

## My Name Is Not "Beautiful," and, No, I Do Not Want To Smile: Paving the Path for Street Harassment Legislation in Illinois

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**MY NAME IS NOT “BEAUTIFUL,” AND, NO, I DO NOT  
WANT TO SMILE: PAVING THE PATH FOR  
STREET HARASSMENT LEGISLATION  
IN ILLINOIS**

*When a stranger on the street makes a sexual comment, he is making a private assessment of me public. And though I've never been seriously worried that I would be attacked, it does make me feel unguarded, unprotected.<sup>1</sup>*

INTRODUCTION

Ask almost anyone who lives in the City of Chicago, the bustling summers undoubtedly make up for the frigid winters. In the summertime, it is hard not to head outside for a refreshing walk down the beaches of glimmering Lake Michigan or take a stroll down the Magnificent Mile. However, for some individuals, taking a walk is the last thing they want to do because walking down a city street evokes a sense of fear, inadequacy, and self-objectification due to the constant catcalls, sexual comments, and dehumanizing stares they are commonly forced to endure. Street harassment: the easiest way to debilitate a person's liberty to walk the streets without fear.

Protecting individuals' liberty is one of the most fundamental aspects of our legal system.<sup>2</sup> In 1690, political theorist John Locke defined liberty as “[being] free from restraint and violence from others; which cannot be, where there is no law.”<sup>3</sup> Unfortunately, because no uniform law currently exists to protect individuals from many types of street harassment, the fundamental rights to mobility and bodily integrity are not being met.<sup>4</sup>

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1. LEORA TANENBAUM, *SLUT! : GROWING UP FEMALE WITH A BAD REPUTATION* 140 (1999).

2. See Cynthia Grant Bowman, *Street Harassment and the Informal Ghettoization of Women*, 106 HARV. L. REV. 517, 520 (1993) (noting that liberty is a fundamental value underlying Anglo-American law).

3. JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* 32 (1980).

4. “The most fundamental definitions of liberty include the right of an individual to go where she chooses in spaces that are public.” Bowman, *supra* note 2, at 520 (noting that street harassment substantially limits individuals' liberty by reducing mobility).

Street harassment is a serious form of sexual harassment that occurs on a daily basis in cities around the world.<sup>5</sup> Although street harassment currently lacks a precise legal definition, scholars define the term in similar ways.<sup>6</sup> Street harassment is a type of sexual harassment that takes its shape in a variety of different forms, including cat-calls and unwanted compliments, looks, groping, or gestures.<sup>7</sup> While 65% of women and 25% of men nationwide report being street harassment victims,<sup>8</sup> the legal system does not currently view this as an issue worthy of legal redress.<sup>9</sup> Although there are laws prohibiting sexual harassment in the workplace, the line is blurred when sexual harassment takes place in the public sphere,<sup>10</sup> and existing laws generally fail to provide legal remedies for street harassment victims.<sup>11</sup> Despite the U.S. legal system's failure to recognize it, street harassment is evolving into a more prevalent and dangerous problem.<sup>12</sup>

5. See generally *What Is Street Harassment?*, STOP STREET HARASSMENT, <http://www.stopstreetharassment.org/about/what-is-street-harassment/> (last visited Aug. 24, 2015) (explaining the international prevalence of street harassment).

6. Olatokunbo Olukemi Laniya, Student Article, *Street Smut: Gender, Media, and the Legal Power Dynamics of Street Harassment, or "Hey Sexy" and Other Verbal Ejaculations*, COLUM. J. GENDER & L., 2005, at 91, 100 (giving a synthesized definition comprised of theories from multiple scholars); see, e.g., Bowman, *supra* note 2, at 575; Micaela di Leonardo, *Political Economy of Street Harassment*, AEGIS, Summer 1981, at 51, 51–52. R

7. TALIA HAGERTY ET AL., STOP STREET HARASSMENT, KNOW YOUR RIGHTS: STREET HARASSMENT AND THE LAW 2 (2013), <http://www.stopstreetharassment.org/wp-content/uploads/2013/12/SSH-KnowYourRights-StreetHarassmentandtheLaw-20131.pdf>.

8. HOLLY KEARL, STOP STREET HARASSMENT, UNSAFE AND HARASSED IN PUBLIC SPACES: A NATIONAL STREET HARASSMENT REPORT 14 (2014), <http://www.stopstreetharassment.org/wp-content/uploads/2012/08/2014-National-SSH-Street-Harassment-Report.pdf>. Men and women reported experiencing at least one type of street harassment in their lifetimes. *Id.* at 6. Kearl's nationwide study was comprised of 2,000 individuals "(approximately 1,000 women and 1,000 men, ages 18 and up)." *Id.* at 5. It is also important to note that although street harassment does not discriminate on the basis of sex or gender, this Comment typically refers to street harassment victims by using the female pronoun "she."

9. Bowman, *supra* note 2, at 519. R

10. Street harassment is a form of sexual harassment, and this notion is discussed in greater depth *infra*. See *infra* notes 25–104 and accompanying text.

11. Bowman, *supra* note 2, at 548–64 (explaining the relevance of laws that prohibit sexual harassment in the workplace as well as why current criminal and tort remedies are typically inapplicable to street harassment victims). Not only are there very few legal remedies available, but even when victims attempt to report the harassment to others, such as the police, they are often "laughed at, further harassed, or told that [street harassment is not] illegal." KEARL, *supra* note 8, at 35. R

12. In 2013, a fourteen-year-old girl was walking down the street in Florida when a man offered her \$200 to have sex with him. *Adrian Mendez Kidnapped a 14-Year-Old Girl*, Ocala Post (Sept. 23, 2013), <http://www.ocalapost.com/adrian-mendez-kidnapped-14-year-old-girl/>. The young girl refused, which caused the man to become agitated and angry, snatch her up by her hair, and pull her into his vehicle. *Id.* Because street harassment is becoming so pervasive and prevalent in today's society, Hollaback!, an international, nonprofit organization, created a street harassment smartphone app. Judith Ohikuare, *An App To Help Women Avoid Street*

## 2016] ILLINOIS STREET HARASSMENT LEGISLATION 833

While simply walking down the streets of Detroit, a mother of three was shot and killed by a thirty-eight-year-old man after she refused to give him her phone number.<sup>13</sup> Just a few days later, in New York, a twenty-six-year-old woman's throat was slashed after she declined to go on a date with a stranger on the street.<sup>14</sup> Although not every instance of street harassment involves physical violence, any type of street harassment—whether it be catcalls, whistles, or an obscene gesture—can leave a harmful and lasting impact on the victim.<sup>15</sup> As such, an international movement has commenced to encourage countries, states, and cities to band together, draft legislation to fight street harassment, and create safe public spaces.<sup>16</sup> Currently, only one city in the United States (Kansas City, Missouri) has enacted a specific ordinance targeting street harassment.<sup>17</sup> However, similar to existing tort remedies and criminal laws, the Kansas City ordinance fails to provide enough protection because it does not address many prevalent street harassment behaviors.<sup>18</sup>

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*Harassment*, ATLANTIC (Sept. 13, 2013), <http://www.theatlantic.com/technology/archive/2013/09/an-app-to-help-women-avoid-street-harassment/279642/>. The smartphone app aims to help users avoid street harassment through an interface that records reports of street harassment by users and then tracks street harassment clusters on a map. *Id.* These are just a few examples of how street harassment impacts our society.

13. Danielle Young, *Shot Down: Mother of Three Killed Because She Said No to a Man's Advances*, MICH. CHRON., Oct. 8, 2014, <http://michronicleonline.com/2014/10/08/shot-down-mother-of-three-killed-because-she-said-no-to-a-mans-advances>.

14. Aaron Feis, *Woman's Throat Slashed After Rejecting Man's Advances*, N.Y. POST, Oct. 8, 2014, <http://nypost.com/2014/10/08/womans-throat-slashed-after-rejecting-mans-advances/>.

15. "Despite the contracted nature of street harassment, it can have a 'deep and lasting impact.'" Tiffanie Heben, Student Article, *A Radical Reshaping of the Law: Interpreting and Remediating Street Harassment*, 4 S. CAL. REV. L. & WOMEN'S STUD. 183, 204 (1994) (quoting CAROL BROOKS GARDNER, *PASSING BY: GENDER AND PUBLIC HARASSMENT* 130 (1995)).

16. Organizations like Hollaback!, the Rogers Park Young Women's Action Team, Stop Street Harassment, and UN Women, are creating platforms to provide information on Street Harassment. See generally HOLLABACK!, <http://www.ihollaback.org/> (last visited Feb. 24, 2016); ROGERS PARK YOUNG WOMEN'S ACTION TEAM, <http://www.rogersparkywat.org/street-harassment/> (last visited Feb. 24, 2016); STOP STREET HARASSMENT, <http://www.stopstreetharassment.org/> (last visited Feb. 24, 2016); UN WOMEN, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/creating-safe-public-spaces> (last visited Feb. 24, 2016).

17. Kansas City, Missouri enacted an anti-harassment law that criminalizes behaviors meant to threaten or intimidate cyclists, pedestrians, and wheelchair users. KAN. CITY, MO., ORDINANCES ch. 50, art. VI, § 50-205 (2014); Brent Hugh, *Kansas City Council Unanimously Adopts Anti-Harassment Law for Cyclists, Pedestrians, Wheelchair Users*, MO. BICYCLE & PEDESTRIAN FED'N (Oct. 3, 2014, 3:31 PM), <http://mobikefed.org/2014/10/kansas-city-council-unanimously-adopts-anti-harassment-law-cyclists-pedestrians-wheelchair-u>. The law bans harassment of the enumerated groups and also addresses threatening actions, such as throwing objects at individuals. KAN. CITY, MO., ORDINANCES ch. 50, art. VI, § 50-205 (2014). However, the law does not forbid lewd comments. *Id.* See HAGERTY ET AL., *supra* note 7, for more information regarding other laws that affect street harassment.

18. Hugh, *supra* note 17; see Bowman, *supra* note 2, at 548–49 (explaining the failures, as well as successes, in attempting to seek legal redress for street harassment under existing laws).

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Thus, due to the prevalence and pervasiveness of street harassment in society and the fact that existing legal remedies fail to provide street harassment victims with adequate protection, this Comment argues that Illinois should become a leader in the street harassment movement by implementing a “Safe Spaces Statute” that would specifically target the most prevalent forms of street harassment. Implementing this legislation would: (1) serve as a deterrent to street harassers; (2) provide street harassment victims with adequate legal remedies; and (3) protect victims’ fundamental liberty rights of mobility and bodily integrity. To draft this legislation, Illinois should look to other countries, states, and cities that have implemented similar legislation and should rely on existing organizations and government entities to gain further support.

Part II of this Comment provides a background on the various definitions of street harassment set forth by scholars and examines the history of street harassment.<sup>19</sup> Part II further explores the current Illinois criminal remedies that are available for victims attempting to seek redress for street harassment.<sup>20</sup> Part III exposes the wide-ranging and long-lasting impacts street harassment has on victims and explores why the current Illinois criminal remedies fail to provide an adequate remedy.<sup>21</sup> Part III also proposes a sample Safe Spaces Statute that: (1) outlines the penalties street harassers would face; (2) explores Illinois’s existing programs, policies, and organizations that can be used to gain support for the Safe Spaces Statute; and (3) addresses various constitutional constraints that may impact the drafting of this legislation.<sup>22</sup> Next, Part IV explores the various results that a Safe Spaces Statute would have not only for street harassment victims but for Illinois and society at large.<sup>23</sup> Lastly, Part V concludes by stating that Illinois should implement a Safe Spaces Statute to criminalize street harassment, deter future street harassment acts, and restore individuals’ right to walk the streets without fear.<sup>24</sup>

## II. BACKGROUND

This Part addresses the developing definitions scholars have created regarding what constitutes street harassment. This Part also explores street harassment’s historical roots and how they shaped today’s anti-

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19. *See infra* notes 25–104 and accompanying text.

20. *See infra* notes 105–16 and accompanying text.

21. *See infra* notes 117–82 and accompanying text.

22. *See infra* notes 183–239 and accompanying text.

23. *See infra* notes 240–73 and accompanying text.

24. *See infra* notes 274–76 and accompanying text.

2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 835

street harassment movement. Finally, this Part discusses and examines the current criminal remedies available to street harassment victims in Illinois.

