

Cyber Stalking: What is the Path to Legal Relief?

Presented by

The Law Office of Allison & Mosby-Scott

October 24, 2018

Agenda

- **Introductions – Michelle Mosby-Scott, Attorney at Law**
- **Overview of Cyber Stalking – Michael Scott, Attorney at Law**
- **Legal Remedies – Matt Majernik, Attorney at Law**
- **Questions and Answers**
 - Law Office of Allison & Mosby-Scott
 - 210 ½ N. Williamsburg Dr., Bloomington, IL 61704
 - www.allisonmosby-scott.com
 - 309-662-5084

The Internet

- In 1973, the entire Internet consisted of only 42 computers.
- In 1993 there were 623 webpages, today the number is approaching 5 billion.
- In 2010, it was estimated that around 247 billion emails are sent in a single day. In 2017 that number grew to around 269 billion. Unfortunately, 70% are spam.
- E-commerce will be responsible for about \$2.8 trillion in sales in 2018.
- What do you use the internet for?

Social Media

- **There will be an estimated 2.62 billion social media users in 2018.**
- **As at March 2018. Facebook has 2.2 billion monthly active users.**
- **As at June 2018, Instagram has 1 billion monthly active users.**
- **As at Q1 2018, Twitter has 336 million monthly active users.**
- **LinkedIn has 250 million monthly active users.**
- **What do you use Social Media for?**

Social Media

- We just Snapchatted,
- That we Instagrammed,
- That we Facebooked,
- That we Google+ed,
- That we Tweeted,
- That we posted on LinkedIn,
- That we blogged on our website,
- That we've sent you an email newsletter with an update.

What is Cyber Stalking?

- **Cyberstalking involves using electronic means, including the Internet, to stalk or harass a person or group of people.**
- **Cyberstalking can include many things including threats, solicitation for sex, false accusations, defamation, slander, libel, identity theft, and vandalism.**
- **Cyberstalking is often used in conjunction with offline stalking, as both are an expression of a desire to control, intimidate, or manipulate a victim.**
- **A cyberstalker may be someone the victim is familiar with, or a complete stranger.**

Other Names for Cyber Stalking?

- **Cyber harassment** - the use of the internet to harass, manipulate, control, intimidate, frighten, embarrass, humiliate or disparage a person or business.
- **Cyber bullying** - Generally, when cyber harassment involves minors it is referred to as “cyber bullying.”

Cyber Stalking Stats

- **The Data & Society Research Institute and the Center for Innovative Public Health Research published findings that 8% of American internet users have been cyberstalked to the point of feeling unsafe or afraid.**
- **The Pew Research Center in 2017 did a survey and 7% of Americans said that they had been stalked online.**
- **The Pew Research Center survey indicates that persons under the age of thirty and women between the ages of 18-24 were vulnerable to the most “severe” forms, including physical threats and sexual harassment.**

Cyber Stalking Stats

But according to the Bureau of Justice Statistics (USDOJ)

- During a 12-month period an estimated 14 in every 1,000 persons age 18 or older were victims of stalking
- About half (46%) of stalking victims experienced at least one unwanted contact per week, and 11% of victims said they had been stalked for 5 years or more.
- The risk of stalking victimization was highest for individuals who were divorced or separated—34 per 1,000 individuals.
- Women were at greater risk than men for stalking victimization; however, women and men were equally likely to experience harassment.
- Male (37%) and female (41%) stalking victimizations were equally likely to be reported to the police.
- Approximately 1 in 4 stalking victims reported some form of cyberstalking such as e-mail (83%) or instant messaging (35%).
- 46% of stalking victims felt fear of not knowing what would happen next.
- Nearly 3 in 4 stalking victims knew their offender in some capacity.
- More than half of stalking victims lost 5 or more days from work.

Psychological profile of a Cyber-Stalker

- According to a 2015 article on Psychology Today, “Cyberstalking is a compulsion. It aims to humiliate, control, frighten, manipulate, embarrass, get revenge at, or otherwise harm the victim. Many cyberstalkers are obsessed, unstable, or otherwise mentally ill. Still, others are simply angry or hurt and have crossed the line into criminal activity when expressing these emotions. While they can exhibit charm and eloquence, they are generally isolated and desperate, have very low self-esteem, and are especially sensitive to rejection.”
- According to a 2014 Slate.com article, research from the University of Manitoba has found that “internet trolls” are “narcissistic, psychopathic and sadistic.”
- According to a 2012 UK Daily Mail.com article, research from the University of Gothenburg found that people who spend a lot of time on the internet are more likely to be depressed, lonely and mentally unstable.

