Bodily harm to victim **or**  
                  2. Confinement or restraint of victim **or**  
                  3. In violation of TRO, OP, SA CNCO, SNCO or injunction

### **Cyberstalking**

Course of conduct using electronic communications which the person knows or should know would cause a reasonable person to fear for their safety or safety of a 3<sup>rd</sup> person or suffer other emotional distress

### **5 tips for building a successful stalking case:**

1. Take reports
2. Learn context
3. Interview offender
4. Identify witnesses
5. Recruit witnesses

### **Stalking No Contact Order**

Victim can get stalking no contact order (SNCO) beginning Jan 1.

Remedies:

1. Prohibit offender from threatening or committing stalking.
2. Order offender not to contact victim
3. Order offender to keep away from victim (distance, residence, school, work, etc)
4. Prohibit FOID card
5. Other injunctive relief

Court may order attorneys fees

## 720 ILCS 5/12-7.3 **Stalking**

(a) 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.

(a-3) A person commits stalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions follows another person or places the person under surveillance or any combination thereof and:

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

(2) places that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint; or

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

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

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

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

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

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

(c) Definitions. For purposes of this Section:

(1) "Course of conduct" means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. A course of conduct may include contact via electronic communications.

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

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

(4) "Family member" means a parent, grandparent, brother, sister, or child, whether by whole blood, half-blood, or adoption and includes a step-grandparent, step-parent, step-brother, step-sister or step-child. "Family member" also means any other person

who regularly resides in the household, or who, within the prior 6 months, regularly resided in the household.

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

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

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

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

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

(d) Exemptions.

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

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

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

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

**720 ILCS 5/12-7.4 Aggravated stalking.**

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

(1) causes bodily harm to the victim;

(2) confines or restrains the victim; or

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

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

(c) Exemptions

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

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

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

## 720 ILCS 5/12-7.5 **Cyberstalking**

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

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

(1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person, or (2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; or (3) at any time knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

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

(1) which communicates a threat of immediate or future bodily harm, sexual assault, confinement, or restraint, where the threat is directed towards that person or a family member of that person, (2) which places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint, or (3) which knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

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

(c) For purposes of this Section:

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

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

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

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

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

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

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

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

## Illinois Orders of Protection and No Contact Orders

	<b>Domestic Violence Order of Protection</b>	<b>Sexual Assault Civil No Contact Order</b>	<b>Stalking No Contact Order</b>
Who is eligible for these protections?	<p>Family or household members:</p> <ul style="list-style-type: none"> <li>▪ related by blood, or by current or former marriage; or</li> <li>▪ share or formerly shared a common dwelling (home); or</li> <li>▪ have or allegedly have a child in common; or</li> <li>▪ share or allegedly share a blood relationship through a child; or</li> <li>▪ have or had a dating or engagement relationship; or</li> <li>▪ high risk adult with disabilities who is abused by a family member or care-giver.</li> </ul>	<p>Any person who is a victim of non-consensual sexual conduct or sexual penetration can petition for this order.</p> <p>The following people also can be protected by this order:</p> <ul style="list-style-type: none"> <li>▪ Family or household member of that victim.</li> <li>▪ Rape crisis center employees and volunteers.</li> </ul>	<p>Any person who is the victim of a course of conduct which causes that victim to fear for his or her safety or the safety of another person, or to suffer emotional distress, and relief is not available to the victim under the Illinois Domestic Violence Act or from a Sexual Assault Civil No Contact Order.</p>
Remedies & Protections	The judge can grant up to eighteen remedies, from prohibiting further abuse, ordering the offender to stay away, revoking FOID card, to protecting property and pets, financial support, temporary care of children, and exclusive possession of the home.	The judge can grant any or all of the following remedies: <ul style="list-style-type: none"> <li>▪ Prohibit contact with victim;</li> <li>▪ Stay away from victim generally;</li> <li>▪ Stay away from specific locations;</li> <li>▪ Protection of property and pets;</li> <li>▪ Order the offender to transfer to another school if the victim and offender attend the same school;</li> <li>▪ Other injunctive relief necessary to protect the petitioner.</li> </ul>	<p>The judge can grant any or all of the following remedies:</p> <ul style="list-style-type: none"> <li>▪ Prohibit further stalking or threatening to stalk;</li> <li>▪ Prohibit contact with victim;</li> <li>▪ Stay away from specific locations;</li> <li>▪ Prohibit FOID card and firearms;</li> <li>▪ Other injunctive relief necessary to protect the petitioner.</li> </ul> <p>Attorneys' fees are the only financial remedy available.</p>
Violations	First violation is class A misdemeanor. Subsequent violation or violation following other domestic convictions is a class 4 felony.	First violation is a class A misdemeanor. Subsequent violation is class 4 felony.	First violation is a class A misdemeanor. Subsequent violation is class 4 felony.