One of the most fundamental duties of the U.S. government and judicial system is to protect its citizens and lead by example.<sup>25</sup> Although policy leaders have addressed various forms of sexual harassment, including sexual harassment in the workplace,<sup>26</sup> those same policy leaders have failed to confront the harms caused by street harassment.<sup>27</sup> As a result, legal scholars intervened to address these harms by providing working definitions of what behaviors constitute street harassment and where it occurs.<sup>28</sup>

### A. *Developing Definitions of Street Harassment*

“Problems without names tend to stay hidden and inadequately addressed[,]”<sup>29</sup> which is why it is important to understand the various definitions of street harassment. Unlike sexual harassment in the workplace,<sup>30</sup> street harassment lacks a precise legal definition; however, scholars and organizations define the term in similar ways. One of the earliest definitions and uses of the term “street harassment” comes from cultural anthropologist Micaela di Leonardo’s 1981 definition.<sup>31</sup> Leonardo defined street harassment as occurring when:

one or more strange men accost one or more women whom they perceive as heterosexual in a public place which is not the woman’s/women’s worksite. Through looks, words, or gestures the man asserts his right to intrude on the woman’s attention, defining her as a sexual object, and forcing her to interact with him.<sup>32</sup>

Several years later, Cynthia Grant Bowman, a leading scholar in the area of street harassment, stated:

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25. See *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting) (explaining that the government is the “omnipresent” teacher), *overruled by* *Katz v. United States*, 389 U.S. 347 (1967).

26. *Sexual Harassment*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, [http://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](http://www.eeoc.gov/laws/types/sexual_harassment.cfm) (last visited Aug. 31, 2015) (explaining that it is unlawful to harass a person in the workplace because of that person’s sex). “Harassment can include ‘sexual harassment’ or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.” *Id.*

27. See Bowman, *supra* note 2, at 518 (“The law trivializes or simply ignores events that have a profound effect upon women’s consciousness, physical well-being, and freedom.”) R

28. See, e.g., Leonardo, *supra* note 6; Bowman, *supra* note 2. R

29. HOLLY KEARL, *STOP STREET HARASSMENT: MAKING PUBLIC PLACES SAFE AND WELCOMING FOR WOMEN* 5 (2010).

30. *Sexual Harassment*, *supra* note 26. R

31. Leonardo, *supra* note 6, at 51–52. R

32. *Id.*

Street harassment occurs when one or more *unfamiliar men* accost one or more *women* in a public place, on one or more occasions, and intrude or attempt to intrude upon the woman's attention in a manner that is unwelcome to the woman, with language or action that is explicitly or implicitly sexual.<sup>33</sup>

Bowman further noted that sexually explicit or implicit language includes references to: (1) the male or female genitalia and other body parts; (2) sexual activities; (3) solicitation of sex; (4) "reference by word or action to the target of the harassment as the object of sexual desire"; or (5) words that inflict injury or provoke violent resentment.<sup>34</sup> Olatokunbo Olukemi Laniya, another prominent scholar in this area, defined the term as an "unsolicited verbal and/or nonverbal act of a male stranger towards a female, solely on the basis of her sex, in a public place."<sup>35</sup> All three scholars defined street harassment as a gender-based form of harassment, which is the most common type of definition used by academics.<sup>36</sup>

Tiffanie Heben, author of "A Radical Reshaping of the Law: Interpreting and Remediating Street Harassment," adopted Bowman's definition but noted that narrowly categorizing different forms of this behavior as severe, moderately severe, and least severe would provide greater clarity on the issue.<sup>37</sup> Heben categorized the most severe forms of street harassment as: (1) "sexually explicit references to a woman's body or sexual" acts; (2) profanities based on gender; (3) comments that fit into any of the three categories combined with racial slurs or references to a woman's potential homosexuality; and (4) physical acts like stalking, throwing things, pinching, or poking.<sup>38</sup> Heben's moderately severe category of street harassment consisted of sexual innuendos or "references to a woman's gender or body that are not sexually explicit."<sup>39</sup> Lastly, Heben's least severe category is comprised of staring, whistling, or other comments made by a man to a woman that are "unnecessary or are not political in nature."<sup>40</sup>

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33. Bowman, *supra* note 2, at 575 (emphasis added).

34. *Id.*

35. Laniya, *supra* note 6, at 100.

36. See *Definitions*, STOP STREET HARASSMENT, <http://www.stopstreetharassment.org/resources/definitions/#organizations> (last visited Aug. 31, 2015) (noting that "gender-based harassment in public spaces" is the term most commonly used by academics and activists).

37. Heben, *supra* note 15, at 187–88.

38. *Id.*

39. *Id.* at 188.

40. *Id.*

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## 2016] ILLINOIS STREET HARASSMENT LEGISLATION 837

Stop Street Harassment,<sup>41</sup> a prominent organization aimed at providing information and resources about street harassment, defined the term differently, stating that it includes “unwanted comments, gestures, and actions forced on a stranger in a public place without their consent and is directed at them because of their actual or perceived sex, gender, gender expression, or sexual orientation.”<sup>42</sup> This definition differs from the majority of scholarly definitions because it does not categorize the offender as male and the victim as female. Similarly, Hollaback!,<sup>43</sup> another innovative nonprofit organization, explained: “Street harassment is a form of sexual harassment that takes place in public spaces. At its core is a power dynamic that constantly reminds historically subordinated groups . . . of their vulnerability to assault in public spaces.”<sup>44</sup>

Despite these definitions, some individuals still view street harassment as harmless and hold the opinion that these behaviors constitute nothing more than mere compliments.<sup>45</sup> Although street harassment may be hard to concretely define due to the vast array of behaviors of which it is comprised, developing a descriptive, detailed, and precise legal definition is of great importance—especially for purposes of drafting legislation to target these behaviors. Notably, many of the definitions provided by scholars and street harassment organizations share common characteristics, including: (1) gender-motivated acts; (2) male harassers;<sup>46</sup> (3) female victims; (4) an unacquainted victim; and (5) harassment taking place in a public forum.<sup>47</sup> These character-

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41. See STOP STREET HARASSMENT, *supra* note 16, for more information regarding the organization.

42. *Definitions*, *supra* note 36.

43. See HOLLABACK!, *supra* note 16, for more information about the organization.

44. *About*, HOLLABACK!, <http://www.ihollaback.org/about/> (last visited Aug. 31, 2015).

45. See, e.g., Doree Lewak, *Hey, Ladies—Catcalls Are Flattering! Deal with It*, N.Y. POST., Aug. 18, 2014, <http://nypost.com/2014/08/18/enough-sanctimony-ladies-catcalls-are-flattering/>. Lewak wrote about her experiences with street harassment and how she enjoys being “complimented” by various individuals. *Id.* In a CNN discussion regarding street harassment, Steve Santagati, an author, and Amanda Seales, a standup comedian, debated about whether street harassment is merely a “compliment.” See CNN, *Catcall Video goes Viral*, YOUTUBE (Nov. 2, 2014), <https://www.youtube.com/watch?v=-HI4DC18wCg>. According to Santagati, “there is nothing more that a woman loves to hear than how pretty she is,” and street harassment is just another example of “a lot of ‘feminists’ that have an ala carte attitude toward it.” *Id.*

46. It is relevant to note that Stop Street Harassment is more progressive in its definition by not ascribing a gender to the perpetrators. See *Definitions*, *supra* note 36.

47. Kalema Boateng, *Street Harassment as a Genderless Concern in the Age of Technology* (2011) (unpublished undergraduate thesis, Columbia University) (manuscript at 5), [http://academiccommons.columbia.edu/download/fedora\\_content/download/ac:130847/CONTENT/51-Boate.harassment.docx](http://academiccommons.columbia.edu/download/fedora_content/download/ac:130847/CONTENT/51-Boate.harassment.docx).



istics will help develop a more concrete definition of street harassment, which is provided *infra*.<sup>48</sup>

### B. *The Historical Underpinnings of Street Harassment*

Street harassment is not a new phenomenon; in fact, due to the lack of legal sanctions, street harassment is something that has occurred for—and has become normalized over—centuries.<sup>49</sup> Instances of street harassment in public places can be traced back to the 1800s.<sup>50</sup> For instance, in 1898, a woman wrote to the British journal *Womanhood* about being harassed in the street.<sup>51</sup> She stated that this type of harassment was of great importance because it was a “grave annoyance” for women, particularly young girls, to be followed home and spoken to by strange men on the street.<sup>52</sup> She then stated: “It is sad to think that even at the present day a woman cannot go out and return to her home without the fear of being molested.”<sup>53</sup>

By the early 1900s, street harassment, known at the time as “mashing,” became more prevalent because many individuals began moving from rural farmlands to cities.<sup>54</sup> Fed up with these behaviors, victims began fighting back against the “mashers,” which led to news stories and publicity regarding these invasive occurrences.<sup>55</sup> For example, in San Francisco, a victim stabbed a “masher who used cave-man tactics” with her hatpin.<sup>56</sup> In another instance, an African-American woman was traveling on the subway in New York when a Caucasian man ap-

48. See *supra* notes 194–98, and accompanying text.

49. KEARL, *supra* note 8, at 8; see Laniya, *supra* note 6, at 116 (explaining that acts constituting street harassment have been normalized and encouraged by the underlying patriarchal system, which influences society’s normal, average male to act in this manner).

50. See Bowman, *supra* note 2, at 527 & 527 n.47. “Rare but occasional mention in the case law demonstrates that the harassment of women in public places predates the modern period.” *Id.* at 527.

51. *Id.* at 527 n.47; see also *Craker v. Chi. & N.W. Ry. Co.*, 36 Wis. 657, 678–79 (1875) (awarding damages to a young woman who was sexually harassed and assaulted by a train conductor).

52. Bowman, *supra* note 2, at 527 n.47 (quoting a letter from the British journal *Womanhood*, Dec. 1898, quoted in Cheris Kramarae, *Harassment and Everyday Life*, in *WOMEN MAKING MEANING: NEW FEMINIST DIRECTIONS IN COMMUNICATION* 100, 112 (Lana F. Rakow ed., 1992)).

53. *Id.*

54. Holly Kearl, *Part 2: Redefining Rape and Street Harassment: 1880-1920s*, STOP STREET HARASSMENT (Oct. 3, 2013), <http://www.stopstreetharassment.org/2013/10/redefiningrape2/>.

55. See, e.g., *Masher Put To Flight by Girl’s Hatpin*, MILWAUKEE J., Oct. 10, 1921, at 2; *Youth Seized as Masher: Accused of Annoying Score of Women in Queens*, N.Y. TIMES, Aug. 15, 1943, at 41. For more information regarding “mashers,” see Holly Kearl, *Hands Off, Masher! Street Harassment in History*, STOP STREET HARASSMENT, (Nov. 19, 2015), <http://www.stopstreetharassment.org/2012/11/hands-off-masher-street-harassment-in-history/>.

56. *Midnight Masher’s Ardor Punctured by Ready Hatpin in Hands of Berkeley Miss*, S.F. CHRON., Sept. 30, 1921, at 1.

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## 2016] ILLINOIS STREET HARASSMENT LEGISLATION 839

proached her and asked to purchase sexual acts.<sup>57</sup> When the woman refused, the young man began harassing and threatening the woman.<sup>58</sup> Luckily, another passenger on the train witnessed this interaction, helped the victim detain the man, called the police, and had him arrested.<sup>59</sup>

In the 1920s, women in Washington, D.C. formed the “Anti-Flirt Club” because they were sick and tired of being offered rides from strange men while simply walking down the street.<sup>60</sup> Unfortunately, these efforts did not stop the normalization of street harassment. For example, in the 1960s, a popular men’s hair gel promoted street harassment through television commercials and a catchy jingle that proclaimed: “when Charlie sees a lovely girl, a girl like yours or mine, he uses a whistle, a wink . . . and it gets her every time.”<sup>61</sup> Street harassment gained more public attention during the Women’s Movement of the 1970s and 1980s when “personal accounts of sexual harassment began to appear in . . . journals.”<sup>62</sup> Women banded together even more during the Women’s Liberation Movement of the 1970s to address concerns such as domestic violence and rape;<sup>63</sup> it was from these efforts that modern-day activism against street harassment was born.

Due to the technological advances within the past several decades, organizations such as Hollaback!, Stop Street Harassment, and UN Women have drastically increased awareness of street harassment.<sup>64</sup>

57. ESTELLE B. FREEDMAN, *REDEFINING RAPE* 207 (2013).

58. *Id.*

59. *Id.*

60. Alexis Coe, *Stop That Skirt-Chaser! The Movement To Outlaw Flirting in the 1920s*, ATLANTIC (Feb. 12, 2013), <http://www.theatlantic.com/sexes/archive/2013/02/stop-that-skirt-chaser-the-movement-to-outlaw-flirting-in-the-1920s/273068/>. The Anti-Flirt Club expanded, with chapters appearing in cities like Chicago and New York City. However, those organizations were headed by men. *Id.*

61. Mitch Bourque, *Wildroot TV Advert*, YOUTUBE (Feb. 24, 2007), [https://www.youtube.com/watch?v=csb\\_5oQBrBM](https://www.youtube.com/watch?v=csb_5oQBrBM).

62. Bowman, *supra* note 2, at 528. Scholarly articles about the topic began to emerge in the early 1990s with Bowman paving the path. *See, e.g., id.*; Elizabeth Arveda Kissling, *Street Harassment: The Language of Sexual Terrorism*, 2 DISCOURSE & SOC’Y 451 (1991) (analyzing the social implications of men’s street harassment toward unknown women); Heben, *supra* note 15 (addressing the often disregarded topic of street harassment).

