

# STATE OF NEW YORK

7662

2017-2018 Regular Sessions

## IN ASSEMBLY

May 8, 2017

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to creating the crime of cyber harassment; and increasing penalties for the crimes of harassment and stalking

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding a new section 240.33 to  
2 read as follows:

3 § 240.33 Cyber harassment.

4 1. A person is guilty of cyber harassment when, for the purpose of  
5 frightening or disturbing another person, he or she transmits or causes  
6 the transmission of an electronic communication, or knowingly permits an  
7 electronic communication to be transmitted to another person from an  
8 electronic communication device under his or her control:

9 (a) using coarse language offensive to a person of average sensibili-  
10 ty; or

11 (b) anonymously or repeatedly transmitting such communication whether  
12 or not conversation occurs; or

13 (c) threatening to commit any felony.

14 2. No person shall make or cause to be made an electronic communi-  
15 cation, or permit an electronic communication to be made from an elec-  
16 tronic communication device under such person's control, with the intent  
17 to frighten or disturb any other person in any manner described in this  
18 section either by the direct action of the person initiating the commu-  
19 nication or through the actions of a third party whose actions are  
20 instigated, initiated, prompted, or brought about by such person's  
21 communication.

22 3. Any offense committed under this section may be deemed to have been  
23 committed either at the place from which the communication was made or  
24 at the place where the communication was received.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 4. For the purposes of this article, the following terms shall mean:

2 (a) "an adult" is any person eighteen years or older;

3 (b) "a child" is any person under seventeen years of age;

4 (c) "electronic communication" are the origination, emission, dissem-  
5 ination, transmission, or reception of data, images, signals, sounds, or  
6 other intelligence or equivalence of intelligence of any nature over any  
7 communications system by any method, including, but not limited to, a  
8 fiber optic, electronic, magnetic, optical, digital, or analog method.  
9 Such electronic communication shall include, but not be limited to elec-  
10 tronic mail, Internet-based communications, pager service, and electron-  
11 ic text messaging; and

12 (d) "an electronic communications device" is any instrument, equip-  
13 ment, machine, or other device that facilitates telecommunication,  
14 including, but not limited to, a computer, computer network, computer  
15 chip, computer circuit, scanner, telephone, cellular telephone, pager,  
16 personal communications device, transponder, receiver, radio, modem, or  
17 device that enables the use of a modem.

18 Cyber harassment is a class A misdemeanor. Cyber harassment is a class  
19 D felony when committed by an adult against a child.

20 § 2. Section 240.25 of the penal law, as amended by chapter 109 of the  
21 laws of 1994, is amended to read as follows:

22 § 240.25 Harassment in the first degree.

23 A person is guilty of harassment in the first degree when he or she  
24 intentionally and repeatedly harasses another person by following such  
25 person in or about a public place or places or by engaging in a course  
26 of conduct or by repeatedly committing acts which places such person in  
27 reasonable fear of physical injury. This section shall not apply to  
28 activities regulated by the national labor relations act, as amended,  
29 the railway labor act, as amended, or the federal employment labor  
30 management act, as amended.

31 Harassment in the first degree is a class B misdemeanor. Harassment  
32 in the first degree is a class D felony when committed by an adult  
33 against a child.

34 § 3. Section 240.26 of the penal law, as amended by chapter 109 of the  
35 laws of 1994, is amended to read as follows:

36 § 240.26 Harassment in the second degree.

37 A person is guilty of harassment in the second degree when, with  
38 intent to harass, annoy or alarm another person:

39 1. He or she strikes, shoves, kicks or otherwise subjects such other  
40 person to physical contact, or attempts or threatens to do the same; or

41 2. He or she follows a person in or about a public place or places; or

42 3. He or she engages in a course of conduct or repeatedly commits acts  
43 which alarm or seriously annoy such other person and which serve no  
44 legitimate purpose.

45 Subdivisions two and three of this section shall not apply to activ-  
46 ities regulated by the national labor relations act, as amended, the  
47 railway labor act, as amended, or the federal employment labor manage-  
48 ment act, as amended.

49 Harassment in the second degree is a violation. Harassment in the  
50 second degree is a class E felony when committed by an adult against a  
51 child.

52 § 4. Section 120.50 of the penal law, as added by chapter 635 of the  
53 laws of 1999, is amended to read as follows:

54 § 120.50 Stalking in the third degree.

55 A person is guilty of stalking in the third degree when he or she:

1 1. Commits the crime of stalking in the fourth degree in violation of  
2 section 120.45 of this article against three or more persons, in three  
3 or more separate transactions, for which the actor has not been previ-  
4 ously convicted; or

5 2. Commits the crime of stalking in the fourth degree in violation of  
6 section 120.45 of this article against any person, and has previously  
7 been convicted, within the preceding ten years of a specified predicate  
8 crime, as defined in subdivision five of section 120.40 of this article,  
9 and the victim of such specified predicate crime is the victim, or an  
10 immediate family member of the victim, of the present offense; or

11 3. With intent to harass, annoy or alarm a specific person, inten-  
12 tionally engages in a course of conduct directed at such person which is  
13 likely to cause such person to reasonably fear physical injury or seri-  
14 ous physical injury, the commission of a sex offense against, or the  
15 kidnapping, unlawful imprisonment or death of such person or a member of  
16 such person's immediate family; or

17 4. Commits the crime of stalking in the fourth degree and has previ-  
18 ously been convicted within the preceding ten years of stalking in the  
19 fourth degree.

20 Stalking in the third degree is a class A misdemeanor. Stalking in  
21 the third degree is a class D felony when committed by an adult against  
22 a child.

23 § 5. Section 120.45 of the penal law, as amended by chapter 184 of the  
24 laws of 2014, is amended to read as follows:

25 § 120.45 Stalking in the fourth degree.

26 A person is guilty of stalking in the fourth degree when he or she  
27 intentionally, and for no legitimate purpose, engages in a course of  
28 conduct directed at a specific person, and knows or reasonably should  
29 know that such conduct:

30 1. is likely to cause reasonable fear of material harm to the physical  
31 health, safety or property of such person, a member of such person's  
32 immediate family or a third party with whom such person is acquainted;  
33 or

34 2. causes material harm to the mental or emotional health of such  
35 person, where such conduct consists of following, telephoning or initi-  
36 ating communication or contact with such person, a member of such  
37 person's immediate family or a third party with whom such person is  
38 acquainted, and the actor was previously clearly informed to cease that  
39 conduct; or

40 3. is likely to cause such person to reasonably fear that his or her  
41 employment, business or career is threatened, where such conduct  
42 consists of appearing, telephoning or initiating communication or  
43 contact at such person's place of employment or business, and the actor  
44 was previously clearly informed to cease that conduct.

45 For the purposes of subdivision two of this section, "following" shall  
46 include the unauthorized tracking of such person's movements or location  
47 through the use of a global positioning system or other device.

48 Stalking in the fourth degree is a class B misdemeanor. Stalking in  
49 the fourth degree is a class E felony when committed by an adult against  
50 a child.

51 § 6. This act shall take effect on the one hundred eightieth day after  
52 it shall have become a law.