Hang Up on Harassment: Dealing with Cellular Phone Abuse [1]

This fact sheet is for informational purposes only. We regret that we are not able to counsel stalking victims.

1. Introduction

With cell phones now the primary way of communicating, harassing phone calls can be especially distressing and disruptive. You should be aware of the steps you need to take if you receive harassing calls, text messages, or spam.

2. What can I do if I am receiving harassing calls on my cell phone?

Many states have enacted laws that explicitly include electronic forms of communication within stalking or harassment laws. In California, Penal Code § 653m and Penal Code §§ 422-422.1 protect individuals who are harassed by electronic devices, including telephones, cell phones, computers, video recorders, fax machines, and pagers. [2]

Cell phone carriers recommend that you contact the police first because they have expertise in personal safety. Be sure to file a report with the police department. This is important to ensure that you can get a subpoena. A subpoena is a court order demanding the production of evidence. Filing a report is not a guarantee that you will get a subpoena however. Depending on the resources of your local police station, your complaint may not be fully investigated. We recommend that you file the report as a first step because most cell phone carriers will not reveal customer information, including a harasser's identity, without a subpoena.

Some cell phone carriers have corporate security divisions that will work with you to stop the harassing calls. You should call your carrier's customer service department after filing your police report and determine if they will assist you without a subpoena. If your phone carrier does not offer this option you can consider filing a civil suit against your harasser and subpoena the information from the phone carrier as part of your lawsuit.

You should record the date, time, and description of each call, and save any messages you receive. This information is essential evidence in helping the police and the cell phone carrier investigate the harassment. If you think that the messages will be deleted before you are able to get a subpoena, it is a good idea to play the message into a tape recorder.

Many cell phone carriers have developed services that include the ability to block certain numbers from texting or calling the cell phone.

There are several technological solutions available. Some services allow users to create lists of authorized contacts, and inbound calls that are not part of an authorized list can be redirected to a recorded message that states the telephone number has been disconnected. If the harasser is using a blocked or restricted number, some technological solutions will redirect incoming calls to an 800 number before sending it to the cell phone. The blocked number is then unmasked. Spoofed numbers may not be
unmasked using this method.


3 . How is harassment defined?

The law will vary from state to state, but in California a single call is enough to meet the definition of harassment if the caller threatens physical harm or is obscene. If the call does not fall into either of these categories, the calls must be repeated to be considered harassment.

Intent is another requirement included in most harassment definitions. The law generally requires that the harasser intend the calls to be viewed as harassment. Because of the need to prove intent, you should tell the harasser that you do not want to speak to the person and to stop calling. If the harasser persists after this clear message, it will be easier to prove that the intent was to harass.

If the caller is a debt collector or telemarketer, harassment laws generally will not apply. For more information on dealing with these types of calls, see PRC Fact Sheet 5 on telemarketing at www.privacyrights.org/fs/fs5-tmkt.htm [9] and PRC Fact Sheet 27 on debt collection at https://www.privacyrights.org/debt-collection-practices-when-hardball-tactics-go-too-far [10].

4 . What can I do if I am receiving harassing text messages on my cell phone?

If you believe the threats are serious, contact the police. Most carriers explicitly prohibit harassing SMS (short message service) messages, or as they are more commonly known, text messages, in their terms of use. However, filing a police report is still an important step. Since text messages can be sent from a computer without sending a call-back number, it may be difficult to pinpoint who is sending the message. A subpoena might be necessary to locate the harasser through their computer or their restricted phone number.

In addition to filing the police report, it is important to document the harassment. If you think the messages will be deleted before the investigation is complete, you may want to photograph the text messages.

Parents should be aware of the increase in electronic bullying through text messages. One option is to contact the carrier and ask that the text message function be disabled. Disabling this feature will block all messages though (it is not usually possible to block a single phone number). As cell phones are often an integral part of a child's social life, you may not want to completely take this option.

Some experts suggest that turning off the text messaging function for a few days may be enough to discourage the harasser. Policies on blocking text messages vary by individual carrier, and your carrier may offer other options.

Many cell phone companies have designed services for parents concerned about the cell phone usage of their children. These services may allow parents to restrict the hours during which text messages are received as well as who the phone can call or text (both incoming and outgoing). Call your carrier's customer service department to see what options are available. While designed for parents, these services may be useful to anyone dealing with cell phone or text message harassment.

Often people use shorthand for text messages. If you are unsure of what the shorthand means, you can use the list found at http://www.netlingo.com/acronyms.php [11]

5 . Resources

- FCC consumer facts on CAN-SPAM and cell phones www.fcc.gov/cgb/consumerfacts/canspam.html [12]
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Links
[9] https://www.privacyrights.org/fs/fs5-tmkt.htm