63. FREEDMAN, *supra* note 57, at 8. The Women’s Liberation Movement also sparked community organizations in Washington, D.C. to convert the city into a “hassle free zone.” *See* Lauren McEwen, *USA: Anti-Flirt Club and Hassle-Free Zones, 100 Years of Activism*, STOP STREET HARASSMENT (OCT. 1, 2013), <http://www.stopstreetharassment.org/2013/10/shhistory/>. The campaign focused on street harassment during the “Take Back the Night March.” *Id.*

64. Although the anti-street harassment movement gained strength in the 1980s and 1990s, the movement was “slow in developing until the advent of blogging, social media[,] and cellphones.” Alison Stein Wellner, *Giving Street Harassers All the Attention They Want—and More*, WASH. POST, Jan. 7, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/07/AR2011010703939.html>.

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Countries around the world have recognized the harms of street harassment and have enacted laws to ban it. In 2009, a city in Mexico made it illegal for individuals to catcall after realizing the harm it caused victims.<sup>65</sup> Following suit, in 2012, the British Prime Minister and the Council of Europe's Convention on Violence Against Women recommended legislation to criminalize and impose sanctions for "unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment."<sup>66</sup> Additionally, in March 2014, Belgium passed a law that would make many forms of sexual harassment, including street harassment, a criminal offense punishable by fines or imprisonment of up to one year.<sup>67</sup> Moreover, on June 12, 2013, the City of Brussels imposed a fine for street harassment and, within three months of enacting the ordinance, issued sixty-nine fines.<sup>68</sup> Most recently, in 2015, Peru passed a bill that defines harassment as any act "impacting the freedom and dignity of movement and the right to physical and moral integrity[.]" and a violation of this bill "could potentially condemn an aggressor up to 12 years."<sup>69</sup>

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65. Bunkosal Chhun, Note, *Catcalls: Protected Speech or Fighting Words?*, 33 T. JEFFERSON L. REV. 273, 287 & 287 n.106 (2011).

66. Amelia Hill & Juliette Jowit, *Sexist Remarks and Wolf-Whistles Could Become Criminal Offences*, GUARDIAN (Mar. 7, 2012, 7:18 PM), <http://www.theguardian.com/society/2012/mar/08/sexist-comments-to-become-criminal-offence> (quoting COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE 15 (Apr. 12, 2011)). "The way we see it is if you want to tackle it you tackle all of it—you say no to all forms of unwanted sexual harassment; that includes wolf-whistling, comments, everything." *Id.* (quoting Julia Gray, Founder, London branch of Hollaback!).

67. Derek Blyth, *Sexual Harassment Illegal Under New Belgian Law*, FLANDERS TODAY (Mar. 14, 2014), <http://www.flandertoday.eu/politics/sexual-harassment-illegal-under-new-belgian-law> (explaining that the new Belgian law "makes it a crime to 'make a gesture or statement that is clearly intended to express contempt for one of more people of a different gender on the basis of their gender or to make them appear inferior or reduce them to their sexual dimension in a way that constitutes a serious attack on their dignity'"); Nicole Elphick, *Belgium To Ban Sexist Comments*, DAILY LIFE (Mar. 17, 2014), <http://www.dailylife.com.au/news-and-views/news-features/belgium-to-ban-sexist-comments-20140317-34w68.html>; Eugene Volokh, *Belgium Bans a Wide Range of Sexist Speech*, WASH. POST., Mar. 21, 2014, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/21/belgium-bans-a-wide-range-of-sexist-speech>.

68. STREET HARASSMENT: KNOW YOUR RIGHTS 22 (2014), <http://www.ihollaback.org/wp-content/uploads/2014/10/Street-Harassment-Know-Your-Rights.pdf>. A fine of up to 250 Euro can be imposed for making a sexualized insult. *Id.*

69. Hillary Ojeda, *Peru: Street Harassment To Be Condemned up to 12 Years in Prison*, LIVING IN PERU (Mar. 5, 2015), <http://www.peruthisweek.com/news-peru-street-harassment-to-be-condemned-up-to-12-years-in-prison-105452>. Similarly, Portugal and other countries have taken steps to make street harassment illegal. Laura Bates, *Portugal Has Made Street Harassment a Crime – Why Hasn't the UK?*, GUARDIAN (Feb. 25, 2015, 4:00 PM), <http://www.theguardian.com/lifeandstyle/womens-blog/2016/feb/25/portugal-has-made-street-harassment-a-why-hasnt-the-uk>.

## 2016] ILLINOIS STREET HARASSMENT LEGISLATION 841

Closer to home, in October 2014, Kansas City, Missouri passed an anti-harassment ordinance that imposes fines, and even jail sentences, on perpetrators found guilty of harassing pedestrians and bicyclists.<sup>70</sup> The Kansas City ordinance seeks to encourage citizens to use modes of transportation other than motor vehicles; consequently, it makes it a crime for individuals to: (1) throw an object or operate a vehicle in a bicyclist's or pedestrian's path; (2) threaten a bicyclist or pedestrian; (3) sound a horn, shout, or direct loud or unusual sounds toward a bicyclist or pedestrian; (4) place a person in "apprehension of immediate physical injury"; or (5) "[e]ngage in conduct that creates a risk of death or serious physical injury" to a bicyclist or pedestrian.<sup>71</sup> Finally, legal scholars have proposed sample pieces of street harassment legislation for states to implement.<sup>72</sup> Despite the progress made by other countries and cities throughout the globe, research and recent statistics show that street harassment still remains a potent and pervasive problem that is not adequately addressed by most U.S. states, including Illinois.<sup>73</sup>

C. *Street Harassment Statistics: A Problem of Epic Proportion*

Although it is true that the majority of street harassment victims are women, street harassment affects individuals of every gender, race,

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70. Holly Kearn, *Kansas City, MO, Passes Anti-Harassment Ordinance*, STOP STREET HARASSMENT (Oct. 3, 2014), <http://www.stopstreetharassment.org/2014/10/shordinance/> (citing KAN. CITY, MO. ORDINANCES, ch. 50, art. VI, § 50-205 (2014)).

71. *Id.*

72. Bowman's sample street harassment statute provides in pertinent part:

*Street harassment:* It shall be a misdemeanor, punishable by a fine of \$250, to engage in street harassment. Street harassment occurs when one or more unfamiliar men accost one or more women in a public place, on one or more occasion, and intrude or attempt to intrude upon the woman's attention in a manner that is unwelcome to the woman, with language or action that is explicitly or implicitly sexual. Such language includes, but is not limited to, references to male or female genitalia or to female body parts or to sexual activities, solicitation of sex, or reference by word or action to the target of the harassment as the object of sexual desire, or similar words that by their very utterance inflict injury or naturally tend to provoke violent resentment, even if the woman did not herself react with violence. The harasser's intent, except his intent to say the words or engage in the conduct, is not an element of this offense. This section does not apply to any peaceable activity intended to express political views or provide public information to others.

Bowman, *supra* note 2, at 575. Bowman's definition helped shaped the proposed definition of street harassment, which is discussed in further detail *infra*. See *infra* notes 194–98 and accompanying text.

73. See generally STREET HARASSMENT: KNOW YOUR RIGHTS (2014), <http://www.trust.org/content/Asset/raw-data/7ea3c510-0595-40c4-ab35-f3208f28b0b0/file> (providing a comprehensive guide regarding potential state (and international) laws that could be used to challenge street harassment but also noting that many states do not currently have specific street harassment laws on the books).

religion, sex, and sexual orientation.<sup>74</sup> In a 2003 study conducted in Chicago, 86% of respondents reported being a victim of street harassment.<sup>75</sup> Local studies and surveys from other cities around the country, such as the California Bay Area, Indianapolis, and New York City, rendered similar results.<sup>76</sup> For example, during the 1980s–1990s, a study in Indianapolis revealed that all of the 293 women interviewed could cite several instances of being harassed in public by unknown individuals.<sup>77</sup> Because street harassment is a global issue, studies from other countries show similar results.<sup>78</sup>

### 1. *A Comprehensive, National Study Regarding Street Harassment*

Although most studies solely focus on women as victims and men as perpetrators, Holly Kearl, founder of Stop Street Harassment, recognized that women are not the only victims of street harassment and men are not the only perpetrators.<sup>79</sup> In Spring 2014, Kearl conducted a 2,000 person study in the United States to better understand street harassment patterns.<sup>80</sup> This study served as the first comprehensive

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74. KEARL, *supra* note 8, at 14 figs., 15–19, 15 fig., 16 fig., 17 fig.

75. In 2003, the Rogers Park Young Women's Action Team conducted surveys of 168 young women ages ten through nineteen and interviewed thirty-four women in focus groups to collect data about street harassment in Chicago. ROGERS PARK YOUNG WOMEN'S ACTION TEAM, HEY CUTIE, CAN I GET YOUR DIGITS? 7 (2003), <http://www.rogersparkywat.org/wp-content/uploads/2010/09/Hey-Cutie-Can-I-Get-Your-Digits-Report.pdf>. In addition to the 86% of respondents who admitted to being catcalled, 36% said they were harassed on a daily basis, and 60% said they felt unsafe while walking in their own neighborhood. *Statistics—Academic and Community Studies*, STOP STREET HARASSMENT, <http://www.stopstreetharassment.org/resources/statistics/statistics-academic-studies/> (last visited Sept. 2, 2015).

76. A 2007 study in New York City, conducted via an online questionnaire, found that 63% of the 1,790 participants reported being sexually harassed on the subway and that nearly one-tenth of the respondents had been sexually assaulted as well. See *Statistics—Academic and Community Studies*, *supra* note 75, for more information regarding the results of these particular studies.

77. *Id.* The women interviewed were of various ages, races, sexes, sexual orientations, and socioeconomic classes. *Id.*

78. See, e.g., FRA: EUROPEAN AGENCY FOR FUNDAMENTAL RIGHTS, LGBT PERSONS' EXPERIENCES OF DISCRIMINATION AND HATE CRIME IN THE EU AND CROATIA [hereinafter FRA REPORT], [http://fra.europa.eu/sites/default/files/eu-lgbt-survey-factsheet\\_en.pdf](http://fra.europa.eu/sites/default/files/eu-lgbt-survey-factsheet_en.pdf) (examining the experiences of LGBT persons in the EU and Croatia); RESEARCH STUDY: STREET HARASSMENT AGAINST GIRLS IN DISTRICT GUJRANWALA 27 (2005) [hereinafter STREET HARASSMENT IN GUJRANWALA], <http://bargad.org.pk/media/page-downloads/65.pdf> (examining street harassment against girls in District Gujranwala); *Harassment Rampant on Public Transportation*, SHANGHAI STAR (Apr. 11, 2002), <http://app1.chinadaily.com.cn/star/2002/0411/cn8-4.html> (examining the discrimination against residents of Beijing).

79. KEARL, *supra* note 8, at 7, 14 (providing the results and statistics from a 2014 nationwide study on street harassment).

80. *Id.* at 10. The survey was comprised of 1,058 men and 982 women. *Id.* at 11. The respondents ranged in age from eighteen to sixty-five and older with the majority of respondents being between eighteen and thirty-four. *Id.* As mentioned, the study was nationwide with 715 from the South, 481 from the Midwest, 456 from the West, and 388 people from the Northeast. *Id.*

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2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 843

national research study to examine both men's and women's experiences with street harassment while also taking income, race, sex, and sexual orientation into account.<sup>81</sup>

The study discovered that 65% of women and 25% of men experienced street harassment over the course of their lifetime.<sup>82</sup> Of those individuals, 57% of women and 18% of men experienced verbal harassment, and 41% of women and 16% of men reported that the street harassment became physically aggressive.<sup>83</sup> These statistics help explain why nearly two-thirds of women respondents and nearly one-half of male respondents reported being very—or at least somewhat—concerned that the verbal street harassment would escalate into something far worse.<sup>84</sup> The study also indicated that, overall, minority respondents experienced the highest percentages of verbal and physically aggressive harassment.<sup>85</sup> Furthermore, the types of verbal harassment experienced between the sexes differed drastically.<sup>86</sup> The most common types of verbal street harassment women endured were spoken comments, such as “hey baby,” “mmm sexy,” or “give me a smile,” followed by inappropriate comments regarding the woman's intimate body parts or obscene sounds.<sup>87</sup> On the other hand, male respondents were more likely to be verbally attacked by being called a homophobic or transphobic slur.<sup>88</sup> Both sexes reported that the majority of the street harassers were male; however, 20% of male respondents reported that their harassers were female,<sup>89</sup> demonstrating that street harassment is not merely a feminist issue.

Overall, respondents in the study who identified their sexual orientation as anything other than heterosexual were more likely to experience street harassment.<sup>90</sup> This discrepancy tended to be larger among

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The study also took race and sexual orientation into account. *Id.* Seventy-seven percent of respondents were White, 10% were Hispanic, 7% were African American, 4% were nonHispanic, and 3% were mixed race. *Id.* Forty-nine men and forty-eight women respondents identified as lesbian, gay, bisexual, or transgender, and 1,009 men and 934 women identified as heterosexual. *Id.* To supplement the survey, ten focus groups were held from August 2012 to March 2014. *Id.*

81. *Id.* at 10.