Real Life Examples of Cyber Stalking

- **James Allen, Detroit, MI**
- **He used the internet to harass girls between the ages of 14 to 18.**
- **He made a fake website in 2012 and through it obtained personal information from the 18 girls, all of whom were from the Buffalo area of New York state.**
- **He lured them in by getting them to Skype with him, claiming that he had in his possession nude photos of each of the girls. He threatened to release them if they didn't video chat and then would try to convince them to show themselves on camera.**
- **The police were tipped off about Allen and when the FBI cracked his computer, there were a number of screenshots from his victims.**
- **The 36-year-old was charged with child entertainment and cyber stalking and was sentenced to 20 years in prison.**

Real Life Examples of Cyber Stalking

- **David Matusiewicz, Delaware.**
- **Christine Belford was in a custody battle with her estranged husband David Matusiewicz after he abducted their three children and took them overseas for 19 months.**
- **He was sentenced to 48 months in jail and while there, he, his sister Amy Gonzalez, and his mother Lenore were accused of harassing Belford online.**
- **They made various posts on websites and social media where they threatened and intimidated Belford until finally Matusiewicz's father, Thomas, shot and killed Belford and her friend Laura Mulford in a Delaware courthouse lobby. They had just left a custody hearing.**
- **Matusiewicz, Gonzalez, and their mother were taken to trial over the cyberstalking and plot to murder Belford and each was sentenced to life in prison.**

Real Life Examples of Cyber Stalking

- **Patrick Macchione**
- **Macchione was a college classmate of Kristen Pratt, and when he first messaged her on Facebook, she didn't think it was a cause for concern.**
- **Then came the barrage of deranged messages through social media where Macchione threatened to kill Pratt.**
- **Once, in a five hour period, he called her 40 times. He posted 27 videos to YouTube of himself ranting and raving about her.**
- **Macchione was sentenced to four years in jail. He served half of that and was released. His probation ended in 2015, but he is forbidden from having any contact with Pratt.**

Real Life Examples of Cyber Stalking

- Gary Dellapenta.
- A woman was frightened and confused because random men would show up at her home in the middle of the night.
- All were responding to ads on the internet pretending to be her, saying that she had a secret fantasy for a strange man to creep into her house and sexually violate her.
- She finally made a sign alerting any interested parties that the ads were fake and they needed to leave her property. New ads were created, saying the notes were a part of the game.
- The woman's father was concerned so he pretended to be interested and answered one of the ads.
- He was able to trace where they were coming from and they were traced back to a man named Gary Dellapenta.
- The woman he was harassing had rejected his advances in the past. He posted vile things about her online, shared her address with the public, and told men how to disable her security system to play into her false rape fantasy. He also gave out her phone number and told people that she liked to receive vulgar messages.
- Dellapenta pleaded guilty of solicitation of sexual assault and stalking and was sentenced to six years in prison.

Real Life Examples of Cyber Stalking

- James Murphy
- Joelle Ligon met James Murphy when she was 15-years-old. They dated for six years before they broke up. She moved to Virginia, finished college, met someone else, and got married.
- In 1998 she started getting strange, eerie emails that said things such as, "I know your mother died when you were 14. I know where you went to high school."
- A year after that she began receiving emails containing pornography. This would continue for another six years, always from various anonymous emails.
- James Murphy was the cyberstalker. He also was giving out both her home and work phone numbers. He was going into chat rooms pretending to be her, telling strangers that she wanted sex. He emailed her co-workers as her with links to adult sites.
- After a 15-month investigation, police charged Murphy with 26 felony counts of internet harassment. He pleaded guilty to two counts under a plea agreement and was sentenced to five years probation.