82. *Id.* at 14 fig.

83. *Id.*

84. *Id.* at 6.

85. KEARL, *supra* note 8, at 18.

86. *Id.* at 16 fig.

87. *Id.*

88. *Id.*

89. *Id.* at 22, 23 fig.

90. *Id.* at 15 & fig. (noting that this includes verbal forms of street harassment (57% of LGBT respondents as compared to 37% of heterosexual respondents) as well as physically aggressive

men.<sup>91</sup> In one of her focus groups, Kearl explored this avenue of street harassment in more depth.<sup>92</sup> Although these statistics paint a picture of how pervasive street harassment is in the United States, perhaps the most important statistic from Kearl's study is that the majority of respondents (91%), both men and women, reported that something could and should be done to combat street harassment.<sup>93</sup>

## 2. *International Studies' Statistics*

Studies conducted in countries throughout the world demonstrate similar statistics regarding street harassment, which have increased awareness of this global problem and led to international solutions.<sup>94</sup> In 2002, a Beijing survey of 200 citizens found that 70% of respondents had been subjected to some form of street harassment.<sup>95</sup> Similarly, in Pakistan, a study of more than 200 college-aged individuals revealed that 96% of female respondents experienced street harassment, and 56% of the male respondents admitted that they started harassing females when the respondents were between the ages of fifteen to nineteen years old.<sup>96</sup> Moreover, studies reported by UN Women found that one out of every four women in France experienced fear while walking down the street, and, in 2013, approximately one in every five women were verbally harassed on the street.<sup>97</sup> These studies demonstrate that street harassment is a problem of global proportion.<sup>98</sup> With regard to street harassment of LGBT<sup>99</sup> individuals, in

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forms of street harassment (45% of LGBT respondents as compared to 28% of heterosexual respondents)).

91. KEARL, *supra* note 8, at 15.

92. *See id.* at 44. A man who identified as gay shared a personal story regarding the street harassment he experienced while visiting his family in New York.

93. *Id.* at 24.

94. *See infra* notes 95–102 and accompanying text.

95. *Harassment Rampant on Public Transportation*, *supra* note 78.

96. STREET HARASSMENT IN GUJRANWALA, *supra* note 78, at 11. Additionally, 68% of the studies' female respondents stated that they faced mobility issues because of the harassment, while 16% also maintained that the harassment interrupted their educational careers. *Id.* Furthermore, 76% of female respondents believed that "reducing the harassment cases [could] minimize social constraints for girls. When girls go out and they don't face any sort of harassment, there are major tribulations that would be solved, . . . [making it] easier for them to move freely and make progress in every field of life." *Id.*

97. UN WOMEN, SAFE CITIES GLOBAL INITIATIVE (2013), [http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2013/12/un%20women-evaw-safecities-brief\\_us-web%20pdf.ashx](http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2013/12/un%20women-evaw-safecities-brief_us-web%20pdf.ashx). For more information on UN Women's Safe Spaces initiative, see *Creating Safe Public Spaces*, UN WOMEN, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/creating-safe-public-spaces> (last visited Feb. 24, 2016).

98. KEARL, *supra* note 8, at 67–69 (noting that street harassment is a global problem and providing stories of individuals around the globe who have experienced street harassment).

99. Lesbian, Gay, Bisexual, Transgender.

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2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 845

2012, the European Union conducted a study of over 93,000 LGBT individuals in Europe and found that approximately one-half of the study's participants avoided public spaces due to the fear of harassment.<sup>100</sup> Further, more than four-fifths of the respondents stated that "casual jokes about [LGBT individuals] in everyday life were widespread."<sup>101</sup> More recently, a February 2016 survey conducted in Israel found that: "One out of every two adult women in Israel and some 70% of teenaged girls have been sexually harassed," and, further, "one out of every 10 men responded that they had been sexually harassed at least once"<sup>102</sup>

These studies demonstrate that street harassment is a pervasive and persistent problem for individuals around the globe that has occurred for years.<sup>103</sup> "Street harassment is a human rights violation . . . . It causes many harassed persons . . . to feel less safe in public places and limit[s] their time there. It can also cause people emotional and psychological harm."<sup>104</sup> And, despite some criminal remedies in existence, street harassment victims remain largely unprotected.

*D. Current Criminal Remedies Available to Street Harassment Victims in Illinois*

There are a few laws in Illinois, such as those addressing assault and intimidation, that street harassment victims could attempt to use when seeking legal redress for the harms done to them by street harassers.<sup>105</sup> However, there are shortcomings to these remedies, which will be discussed in greater detail *infra*.

*1. Assault*

Some victims have sought redress by bringing assault charges against their harasser.<sup>106</sup> Under the Illinois Criminal Code, a person commits an assault when, "without lawful authority, he or she knowingly engages in conduct which places another in reasonable appre-

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100. FRA REPORT, *supra* note 78, at 1.

101. *Id.* at 2.

102. Lidar Gravé-Lazi, *Survey: Half of Israeli Women and 70% of Teen Girls Are Victims of Sexual Harassment*, JERUSALEM POST, Mar. 8, 2016, <http://www.jpost.com/Israel-News/Survey-Half-of-Israeli-women-and-70-percent-of-teen-girls-are-victims-of-sexual-harassment-447242>.

103. See *supra* notes 74–102 and accompanying text (discussing U.S. and international trends).

104. KEARL, *supra* note 8, at 5.

105. See, e.g., 720 ILL. COMP. STAT. 5/12-1 (2012) (defining assault); *id.* at 5/12-6 (defining intimidation).

106. Bowman, *supra* note 2, at 549.

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hension of receiving a battery.”<sup>107</sup> It is also important to note that the elements of assault typically require a finding of intent on the part of the harasser.<sup>108</sup>

## 2. *Harassing and Obscene Communications*

Street harassment victims may also attempt to seek legal redress for street harassment “under state statutes or municipal ordinances that prohibit harassment” in public.<sup>109</sup> However, although the Illinois Criminal Code does include a provision that addresses harassing and obscene communications, this provision only refers to modes of harassment conducted through writing, electronic communication (such as e-mail), or over the telephone.<sup>110</sup>

## 3. *Intimidation*

Another current approach that street harassment victims could attempt to rely on is suing under Illinois’s criminal intimidation law. Under Section 5/12-6 of the Illinois Criminal Code, “[a] person commits intimidation when, with intent to cause another to perform or to omit the performance of an act, he or she communicates to another, directly or indirectly by any means, a threat to perform without lawful authority any of the following acts.”<sup>111</sup> The statute goes on to list seven acts that constitute intimidation: (1) inflicting “physical harm on the person threatened or any other person or on property”; (2) subjecting another to physical confinement or restraint; (3) committing “a felony or Class A misdemeanor”; (4) accusing another of an offense; (5) exposing another “to hatred, contempt or ridicule”; (6) taking “action as a public official against anyone or anything, or withhold[ing] official action”; and (7) bringing “about or continu[ing] a strike, boycott or other collective action.”<sup>112</sup>

## 4. *Stalking*

Street harassment may sometimes fall under a state’s criminal stalking law. In Illinois, stalking occurs when an individual “engag[es] in a

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107. 720 ILL. COMP. STAT. 5/12-1. Victims may also seek civil damages for assault. Based on a tort theory, an individual commits an assault when: (1) she acts with the intent to cause a harmful or offensive contact with another individual, or the intent to cause an imminent apprehension of such contact and (2) the other individual is then put in such imminent apprehension. See RESTATEMENT (SECOND) OF TORTS § 21 (AM. LAW INST. 1965).

108. Bowman, *supra* note 2, at 552 (citing RESTATEMENT (SECOND) OF TORTS § 21).

109. *Id.* at 555.

110. 720 ILL. COMP. STAT. 5/26.5-1.

111. *Id.* at 5/12-6.

112. *Id.*

2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 847

course of conduct directed at a specific person, and he . . . knows or should know that this course of conduct would cause a reasonable person to fear for his or her safety.”<sup>113</sup> The Illinois statute explicitly notes: “Stalking generally refers to a course of conduct, not a single act.”<sup>114</sup> Moreover, the statute defines “contact” as “any contact with the victim, that is initiated or continued without the victim’s consent, or that is in disregard of the victim’s expressed desire that the contact be avoided or discontinued.”<sup>115</sup>

In sum, despite some criminal remedies in existence, street harassment victims remain largely unprotected, which is a serious societal problem because street harassment is “an invasion of privacy, a disturbance of peace, sexual harassment, and a slippery slope towards a possible assault or abuse, either physically or mentally. [It] isn’t a feminist issue. It’s a societal problem” that is worthy of proper redress under the law.<sup>116</sup>

### III. ANALYSIS

This Part argues that the widespread economic, emotional, and psychological effects that street harassment has on its victims as well as the current lack of sufficient criminal remedies warrant implementation of a criminal Safe Spaces Statute in Illinois. This Part further argues that implementing legislation is the best approach to ending street harassment. Lastly, this Part addresses the countervailing arguments against the adoption of a Safe Spaces Statute, ultimately concluding, however, that a Safe Spaces Statute is necessary to end street harassment.

Justice Brandeis once stated: “Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.”<sup>117</sup> Unfortunately, despite a history replete with instances of reported harassment, the pervasive occurrences of street harassment today, and the detrimental effects it has on victims, the law simply overlooks this serious issue and, in essence, teaches everyone to live with the harms that stem from it.<sup>118</sup>

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113. 740 ILL. COMP. STAT. 21/10 (2012).

114. *Id.* at 21/5.

115. *Id.* at 21/10.

116. J.J. Colagrande, *Catcalling and Street Harassment Should Absolutely Be a Crime*, HUFFINGTON POST, [http://www.huffingtonpost.com/jj-colagrande/street-harassment-crime\\_b\\_6165166.html](http://www.huffingtonpost.com/jj-colagrande/street-harassment-crime_b_6165166.html) (last updated Jan. 19, 2015).

117. *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting), *overruled* by *Katz v. United States*, 389 U.S. 347 (1967).

118. *See* Bowman, *supra* note 2, at 518 (arguing that the law simply ignores events that predominantly affect women).

Deborah Tuerkheimer, Professor of Law at Northwestern Pritzker School of Law, explained that we turn to our legal system because “we have hope and faith that it will affect our lives and our society for the better.”<sup>119</sup> Although controversial, there are strong arguments in favor of criminalizing street harassment.<sup>120</sup> For example, a criminal street harassment law would prohibit uninvited harassing speech and, although not fully realized, help combat other forms of violence.<sup>121</sup> As such, a radical reshaping of the law is in order, and Illinois is the perfect place to begin paving the path for implementing a solution to the harassment that takes place on city streets every day.

### A. *Street Harassment's Widespread Effects*

Street harassment limits victims' access to public places due to fear, humiliation, and a declined comfort level.<sup>122</sup> Consequently, street harassment often has harmful and lasting impacts on victims.<sup>123</sup>

#### 1. *The Public Sphere Is Full of Fear: Psychological and Emotional Effects of Street Harassment*

“The idea that only physical injuries actually hurt provides a hopelessly inauthentic account of humanity.”<sup>124</sup> The failure of the law to protect individuals from lewd comments, inappropriate gestures, as well as unwelcomed and sexualized looks reinforces the message that

119. Deborah Tuerkheimer, *Street Harassment as Sexual Subordination: The Phenomenology of Gender-Specific Harm*, 12 WIS. WOMEN'S L.J. 167, 206 (1997). Tuerkheimer noted that “when we reveal the injustices of existing legal doctrine and reshape this doctrine to reflect our needs, . . . when we clarify our relationship to law, and when we restructure social norms—we are in the realm of law.” *Id.*

120. See, e.g., Laura Beth Nielsen, Opinion, *Street Harassment Law Would Restrict Intimidating Behavior*, N.Y. TIMES, <http://www.nytimes.com/roomfordebate/2014/10/31/do-we-need-a-law-against-catcalling/street-harassment-law-would-restrict-intimidating-behavior> (last updated Nov. 3, 2014, 11:10 AM) (arguing that this would be consistent with First Amendment jurisprudence).

121. *Id.*; see also Katie Gonzalez, *Why the US Should Take a Page from Egypt and Criminalize Catcalls*, ELITE DAILY (June 19, 2014, 3:32 PM), <http://elitedaily.com/news/politics/us-criminalize-cat-calling/638260/> (explaining that even if street harassers believe their behavior is “innocent,” allowing this form of harassment to go unpunished breeds the sort of behavior that encourages objectification of individuals and tells certain men that they have the right to harm women and sexually violate them).

122. Bowman, *supra* note 2, at 539.

123. Bowman, *supra* note 2, at 534 n.81 (noting that there are women who like being catcalled or whistled at by people on the street but that this does not outweigh the harm caused by harassment); Tuerkheimer, *supra* note 119, at 202 (explaining how the lack of legal remedies shapes our understanding of street harassment and how if street harassment were legally defined to merely include comments such as “nice ass” that “denigrated” an individual's body, it “would likely be socially constructed as ‘harmless’”).

124. Heben, *supra* note 15, at 201 (quoting Nancy Levit, *Ethereal Torts*, 61 GEO. WASH. L. REV. 136, 179 (1992)).

2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 849

U.S. society accepts objectification of marginalized groups.<sup>125</sup> Street harassment victims are, in essence, dehumanized, and because no specific law targeting this sort of sexual harassment exists (at least in Illinois), victims are taught to accept, endure, and simply ignore the harassment.<sup>126</sup>

The psychological and emotional effects of street harassment can range from mere annoyance to extreme, penetrating fear.<sup>127</sup> Beth Livingston, an assistant professor at Cornell University, explained that emotions ranging from fear, anxiety, anger, shame, and helplessness are common among street harassment victims.<sup>128</sup> Based on her research, Livingston noted: “These sorts of emotions—particularly when experienced day after day—can become paralyzing. . . . It is incredibly likely that, as with many other negative emotional experiences, the impact can accumulate over time, leading to behavioral and health outcomes that we should all be concerned about.”<sup>129</sup>

Furthermore, street harassment is positively correlated with self-objectification, which, in turn, can lead to an assortment of mental health problems.<sup>130</sup> Self-objectification is a process by which individuals begin to think of and view their bodies as objects for the pleasure or desire of others.<sup>131</sup> Research has shown that self-objectification is positively related to negative behavioral and emotional outcomes, such as depression, anxiety, and eating disorders.<sup>132</sup> It can also teach individuals to “associate their bodies with fear and humiliation. . . . [which] may also interfere with [their] ability to be comfortable with [their] sexuality.”<sup>133</sup> Women are not the only ones who experience these feelings; male street harassment victims also reported feeling unwelcome and uncomfortable in public.<sup>134</sup>

125. See Laniya, *supra* note 6, at 103.

126. “The injured [person] is dehumanized and is taught by these continual experiences to associate emotions of humiliation and powerlessness with her identity as a sexual being.” *Id.*

127. Bowman, *supra* note 2, at 535.

128. KEARL, *supra* note 8, at 10 (quoting an interview with Beth Livingston, Assistant Professor, Cornell University (Apr. 2014)).

129. *Id.* (second alteration in original) (quoting an interview with Beth Livingston, Assistant Professor, Cornell University (Apr. 2014)).

130. Kimberly Fairchild & Laurie A. Rudman, *Everyday Stranger Harassment and Women’s Objectification*, 21 SOC. JUST. RES. 338, 343 (2008).

131. Kathryn Stamoulis, “Hey Baby” Hurts, PSYCHOL. TODAY (Aug. 19, 2011), <http://www.psychologytoday.com/blog/the-new-teen-age/201108/hey-baby-hurts>.

132. KEARL, *supra* note 8, at 10.

133. Bowman, *supra* note 2, at 538.

134. Patrick McNeil, *A Type of Public Harassment We Need To Talk About More*, HUFFINGTON POST, [http://www.huffingtonpost.com/patrick-mcneil/a-type-of-public-harassme\\_b\\_5184159.html](http://www.huffingtonpost.com/patrick-mcneil/a-type-of-public-harassme_b_5184159.html) (last updated June 21, 2014, 5:59 PM). A man from Chicago shared his experiences with street harassment, stating that as a daily rider of the Chicago Transit Authority’s

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Additionally, “[individuals] who are victims of mild forms of [street] harassment may understandably worry whether a harasser’s conduct is merely a prelude to a violent sexual assault.”<sup>135</sup> According to the Centers for Disease Control and Prevention, one in five women and one in seventy-one men have been sexually abused.<sup>136</sup> Consequently, street harassment can often serve as a trigger, bringing those individuals back to their abusive experiences, which can be especially upsetting and emotionally challenging.<sup>137</sup> Kearn’s nationwide study found that 68% of women and 48% of men reported being either very, or at least somewhat, concerned that verbal forms of street harassment would turn physical.<sup>138</sup> The fear sparked by street harassment also likely interferes with individuals’ mobility rights.<sup>139</sup> In a survey conducted by *Ms. Magazine* in the early 1990s, approximately one-half of the female respondents stated that, on at least one occasion, they had not left their homes because they were afraid to go outside.<sup>140</sup> Furthermore, 27% of men and 24% of women ceased going to the locations where prior harassment occurred, which caused victims to alter their normal travel routes.<sup>141</sup>

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trains, he “constantly feel[s] uncomfortable when there are older men making suggestive gestures at [him], regardless of the time of day or location.” *Id.* He further explained that in some neighborhoods, he feels “constantly unwelcome, mostly because there are a large number of men who make obscene gestures at me or check me out so thoroughly that I feel violated.” *Id.*

135. *Ellison v. Brady*, 924 F.2d 872, 879 (9th Cir. 1991).

136. CTNS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 1 (2011) [hereinafter CDC 2010 SUMMARY REPORT], [http://www.ihollaback.org/wp-content/uploads/2012/06/NISVS\\_Report2010.pdf](http://www.ihollaback.org/wp-content/uploads/2012/06/NISVS_Report2010.pdf).

137. KEARL, *supra* note 8, at 20. Although it is hard to determine how many rape or domestic violence victims are also victims of street harassment, the alarming statistics make the possibility highly foreseeable. CDC 2010 SUMMARY REPORT, *supra* note 136, at 17–26; see KEARL, *supra* note 8, at 20 (explaining that harassed individuals fear that the harassment will escalate).

138. KEARL, *supra* note 8, at 20. In Los Angeles, a young woman found herself switching train cars to avoid a group of men who were verbally harassing her. Emily Smith, *Hey Baby! Women Speak Out Against Street Harassment*, CNN (Oct. 6, 2012, 2:02 PM), <http://www.cnn.com/2012/10/06/living/street-harassment/>. The woman relocated to an empty car with only one male passenger inside. *Id.* The man sat down next to her and began flirting with her to which the woman responded: “please leave me alone.” *Id.* The man quickly became irate and very distressed; he stood up, punched the walls of the train car, shouted sexual threats, and then threatened to shoot the woman. *Id.* This is just one among many stories of street harassment, which demonstrates the fear victims undergo during an encounter.

139. Bowman, *supra* note 2, at 520.

140. Heben, *supra* note 15, at 204 (citing Brenda Seery & Michelle Clossick, *Violence Survey: What You Told Us*, *Ms. MAG*, Mar.–Apr. 1991, at 37).

141. *Id.*; see Laniya, *supra* note 6, at 107 (noting that street harassment limits movement and often causes victims to feel as though they cannot go out at night). Laniya stated that to escape and feel protected from harassment, women feel as though they must travel with men or in groups, which restricts their autonomy by limiting their ability to go to a place alone if they so desire. *Id.*

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2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 851

“Street harassment is a symptom of . . . inequality, and it keeps harassed persons from fully participating and thriving in the world.”<sup>142</sup> A vast majority of LGBT individuals, particularly men, have stated that they sometimes, often, or always feel unwelcome in public due to their sexual orientation.<sup>143</sup> For men and women who are not yet completely comfortable with their sexual orientation, street harassment can be even more harmful because “[i]nternally reconciling a non-normative sexual orientation and simultaneously being approached because of the identity you haven’t yet accepted isn’t easy.”<sup>144</sup> In addition to all of these psychological and emotional impacts, street harassment can also have harsh economic consequences.

## 2. *Economic Effects*

Street harassment can have a profound impact on a person’s life, including one’s economic efficiency.<sup>145</sup> According to a 2008 study conducted by Stop Street Harassment, of the 811 women participants, 19% stated that they had moved, at least one time, due to street harassers in the area, and 9% stated they had changed jobs, at least once, for the same reason.<sup>146</sup> Monique, a Chicago resident, is one of those individuals.<sup>147</sup> As Monique was walking home from an “L” station, approximately eight men approached and surrounded her on the street and described what they would “like to do to her.”<sup>148</sup> Shaken by the incident, which was not the first, Monique decided to not only switch jobs but to relocate to an entirely different neighborhood to avoid the constant harassment she faced.<sup>149</sup> Further, street harassment, also impedes individuals’ attempts to engage in careers involv-

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142. Laniya, *supra* note 6, at 107.

143. Lauren McEwen, *New Study Suggests Street Harassment Is Widespread*, WASH. POST, June 4, 2014, <http://www.washingtonpost.com/blogs/she-the-people/wp/2014/06/04/new-study-suggests-street-harassment-is-widespread/>. A global survey of 331 gay and bisexual men revealed that 71% reported having to constantly assess their surroundings when in public, 69% avoided specific neighborhoods because of street harassment, and 59% went as far as to change their routes. *Why Stopping Street Harassment Matters*, STOP STREET HARASSMENT, <http://www.stopstreetharassment.org/about/what-is-street-harassment/why-stopping-street-harassment-matters/> (last visited Sept. 2, 2015).

144. McNeil, *supra* note 134.

145. See *Why Stopping Street Harassment Matters*, *supra* note 143.

146. *Id.* But see KEARL, *supra* note 8, at 21 (noting that only 4% of women and men made a significant life decision, such as quitting a job or moving neighborhoods, due to street harassment).

147. Holly Kearl, *Stop Commuter Harassment*, FORBES (July 13, 2010, 6:00 PM), <http://www.forbes.com/2010/07/13/sexual-harassment-women-commuter-forbes-woman-leadership-workplace.html>.

148. *Id.*

149. *Id.*

ing outdoor work in public spaces, such as street vending or construction work.<sup>150</sup> Moreover, due to the fear of walking the streets alone, individuals spend even more money avoiding street harassers by paying for alternative modes of transportation, such as spending money to take a taxi or purchasing a vehicle.<sup>151</sup>

Street harassment also affects economic opportunities in less obtrusive ways. For example, victims may not be able to concentrate on projects at work because they are disturbed by the obscene gesture a stranger directed toward them on their morning commute, or they may not have the confidence to perform a large presentation because their self-worth has been diminished by sexualized comments.<sup>152</sup> Street harassment has also been linked to lower academic achievement, which studies show often leads to lower economic success.<sup>153</sup>

All of these effects impact individuals' constitutional liberty rights. In turn, this limited mobility affects individuals' economic efficiency. Street harassment's effect on individuals' economic means demonstrates a tangible measurement of how street harassment impacts society rather than solely focusing on the psychological or emotional impacts it has on victims. Individuals have been forced to endure street harassment for far too long without any forms of legal redress available, and there is no better time than now to make a change by recognizing street harassment as its own criminal offense.

*B. Specific Legislation Targeting Street Harassment Is Needed  
Because Current Illinois Criminal Laws Are Not Typically  
Applicable to Street Harassment's Most Prevalent  
Behaviors*

As discussed *supra*, there are a few laws in Illinois, such as those addressing assault and intimidation, that street harassment victims could use to seek legal redress for the harms done to them by street

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150. Deborah M. Thompson, "The Woman in the Street," *Reclaiming the Public Space from Sexual Harassment*, 6 *YALE J.L. & FEMINISM* 313, 323 (1994). One study showed that women who engaged in traditionally male-dominated careers, such as construction and street vending, were faced with "hostile, threatening, and sexual remarks and actions [from customers and men on the streets]." *Id.* (alteration in original) (quoting Roberta M. Spalter-Roth, *Vending on the Streets: City Policy, Gentrification, and Public Patriarchy*, in *WOMEN AND THE POLITICS OF EMPOWERMENT* 272, 280 (Ann Bookman & Sandra Morgen eds., 1988)).

151. Holly Kearl, *More Research Needed To Help Prevent Street Harassment*, *INST. FOR WOMEN'S POL'Y RES.: BLOG* (Apr. 8, 2011), <http://www.iwpr.org/blog/2011/04/08/more-research-needed-to-help-prevent-street-harassment/>.

152. *See id.*

153. *See Stamoulis, supra* note 131.

## 2016] ILLINOIS STREET HARASSMENT LEGISLATION 853

harassers.<sup>154</sup> However, due to the nature of street harassment's most prevalent behaviors, victims will face an uphill battle relying on these laws. The rigid statutory elements required by current criminal laws leave most street harassment victims without any legal protection.<sup>155</sup> Currently, only the most intrusive behaviors of street harassment, such as groping, stalking, or soliciting a sexual act, can be successfully combatted through criminal laws.<sup>156</sup> However, the majority of acts committed by street harassers—such as sexualized comments directed toward a victim, comments referring to an individual's physical appearance, or sexualized sounds like catcalls, sexualized grunts, or kissing noises, are not eligible for redress because the current laws are too narrowly defined.<sup>157</sup> Despite the law's failure to recognize the harms caused by many street harassment behaviors, these acts are not trivial.<sup>158</sup> "They are frightening and threatening whispered messages of power and subjection. They are, in short, assaults."<sup>159</sup> Unfortunately under the eyes of the law, these actions are not deemed as such.