Practical Ways to Protect Against Cyber Stalking

- **When engaging in online dating sites, do not divulge your last name or phone number until after you have met in person.**
- **Do not share passwords with others, even if you are in a relationship.**
- **Change your passwords on a regular basis.**
- **Only accept friend requests from people whom you have met in person.**
- **Don't respond to a private message on any social media platform if you do not know the sender.**
- **Set your security settings on Facebook, to limit the ability of people other than friends to post on your wall.**
- **Block anyone who exhibits suspicious behavior on Facebook, Twitter, or Instagram.**
- **Don't share specific details about your whereabouts or unnecessary identifiable information about yourself on any social media platforms.**
- **Ask others not to post personal pictures of you online.**
- **Don't delay, report Cyber Stalking as soon as it becomes a problem.**
- **Hire an investigator or attorney to help you if you become a victim.**

Criminal Law vs Civil Law

- **Criminal law deals with behavior that is or can be construed as an offense against the public, society, or the state (even if the immediate victim is an individual).**
- **Examples of criminal law are:**
 - Murder
 - Assault
 - Theft
 - Drunk driving

Criminal Law vs Civil Law

- **Civil law deals with behavior that constitutes an injury to an individual or other private party, such as a corporation.**
- **Examples of civil law are:**
 - Defamation (including libel and slander)
 - Breach of contract
 - Negligence resulting in injury or death, and property damage

Criminal Law vs Civil Law

- In criminal cases, only the federal or a state government (the prosecution) may initiate a case
- Cases are almost always decided by a jury (a bench trial is possible, too)
- Punishment for serious (felony) charges often consists of imprisonment but may also include a fine paid to the government
- To secure conviction, the prosecution must establish the guilt of the defendant "beyond a reasonable doubt"
- Defendants are protected against conduct by police or prosecutors that violates their constitutional rights, including the right against unreasonable searches and seizures (Fourth Amendment) and the right against compelled self-incrimination (Fifth Amendment).

Criminal Law vs Civil Law

- **Civil cases are initiated (suits are filed) by a private party (the plaintiff)**
- **Most cases are decided by a judge (though significant cases may involve juries)**
- **Punishment almost always consists of a monetary award**
- **To prevail, the plaintiff must establish the defendant's liability only according to the "preponderance of evidence"**
- **Defendants are not entitled to the same legal protections as are the criminally accused**

Criminal Law vs Civil Law

- **A single wrongful act may constitute both a public offense and a private injury, it may give rise to both criminal and civil charges**
- **Example: OJ Simpson was found not guilty of murdering Nichole Simpson and Ron Goldman, but he was found to be liable for those deaths in a civil suit, ultimately liable for \$58 million in damages.**

Criminal Laws That Protect Against Cyber Stalking

- **Several states have passed anti-cyber stalking laws.**
- **There are also various state laws on anti-stalking, slander and harassment in general that may also make cyber stalking illegal.**
- **Currently, there is no US Federal law directly relating to cyber stalking.**

Illinois Specific Laws

- **In Illinois, the following laws may make cyber harassment illegal:**
- **720 ILCS 5/12-7.3. Stalking (3 types)**
 - 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:
 - Fear for their safety or suffer emotional distress
- **720 ILCS 5/12-7.4. Aggravated stalking (2 types)**
 - Similar to stalking, but the course of conduct causes harm, the victim is confined or restrained, or there is a violation of a court order
- **720 ILCS 5/12-7.5. Cyberstalking (4 types)**
 - A combination of stalking and aggravated stalking involving electronic communication
 - Fear for their safety, cause emotional distress, threats of harm, apprehension of harm, soliciting a third party to commit harm, or using a website or webpage to harass another person

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.**

720 ILCS 5/12-7.3. Stalking

(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 to or of that person or a family member of that person.**

720 ILCS 5/12-7.3. Stalking

(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 to that person or a family member of that person.

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

720 ILCS 5/12-7.4. Aggravated Stalking

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

(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.

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

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

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.**

720 ILCS 5/12-7.5. Cyberstalking

(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.

720 ILCS 5/12-7.5. Cyberstalking

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

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

- (1) with respect to electronic software, hardware, or computer applications, clear notice regarding the use of the specific type of tracking software or spyware is provided by the installer in advance to the owners and primary users of the electronic software, hardware, or computer application; or**
- (2) written or electronic consent of all owners and primary users of the electronic software, hardware, or computer application on which the tracking software or spyware will be installed has been sought and obtained through a mechanism that does not seek to obtain any other approvals or acknowledgement from the owners and primary users.**

720 ILCS 5/12-7.5. Cyberstalking

(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, or

(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 is a Class 3 felony.