### 1. Assault

On its face, an assault claim may appear to be a promising avenue for a victim to seek legal redress for street harassment; however, as Bowman and Heben noted, this approach presents several challenging obstacles.<sup>160</sup> The elements of assault typically require a finding of intent on the part of the harasser.<sup>161</sup> Many street harassers claim (or at least do not admit) that they did not act with intent to anger or humili-

154. See, e.g., 720 ILL. COMP. STAT. 5/12-1 (2012) (defining assault); *id.* at 5/12-6 (defining intimidation).

155. Bowman, *supra* note 2, at 548–71 (addressing the current legal remedies that exist for street harassment victims and their shortcomings); see also Heben, *supra* note 15, at 206 ("Thus far, the law does not address the issue of street harassment.")

156. In Illinois, solicitation of a sexual act is defined as "[a]ny person who offers a person not his or her spouse any money, property, token, object, or article or anything of value for that person or any other person not his or her spouse to perform any act of sexual penetration." 720 ILL. COMP. STAT. 5/11-14.1. If a street harasser gropes or touches a victim, in any way, the harasser could be sued for battery. *Id.* at 5/12-3. In Illinois, battery is defined as bodily harm or any physical contact of an insulting or provoking nature. *Id.*

157. For a detailed explanation of why current criminal laws typically fail to provide victims with a proper remedy, see Bowman, *supra* note 2, at 549–69. For example, Bowman noted that there are seven common obstacles for victims attempting to sue their harassers for assault. *Id.* at 549.

158. Boateng, *supra* note 47, at 8.

159. *Id.*

160. See, e.g., *id.* at 549; Heben, *supra* note 15, at 215 ("We live in a society where even minor thefts and assaults regularly go unreported. People believe that nothing can be done to remedy many harms.")

161. Bowman, *supra* note 2, at 552 (citing RESTATEMENT (SECOND) OF TORTS § 21 (AM. LAW INST. (1965))).

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ate the victim.<sup>162</sup> Studies have corroborated this and show that only 15% of street harassers admit that they intended to anger or humiliate victims.<sup>163</sup> As Heben noted, the subjective nature of street harassment and the harm that victims endure makes the intent issue one of particular importance.<sup>164</sup> For street harassment victims to state a successful assault claim, “there must be no intent requirement other than the intent to ‘say the words or engage in conduct.’”<sup>165</sup>

Additionally, street harassment victims seeking legal redress under an assault theory will likely struggle to meet the objective standard for a “reasonable apprehension” of harm. The question then becomes: What is deemed reasonable under the eyes of the law? Not everyone finds street harassment to be a problem;<sup>166</sup> thus, unless courts are willing to adopt a “reasonable woman” or “reasonable victim” standard when addressing street harassment cases brought under the Illinois assault statute, many victims will unfortunately fail when bringing legal claims. Furthermore, courts are reluctant to impose liability for assault based on “mere words.”<sup>167</sup> In sum, assault claims for street harassment place an insurmountable burden on the victim to prove all

162. *Id.* Holly Kearn noted that street harassers generally engage in this type of conduct as a form of self-entitlement. Holly Kearn, *The Real Question Is Why Do Men Street Harass?*, STOP STREET HARASSMENT (Oct. 21, 2009), <http://www.stopstreetharassment.org/2009/10/the-real-question-is-why-do-men-street-harass/>.

163. Bowman, *supra* note 2, at 552 (citing Cheryl Benard & Edit Schlaffer, *The Man in the Street: Why He Harasses*, in *FEMINIST FRAMEWORKS: ALTERNATIVE THEORETICAL ACCOUNTS OF THE RELATIONS BETWEEN WOMEN AND MEN* 70, 71 (Alison M. Jaggar & Pala. S. Rosenthal eds., 2d ed. 1984)). Dr. Shira Tarrant noted that individuals engage in street harassment because U.S. culture tells people, particularly men, that putting someone else down is a way to prove their masculinity or superiority. KEARN, *supra* note 8, at 22 (quoting Shira Tarrant, PhD, California State University). Furthermore, pop culture images—things seen and heard in music, television, videos, and movies—tell men and young boys that “they have permission to think about women as sexually available. . . . Our culture sends chronic messages . . . that they are entitled to access to other people’s bodies.” *Id.* (quoting Shira Tarrant).

164. Heben, *supra* note 15, at 215.

165. *Id.* (quoting Bowman, *supra* note 2, at 575).

166. *See supra* note 45 and accompanying text. (discussing those who view street harassment as harmless and believe that these behaviors constitute nothing more than mere compliments).

167. Bowman, *supra* note 2, at 552 (citing *Reed v. Maley* 74 S.W. 1079, 1082 (Ky. 1903) and *Prince v. Ridge*, 66 N.Y.S. 454, 455 (Sup. Ct. 1900) (mem.)); Kavita B. Ramakrishnan, *Inconsistent Legal Treatment of Unwanted Sexual Advances: A Study of the Homosexual Advance Defense, Street Harassment, and Sexual Harassment in the Workplace*, 26 *BERKELEY J. GENDER L. & JUST.* 291, 323 (2011) (noting that for assault claims, mere words are not actionable even if the words incite a fear of rape or further harm in the victim). Richard Delgado explored the issue of not recognizing “mere words” as a basis for legal relief in the context of racial epithets and noted that mere words “whether racial or otherwise, can cause mental, emotional, or even physical harm to their target, especially if delivered in front of others or by a person in a position of authority.” Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 *HARV. C.R.-C.L. L. REV.* 133, 143 (1982) (footnote omitted). Many of Delgado’s arguments apply to the context of street harassment.

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2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 855

elements and typically fail to provide the necessary relief in most instances of street harassment.<sup>168</sup>

### 2. *Harassing and Obscene Communications*

As Bowman noted, victims have also sought legal redress for street harassment “under state statutes or municipal ordinances that prohibit harassment” in public.<sup>169</sup> Unfortunately, for individuals harassed on Illinois streets or in other public places, this type of legal remedy is not available because the Illinois Criminal Code only refers to modes of harassment conducted through writing, electronic communication, or telephone.<sup>170</sup> Thus, many instances of public, verbal, face-to-face harassment are not protected. Regardless, even if Illinois had a general harassment statute, street harassment victims are often unsuccessful when seeking legal redress under these statutes as well.<sup>171</sup>

### 3. *Intimidation*

Another approach that typically fails to provide street harassment victims with the proper legal protection and remedies involves charging the street harasser under the respective state’s criminal code for intimidation; however, seeking legal redress for street harassment under the intimidation provision of the Illinois Criminal Code will likely prove ineffective. Illinois’s intimidation statute places the onus of action on the victim.<sup>172</sup> Further, the intimidation provision protects victims from threats made to intimidate the victim into doing or not doing something.<sup>173</sup> Thus, a street harassment victim would only be protected under the intimidation provision if the harasser made a threat that included an ultimatum, such as “if you do/don’t do this, I will . . . .”<sup>174</sup> However, many instances of street harassment do not include this type of threat but, rather, include a sexually objectifying

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168. Bowman, *supra* note 2, at 552.

169. *Id.* at 555.

170. 720 ILL. COMP. STAT. 5/26.5-1 (2012).

171. Many general harassment statutes require proof that the harasser acted with an “intent to ‘harass, annoy or alarm[,]’” which is a difficult element to prove. *See* Bowman, *supra* note 2, at 556 (quoting 18 PA. CONS. STAT. ANN. § 2709 (1983)). However, even if a victim was successful in proving the harasser’s intent, she would still need to prove that the harasser “engage[d] in a course of conduct or repeatedly commit[ed] acts which alarm or seriously annoy.” *Id.* at 557 (quoting 18 PA. CONS. STAT. ANN. § 2709).

172. *People v. Casciaro*, 2015 Il App (2d) 131291, ¶ 115 (“[w]hen the State cannot meet its burden of proof, the defendant must go free” and that intimidation requires proof of a threat of physical harm at some time).

173. HAGERTY ET AL., *supra* note 7, at 90.

174. *Id.* (alteration in original).

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comment, such as “how much do you charge,”<sup>175</sup> “[h]ey baby, you want some of this,” or “nice ass.”<sup>176</sup> Unfortunately, despite the fact that street harassment victims are intimidated by the comments, gestures, or looks directed at them by harassers, the law views intimidation in a way that is inconsistent with how street harassment victims are both psychologically and economically affected.<sup>177</sup> Consequently, Illinois’s intimidation law fails to provide street harassment victims with the necessary and appropriate protection.

#### 4. *Stalking*

Stalking is another criminal remedy that, despite appearing effective on the surface, typically fails street harassment victims. Although some states permit an individual to file a stalking claim after one instance of being followed, this is not the norm, and individuals are required to prove a “course of conduct.”<sup>178</sup> Illinois is one of those states that requires victims to prove that the alleged stalker has engaged in a repeated course of conduct.<sup>179</sup> This repeated course of conduct requirement typically makes stalking laws an inadequate remedy for street harassment victims because the repeated abuse may not come from the same harasser.<sup>180</sup> However, stalking laws may prove helpful to victims who frequent the same locations on a daily basis and come into contact with the same harassers because an established and repeated course of conduct could be more easily proven.<sup>181</sup>

In sum, existing laws in Illinois typically fail to provide adequate protection to street harassment victims unless the harassment fits neatly into the exact mold and language of the various criminal code provisions.<sup>182</sup> Thus, until a law is enacted that specifically targets

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175. “How Much Do You Charge?,” STOP STREET HARASSMENT (Oct. 30, 2014), <http://www.stopstreetharassment.org/category/stories/>.

176. Smith, *supra* note 138.

177. “Street harassment is a form of discrimination that plays out through intimidation, assumed sexual availability, assumed inferiority or sexism, and gender-based violence, and the impacts on the individual are multiple.” HOLLABACK!, HOLLABACK! 101: AN EDUCATOR’S GUIDE TO STREET HARASSMENT (2014), [http://www.ihollaback.org/wp-content/uploads/2014/02/Educators\\_guide\\_FINAL\\_.pdf](http://www.ihollaback.org/wp-content/uploads/2014/02/Educators_guide_FINAL_.pdf).

178. HAGERTY ET AL., *supra* note 7, at 6–7 (noting that Arkansas, Colorado, Georgia, Kentucky, Minnesota, and Pennsylvania only allow an individual to report someone after being followed).

179. 740 ILL. COMP. STAT. 21/10 (2012). Consequently, the street harassment victim must encounter the street harasser multiple times because under Illinois law: “Stalking generally refers to a course of conduct, not a single act.” *Id.* at 21/5.

180. See *Legal*, HOLLABACK!, [http://www.ihollaback.org/resources/legal/#\\_ftn6](http://www.ihollaback.org/resources/legal/#_ftn6) (last visited Sept. 3, 2015).

181. *Id.*

182. See *supra* notes 154–81 and accompanying text.

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## 2016] ILLINOIS STREET HARASSMENT LEGISLATION 857

prevalent street harassment behaviors, victims will be left unprotected, and city streets will remain a catcalling warzone.

*C. An Effective Remedy for Ending Street Harassment in Illinois: A “Safe Spaces” Statute Proposal*

Reverend Martin Luther King, Jr. once stated: “Law and order exist for the purpose of establishing justice, . . . [and] when they fail in this purpose, they become the dangerously structured dams that block the flow of social progress.”<sup>183</sup> Yet, how can there be justice when there is no law? Because the legal remedies in existence today fail to provide protection to street harassment victims, Illinois should create a Safe Spaces Statute that would outline the actions constituting street harassment, impose a penalty for those who violate the statute, provide victims the protection they are currently not afforded, and aid in the general deterrence of street harassment.<sup>184</sup> To draft this legislation, Illinois should rely on previous recommendations from legal scholars, international laws, and the Kansas City anti-harassment ordinance<sup>185</sup> in addition to implementing its own ideas and policies.

Before drafting the particular legislation, it is important to outline the statute’s goals.<sup>186</sup> Based on prior recommendations for street harassment statutes and recent advances in this area, the Illinois Safe Spaces Statute must: (1) incorporate a reasonable victim standard for determining (a) the offensiveness of the behavior; (b) the victim’s reaction to the behavior; and (c) the effects of the harassment;<sup>187</sup> (2) eliminate the “intent” element, unless intent only refers to the harasser’s intent to speak the words or engage in the various actions or gestures;<sup>188</sup> (3) treat all individuals, perpetrators, and victims in a gender neutral fashion; (4) apply to behaviors not covered by current criminal remedies; (5) not require the behavior to be repetitive;<sup>189</sup> (6) provide penalties for first, second, and third (or more) time offenders;

183. David B. Oppenheimer, Opinion, *King’s Easter Epistle on Civil Disobedience*, L.A. TIMES, Mar. 29, 2013, <http://articles.latimes.com/2013/mar/29/opinion/la-oe-oppenheimer-martin-luther-king-letter-from-a-20130326> (quoting Rev. Martin Luther King, Jr.).

184. See HAGERTY ET AL., *supra* note 7, at 91.

185. KAN. CITY, MO., ORDINANCES ch. 50, art. VI, § 50-205 (2014).

186. Bowman, *supra* note 2, at 574.

187. See *id.* Bowman suggested that a “reasonable woman” standard should be adopted. *Id.* However, women are not the only street harassment victims; thus, to ensure all victims are protected, a reasonable victim standard should be applied in the Illinois Safe Spaces Statute.

188. Heben, *supra* note 15, at 213 (citing Bowman, *supra* note 2, at 575).

189. Bowman, *supra* note 2, at 554–55.

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(7) act as a general deterrent;<sup>190</sup> and (8) be more easily accessible for victims to pursue.<sup>191</sup>

### 1. *Elements of the Illinois Safe Spaces Statute*

Although defining street harassment is a difficult task due to the vast array of behaviors that comprise it, the term must be given a precise, gender-encompassing legal definition.<sup>192</sup> The majority of scholars have previously defined “street harassment” through a feminist jurisprudence lens by which women are victims and men are perpetrators.<sup>193</sup> Although it is true that women make up the majority of victims, to fully address the problems caused by street harassment and ensure equal protection of the law, all genders, sexes, and sexual orientations must be incorporated into the definition of street harassment. Therefore, the proposed Safe Spaces Statute must encompass: (1) a precise definition of street harassment; (2) a different standard for intent; and (3) punishment for offenders.

#### a. A Precise Street Harassment Definition

To truly combat street harassment in its entirety, gender stereotypes must be thrown by the wayside to ensure that policy makers fully comprehend the harm street harassment causes victims and society as a whole—not just women.<sup>194</sup> Although extremely unfortunate, unjust, and unwarranted, “the law fails to take seriously events which affect women’s lives.”<sup>195</sup> Therefore, in drafting the proposed Safe Spaces Statute, street harassment must be phrased in a gender neutral way.<sup>196</sup> To change the minds of street harassers, society’s mindset regarding street harassment must first be changed.<sup>197</sup>

190. Heben, *supra* note 15, at 213 (citing Bowman, *supra* note 2, at 575–76) (suggesting that punitive damages be imposed). R

191. Bowman noted that proposed remedies must be “worth the trouble and expense to pursue.” Bowman, *supra* note 2, at 574. R

192. *Id.* at 523–24. Although it may be difficult, concretely defining street harassment is important so that all victims, regardless of gender, race, or sex, will know what actions constitute street harassment and can confidently report those actions to law enforcement. *See supra* notes 29–48 and accompanying text (explaining the various proposed definitions).

193. Laniya, *supra* note 6, at 100 (arguing that men are also harassed by women); *see, e.g.*, Bowman, *supra* note 2, at 575; Leonardo, *supra* note 6, at 51–52. R

194. *See* Boateng, *supra* note 47, at 3. R

195. Bowman, *supra* note 2, at 518. R

196. *See* Boateng, *supra* note 47, at 5–6 (arguing that street harassment must be framed in a gender neutral way). “Categorizing men as the violent, malicious, aggressors and women as the meek submissive passerby suggest implicit messages that are not being addressed by the feminist writers that have commented on street harassment as an issue of feminist concern.” *Id.*

197. *Id.* at 12.

## 2016] ILLINOIS STREET HARASSMENT LEGISLATION 859

Through incorporating various elements of legal scholars' prior definitions, the new definition of street harassment will better serve the needs of all victims. Therefore, the Illinois Safe Spaces Statute should define street harassment as follows:

Street Harassment occurs when one or more persons accost an individual, or group of individuals, of any sex, gender, race, or sexual orientation in a public place by means of intruding, or attempting to intrude on, the individual's liberty rights to bodily integrity and mobility in an unwelcomed manner. The means of which include: (1) sexually explicit language directed at the individual; (2) comments, remarks, or noises meant to sexualize an individual's body or evaluate an individual's physical appearance; (3) comments regarding an individual's sexual orientation or race; (4) profanities based on gender or sex; (5) sexually explicit gestures; and (6) cat-calls (whistles meant as a way of attracting attention to oneself for purposes of sexual objectification or gratification).

For purposes of this definition, "liberty to bodily integrity and mobility" includes: (1) feeling secure, safe, and uninterrupted in one's own body and (2) feeling secure, safe, and uninterrupted in public places.

For purposes of this definition, "public place" means any place in which the general public has access, including but not limited to: (1) streets; (2) sidewalks; (3) public parks; (4) public transportation and common carriers; and (5) public buildings.<sup>198</sup>

b. Intent

To effectively provide a remedy for street harassment, the Safe Spaces Statute must exclude a general intent requirement.<sup>199</sup> The only intent required under the statute should be proof that the harasser meant to "say the words or engage in the conduct."<sup>200</sup> By framing intent in this manner, the Safe Spaces Statute will protect victims in a way that current criminal and tort laws do not.<sup>201</sup> Additionally, framing intent in a less general way still incorporates a *mens rea* requirement into the statute, which is important because criminal statutes that lack this requirement are generally disfavored.<sup>202</sup>

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198. This proposed Safe Spaces Statute expands on Bowman's 1993 model statute. See Bowman, *supra* note 2, at 575–76.

199. Heben, *supra* note 15, at 213 (citing Bowman, *supra* note 2, at 575).

200. *Id.* (quoting Bowman, *supra* note 2, at 575).

201. See *id.* (explaining the importance of not implementing a general intent requirement in street harassment legislation).

202. *Id.* ("[C]riminal offenses requiring no mens rea have a 'generally disfavored status.' . . . [T]o interpret the statute otherwise would be to criminalize a broad range of apparently innocent conduct." (quoting *Liparota v. United States*, 471 U.S. 419, 426 (1985))).

## c. Punishment

In her sample piece of legislation, Bowman proposed that street harassment could be treated as a misdemeanor offense punishable by a \$250 fine.<sup>203</sup> In a similar fashion, the recent Kansas City anti-harassment ordinance provides that any person convicted of violating the ordinance “shall be punished for that violation by a fine of not less than \$50, but not more than \$500 or by imprisonment of not more than 180 days or by both such fine and imprisonment.”<sup>204</sup> The Illinois Safe Spaces Statute should model its punishment after Bowman and the Kansas City ordinance, but it should also increase punishments based on the number of times an individual violates the statute.<sup>205</sup> Framing punishment in this way will grant notice to individuals that the statute exists and will likely enhance general deterrence because the punishments will positively correlate with the number of offenses.<sup>206</sup> Thus, the Illinois Safe Spaces Statute should provide that:

An individual found in violation of the Safe Spaces Statute shall be subject to punishment as follows:

(1) An individual’s first offense in violation of the Safe Spaces Statute shall be subject to a written warning by proper law enforcement authorities.

(2) An individual’s second offense in violation of the Safe Spaces Statute shall result in a \$100 fine.

(3) An individual’s third offense in violation of the Safe Spaces Statute shall result in a criminal misdemeanor charge on his or her criminal record and be punishable by a \$250 fine.

(4) After an individual’s third offense in violation of the Safe Spaces Statute, the individual shall be subject to a \$250 fine per offense and/or imprisonment of up to, but no more than, one-hundred eighty (180) days.<sup>207</sup>

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203. Bowman, *supra* note 2, at 575.

204. KAN. CITY, MO., ORDINANCES, ch. 50, art. VI, § 50-205 (2014); Brent Hugh, *Anti-Harassment Laws for Bicyclists and Pedestrians—Sample Language*, MO. BICYCLE & PEDESTRIAN FED’N. (May 19, 2012, 2:18 PM), <http://mobikefed.org/2012/05/anti-harassment-laws-bicyclists-and-pedestrians-sample-language#kc>.

205. This framework could operate in a similar fashion to the Illinois driving record points system. *See generally*, *DMV Point System in Illinois*, DMV.ORG, <http://www.dmv.org/il-illinois/point-system.php> (last visited Sept. 4, 2015) (providing more information on the DMV point system in Illinois).

206. VALERIE WRIGHT, SENTENCING PROJECT, DETERRENCE IN CRIMINAL JUSTICE: EVALUATING CERTAINTY VS. SEVERITY OF PUNISHMENT 2 (Nov. 2010), <http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf> (explaining that “by increasing the certainty of punishment, potential offenders may be deterred by the risk of apprehension[,]” and how “the severity of punishment may influence behavior if potential offenders weigh the consequences of their actions and conclude that the risks of punishment are too severe”).

207. This Safe Spaces Statute is modeled off of Bowman’s 1993 proposed sample statute. Bowman, *supra* note 2, at 575.

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2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 861

All of these elements, or similar versions of these elements, should be incorporated in the Illinois Safe Spaces Statute to ensure that the proper legal protection is granted to street harassment victims. Furthermore, Illinois cities must be willing to implement more active policing as a further deterrence measure and to alleviate some of the potential reporting issues.<sup>208</sup>

*D. Constitutional Constraints: Arguments For and Against a Safe Spaces Statute*

The sample Safe Spaces Statute proposed *supra*, as well as any street harassment statute that may be enacted in the future, will likely elicit constitutional challenges specifically related to the First Amendment protections governing free speech.<sup>209</sup> As Deborah Tuerkheimer noted: “The claim that street harassment is speech protected by the First Amendment forces us to examine the fundamental protections governing of speech, equality and community.”<sup>210</sup> Although some individuals argue that regulating speech in a public setting would infringe on a person’s First Amendment rights, based on the doctrines of fighting words and low-level speech,<sup>211</sup> most street harassment behavior would not fall within the contours of First Amendment protection.<sup>212</sup>

In some situations, street harassment may be regulated under the fighting words doctrine.<sup>213</sup> Since the nineteenth century, courts have recognized that insults and defamatory words that incite a breach of

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208. See Heben, *supra* note 15, at 215–18, for a more detailed look at the issues with reporting crimes. For example, Heben explained that victims may not report harassment due to law enforcement’s reputation “for failing to take violence against women seriously.” *Id.* Heben also notes that victims may fear that others believe they are lying about the harassment. *Id.*

209. Bowman, *supra* note 2, at 542–48; Tuerkheimer, *supra* note 119, at 204. See generally Chhun, *supra* note 65 (addressing this argument and proposing an expanded definition of “fighting words,” which are not protected under the First Amendment).

210. Tuerkheimer, *supra* note 119, at 204.

211. Fighting words are “words which by their very utterance inflict injury.” Bowman, *supra* note 2, at 576 (quoting *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942)). “Fighting words” is a category of low-level speech, and restrictions on both fighting words and low-level speech are not presumptively unconstitutional. See Kevin Francis O’Neill, *A First Amendment Compass: Navigating the Speech Clause with a Five-Step Analytical Framework*, 29 Sw. U.L. REV. 223, 230–31 (2000) (“There are seven categories of ‘low-level’ speech. Some are utterly unprotected by the First Amendment, while others are less-than-fully protected. The unprotected categories are: (1) advocacy of imminent lawless action, (2) obscenity, (3) child pornography, and (4) fighting words. The less-than-fully-protected categories are: (1) defamatory statements, (2) commercial speech, and (3) lewd, profane, or indecent expression.” (footnotes omitted)).

212. Ramakrishnan, *supra* note 167, at 321–22.

213. Bowman, *supra* note 2, at 544.

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the peace are generally not entitled to First Amendment protection.<sup>214</sup> Statutes prohibiting speech that provoke a breach of the peace have been upheld by courts in the past.<sup>215</sup> In *Chaplinsky v. New Hampshire*,<sup>216</sup> the U.S. Supreme Court noted: “There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem.”<sup>217</sup> However, courts have also held that “[o]n the public street, or in any other public place, the plaintiff has no right to be alone,”<sup>218</sup> and courts have been hesitant to apply this doctrine to harassment cases due to fear of applying the doctrine in an overly broad or vague manner.<sup>219</sup> However, this does not necessarily mean that the Illinois Safe Spaces Statute will fail all First Amendment objections because “all forms of speech . . . are not entitled to absolute constitutional protection.”<sup>220</sup>

In many instances, street harassment will constitute what has been referred to as “low-value” speech, which subject to minimal scrutiny under the First Amendment.<sup>221</sup> Moreover, street harassment may also constitute slander or defamation.<sup>222</sup> For example, if a harasser calls a woman a “whore” or asks “what’s your price,” one could argue that these statements constitute defamation and, therefore, are not subject to First Amendment protection.<sup>223</sup>

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214. *Id.* at 558–59. See Chhun, *supra* note 65, at 283, for more information regarding the history of the fighting words doctrine.

215. Bowman, *supra* note 2, at 559.

216. 315 U.S. 568 (1942).

217. *Id.* at 571–72.

218. Heben, *supra* note 15, at 210 (quoting William L. Prosser, *Privacy*, 48 CAL. L. REV. 383, 391 (1960)).

219. Bowman provided a detailed analysis of the struggles harassment victims have faced when using the fighting words doctrine as a defense against First Amendment speech. Bowman, *supra* note 2, at 560–62.