The Problem with Illinois Criminal Law

- Parts of the Illinois' stalking and cyberstalking statutes have been found unconstitutional in 2016 by an Illinois Appellate Court in the case of *People v. Relerford*.
- That case was affirmed by the Illinois Supreme Court in November of 2017, striking a portion of the statute on 1st Amendment Grounds.
- The remaining statute is presumed to be Constitutional, but State's Attorneys are still reluctant to proceed.

The Problem with Illinois Criminal Law

- **More importantly, victims will find that local law enforcement are not equipped to unmask anonymous cyber culprits. While law-enforcement may be sympathetic to victims of cybercrimes, unless the victim can positively identify the cyber harasser there is sometimes little law enforcement can do.**

Civil Cyber Suit

- **What if the cyber harasser, stalker, or bully is unknown?**
- **File “John Doe” suit.**
- **Identify the person who is alleged to have committed the cyberstalking through discovery.**
 - Subpoena to relevant website
 - Identify I.P. addresses and other identifying information.
 - Identify I.P. address owner – Cable Privacy Act, 47 USC § 551.
 - Further discovery or surveillance needed?
- **If the cyberstalker is able to be identified, amend pleading.**

Civil Remedies Available

- **Intentional Infliction of Emotional Distress**
- **Libel / Slander**
- **Tortious interference with a business relationship**
- **Orders of Protection**
- **Stalking / No-Contact Order**

Orders of Protection

- **The State of Illinois offers three types of Orders of Protection**
 - An emergency order of protection
 - Issued by the court based on your client's testimony alone.
 - Designed to protect your client on a short-term basis.
 - Typically good for 14 to 21 days.
 - An interim order of protection
 - Similar to an emergency order of protection
 - Is good for up to 30 days.
 - The key difference is that the abuser is not notified in advance of an emergency order being issued.
 - Generally, Courts will extend an emergency order of protection and interim orders are not used.

Orders of Protection

- **The State of Illinois offers three types of Orders of Protection, continued**
 - Plenary order of protection
 - Can last for up to two years
 - Issued after a hearing where both parties present evidence.
 - All of three types of orders provide several remedies.
 - Prohibit the other party from contacting your client or being anywhere near your client or his/her family.
 - Certain family members, pets and property can also be covered by these orders.
- **Governed by the Illinois Domestic Violence Act, 750 ILCS 60**

No Stalking Orders

- **A Stalking No Contact Order is issued when an Order of Protection is not appropriate**
- **Purpose is to request relief from individuals engaging in stalking.**
 - Generally proven by two or more acts of any method, including following a person, conducting surveillance of the person, appearing at the person's home, work or school, making unwanted phone calls, sending unwanted emails or text messages, leaving objects for the person, vandalizing the person's property, or injuring a pet.
- **Governed by the Stalking No Contact Order Act, 740 ILCS 21.**

No Stalking Orders

- **There are two types of Stalking No Contact Orders**
 - Emergency Stalking No Contact Order.
 - Only lasts for 14 to 21 days, after which it may be extended.
 - An individual should file an Emergency Order when the harm which the Order is intended to prevent would likely occur if the Respondent were given any prior notice of the Order being requested
 - A Plenary Stalking No Contact Order
 - Requires that notice be given to the other side, and a hearing date set.
 - Can last up to two years. At the conclusion of the two years, the Order can be extended.
 - If the individual is convicted of stalking at a criminal trial, the Order will be permanent in nature.

Relief Available

- Prohibit the Respondent from threatening to commit or committing stalking
- Order the Respondent not to have contact with the Petitioner or any other third person specifically named by the Court
- Prohibit the Respondent from coming within a specified distance of the Petitioner or Petitioner's residence, school, daycare, place of employment, or any specified place frequented by the Petitioner
- Prohibiting the Respondent from possessing a Firearm Owner's Identification Card or possessing or buying firearms
- Attorney fees and costs
- Any other injunctive relief the Court deems necessary.

Q&A

**If you have any questions after the seminar, we'd be happy to help.
Please email us or visit our website:**

Law Office of Allison & Mosby-Scott

210 ½ N. Williamsburg Drive

Bloomington, Illinois 61704

309-662-5084

www.allisonmosby-scott.com