220. Thompson, *supra* note 150, at 338. Thompson noted that street harassment often involves “threats, verbal violence, and vulgarity.” *Id.* (footnotes omitted). Courts have generally found that these forms of speech are not entitled to full constitutional protection. See, e.g., *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982) (“The First Amendment does not protect violence.”); *FCC v. Pacifica Found.*, 438 U.S. 726, 747 (1978) (explaining that vulgar, offensive, or shocking speech is not entitled to absolute constitutional protection); *United States v. Shoulberg*, 895 F.2d 882, 886 (2d Cir. 1990) (holding that intimidation of witnesses is not constitutionally protected speech).

221. Bowman, *supra* note 2, at 545 (quoting Cass R. Sunstein, *Pornography and the First Amendment*, 1986 DUKE L.J. 589, 602–08) (noting the distinction between low-value and high-value speech).

222. See *id.* at 544.

223. *Id.* at 544 & 544 n.129 (citing W. PAGE KEETON, DAN B. DOBBS, ROBERT E. KEETON & DAVID G. OWEN, *PROSSER AND KEETON ON THE LAW OF TORTS* § 112, at 792–93 (5th ed. 1984)).

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2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 863

Even if the street harassment does not fall within one of the aforementioned exceptions, the Illinois Safe Spaces Statute could still survive First Amendment scrutiny.<sup>224</sup> In a seminal public forum case, Justice Roberts explained that “[t]he privilege of a citizen of the United States to use the streets and parks for communication . . . must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order.”<sup>225</sup> The notion that street harassment should constitute “free speech” presupposes that individuals should be allowed “to dominate the conversation while other groups suffer in silence.”<sup>226</sup> However, to abide by the First Amendment’s ultimate goal, it “may sometimes . . . [be] necessary to ‘restrict the speech of some elements of our society in order to enhance the relative voice of others.’”<sup>227</sup>

Although Safe Spaces Statutes will be subject to First Amendment restraints, street harassment also impedes a victim’s fundamental right to travel.<sup>228</sup> Courts and scholars agree that the right to travel “encompasses intrastate travel including the right to move freely about one’s neighborhood or town.”<sup>229</sup> Further, courts have noted that “the right to move freely about one’s neighborhood or town . . . is indeed ‘implicit in the concept of ordered liberty’ and ‘deeply rooted in the Nation’s history.’”<sup>230</sup> The right to travel is subject to protection from both private and governmental infringement.<sup>231</sup> Therefore, it arguably follows that a narrowly tailored Safe Spaces Statute, which seeks to protect a person’s right to travel, should withstand First Amendment scrutiny.<sup>232</sup>

*E. Additional Counterarguments and Barriers Against  
Implementing a Safe Spaces Statute*

In addition to the constitutional constraints of implementing a Safe Spaces Statute, individuals may oppose criminalizing street harassment for several other reasons, including the possibility of creating a “police state” and because criminalizing street harassment goes

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224. See Thompson, *supra* note 150, at 344.

225. *Id.* at 345 (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515–16 (1939)).

226. *Id.* at 347.

227. *Id.* at 347 (quoting Owen M. Fiss, *Free Speech and Social Structure*, 71 IOWA L. REV. 1405, 1425 (1986)).

228. *Id.* at 343 (noting that the right to travel argument is applicable to prohibitions on street harassment).

229. *Id.*

230. Thompson, *supra* note 150, at 343 (alterations in original) (quoting *Lutz v. City of York*, 899 F.2d 255, 268 (3d Cir. 1990)).

231. *Id.*

232. *Id.* at 345.

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against the decriminalization movement. Due to recent events involving police misconduct, some individuals are losing trust in the law enforcement system that is supposed to protect them.<sup>233</sup> Additionally, “critics say police are becoming far too militarized.”<sup>234</sup> However, despite this argument, a 2015 poll conducted by Thomson Reuters demonstrated that over 50% of U.S. citizens still trust police officers to be fair and just.<sup>235</sup>

Some opponents may also argue against the criminalization of street harassment because Illinois is currently in the process of decriminalizing other crimes, such as the use of medical marijuana.<sup>236</sup> Moreover, a large reason that Illinois is joining the decriminalization movement is the overcrowded and clogged state jails and prisons.<sup>237</sup> Bruce Rauner, current Governor of Illinois, plans to “reduce the prison population

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233. Jon Campbell, *Cuomo: Police Shootings Create ‘Distrust,’* USA TODAY (July 15, 2015, 7:07 PM), <http://www.usatoday.com/story/news/nation/2015/07/15/cuomo-police-shootings-create-distrust/30212495/> (noting that New York Governor, Andrew Cuomo, believes that “minority communities nationwide feel a sense of distrust in the criminal-justice system after a series of high-profile police killings”); see, e.g., Justin Fenton, *Hundreds at Baltimore Police Station Protest over Man’s Injuries During Arrest*, BALT. SUN, Apr. 18, 2015, <http://www.baltimoresun.com/news/maryland/bs-md-shooting-20150418-story.html> (detailing the Ferguson Riots that ensued after Michael Brown, an eighteen-year-old African-American, was shot by the police); Jeremy Gorner, *Police Mood Appears To Hit a Low Amid Fallout from Laquan McDonald Video*, CHI. TRIB., Feb. 26, 2016, <http://www.chicagotribune.com/news/ct-chicago-cops-mood-frustration-met-20160225-story.html> (explaining how “the city [of Chicago] has buckled under the weight of the scandal and Mayor Rahm Emanuel has struggled to restore public confidence” in the Chicago Police Department); Andrew Schroedter, *Chicago Tops in Fatal Police Shootings Among Big U.S. Cities*, CHI. SUN-TIMES, July 26, 2015, <http://http://chicago.suntimes.com/news/chicago-tops-in-fatal-police-shootings-among-big-u-s-cities/> (“No other police department in any of the 10 most populous cities killed more people from 2010 through 2014 . . .”).

234. Cheryl K. Chumley, *Public Trust in Police Low, Criticism of Militarization Rises: Poll*, WASH. TIMES, Aug. 26, 2014, <http://www.washingtontimes.com/news/2014/aug/26/public-trust-police-low-poll-finds/>.

235. Bill Schneider, *Do Americans Trust Their Cops To Be Fair and Just?: New Poll Contains Surprises*, REUTERS: BLOG (Jan. 15, 2015), <http://blogs.reuters.com/great-debate/2015/01/15/one-third-of-americans-believe-police-lie-routinely/>. With that said, only 30% of minorities and 43% of young people said that they trust the police to be fair and just. *Id.* However, when asked whether they approve of their local police and their job performance, nearly three-quarters of survey respondents stated that they did approve. *Id.* This “[a]pproval [was] high among African-Americans (56%) [and] whites (77%).” *Id.*

236. Jessie Hellmann, *Illinois Senate Passes Marijuana Decriminalization Bill but Plans Changes*, CHI. TRIB., May 22, 2015, <http://www.chicagotribune.com/news/local/politics/ct-illinois-marijuana-decriminalization-met-0522-20150521-story.html> (explaining that the Illinois legislature recently joined the movement to decriminalize the possession of small amounts of marijuana and passed a measure that would bar the arrest for these offenses).

237. *Id.* (“Supporters said the measure would keep low-level drug offenders out of the state’s clogged jails and prisons. Earlier this year, Rauner announced a goal of reducing the state’s prison population by 25% over the next 10 years.”). See generally Editorial Board, Opinion, *Cutting Illinois’ Prison Population the Right Way*, CHI. TRIB., Mar. 6, 2015 [hereinafter *Cutting Illinois’ Prison Population the Right Way*], <http://www.chicagotribune.com/news/opinion/editorials/ct-illinois-budget-prisons-rauner-population-edit-0309-jm-20150306-story.html> (noting that

2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 865

by [25%] over the next decade.”<sup>238</sup> Thus, some individuals may oppose the proposed Safe Spaces Statute due to the possibility of increasing the prison and jail population within the state. However, this argument should not carry much, if any, weight because the only way an individual would be sentenced to jail time under the proposed Safe Spaces Statute is if the harasser violated the statute three or more times. And, even if a street harasser was sentenced to jail time, it would only be for a period of no more than 180 days.

Despite the counterarguments that exist, society relies on the law because “we have hope and faith that it will affect our lives and our society for the better. When we . . . reveal the injustices of existing legal doctrine and reshape [the] doctrine to reflect our needs, . . . we are in the realm of law.”<sup>239</sup> By confronting the pervasive and detrimental effects street harassment continues to have on society, Illinois can begin to foster street harassment victims’ hope and belief in the law and pave a path for other states to follow suit.

#### IV. IMPACT

Practically speaking, implementing a Safe Spaces Statute in Illinois is sure to have its fair share of challenges due to the complexities in reporting, defining street harassment, and balancing constitutional rights; however, the end result will far outweigh any obstacles faced along the way. Rather than continue to ignore this prevalent issue that affects individuals throughout the world, Illinois has the opportunity to confront street harassment head on and improve the current—practically nonexistent—remedies that are in place. By becoming a leading state in the fight against street harassment, Illinois would not only increase safety in its cities but would also help protect individuals’ liberty rights of bodily integrity and mobility. Furthermore, through implementing a Safe Spaces Statute, Illinois would establish itself as one of the leading legal advocates in this area of the law. This Part addresses how Illinois could utilize existing organizations, policies, and programs to garner support for the Safe Spaces Statute and further explains how the Safe Spaces Statute would positively impact individuals’ liberty rights.

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the Illinois prison system currently holds approximately 49,000 inmates despite the fact that the facilities are only designed to hold 32,000 inmates).

238. *Cutting Illinois’ Prison Population the Right Way*, *supra* note 237.

239. Tuerkheimer, *supra* note 119, at 206.

A. *Utilizing Existing Organizations, Policies, and Programs in Illinois To Gain Support for Street Harassment Legislation*

It is clear that current legal remedies consistently fail to protect street harassment victims from continuing abuse.<sup>240</sup> A Safe Spaces Statute would remedy this problem; however, policy makers and government officials must realize the detrimental impacts of street harassment and the harms they cause many Illinois residents. Fortunately, in 2014, street harassment became a topic of conversation across the United States, providing Illinois a platform to work with and expand on.<sup>241</sup> Through involving existing Illinois organizations, such as the Rogers Park Young Women's Action Team and the Chicago Sexual Harassment Office,<sup>242</sup> Illinois can continue this nationwide discussion by educating street harassers and the general public about the effects and harms caused by this form of harassment, which will likely lead to increased support for legislation.<sup>243</sup>

As an effective first step in gaining support for the Safe Spaces Statute, Illinois communities should conduct community safety audits to gather data.<sup>244</sup> The ideal community safety audit should be led by a group of diverse individuals who conduct the audit by walking through a city and evaluating how safe they feel.<sup>245</sup> After conducting the audit, group members would draft a recommendation report,

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240. See *supra* notes 105–16 and accompany text (describing the current legal remedies).

241. Thanks to the Internet and several international street harassment organizations, such as Hollaback! and Stop Street Harassment, street harassment became a national conversation in 2014. Bethonie Butler, *How Street Harassment Became a National Conversation in 2014*, WASH. POST, Jan. 2, 2015, <http://www.washingtonpost.com/blogs/she-the-people/wp/2015/01/02/how-street-harassment-became-a-national-conversation-in-2014/>. Butler discussed several awareness campaigns, such as the “10 Hours of Walking in NYC as a Woman” viral video, that have spread the need for increased awareness regarding street harassment. *Id.* (citing Street Harassment Video, *10 Hours of Walking in NYC as a Woman*, YOUTUBE (Oct. 28, 2014), <https://www.youtube.com/watch?v=B1XGPvbWn0A>) (sparking controversy, this viral video that depicts woman being street harassed while simply walking in New York City has gained more than 42 million views as of March 9, 2016). Campaigns like this will only aid Illinois in proving that street harassment is a prevalent and pervasive problem that needs to be properly addressed.

242. See generally Andrea Gomberg, *Beyond Politics as Usual: The City of Chicago Sexual Harassment Office*, 34 WAKE FOREST L. REV. 27 (1999) (describing how the Chicago Sexual Harassment Office came into being); *Human Resources: Our Structure*, CITY CHI., [http://www.cityofchicago.org/city/en/depts/dhr/auto\\_generated/dhr\\_our\\_structure.html](http://www.cityofchicago.org/city/en/depts/dhr/auto_generated/dhr_our_structure.html) (last visited Nov. 13, 2014) (describing the purpose of the Chicago Sexual Harassment Office).

243. See generally KEARL, *supra* note 8 (providing a relevant discussion of what street harassment is, who it affects, and why it is important to address).

244. *Safety Audits & Surveying*, STOP STREET HARASSMENT, <http://www.stopstreetharassment.org/toolkits/audits/> (last visited Sept. 4, 2015).

245. *How To Lead a Community Safety Audit*, HOLLABACK!, <http://www.ihollaback.org/how-to-lead-a-community-safety-audit/> (last visited Sept. 4, 2015). The makeup of the audit group should reflect the city's economic, ethnic, and sexual diversity. *Id.*

2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 867

which would be sent to legislators and community members in the surrounding area.<sup>246</sup> Similar audits have already been conducted in cities throughout the United States, including New York and Washington, D.C., and informal audits have already been conducted in Chicago.<sup>247</sup> The previous Chicago audits “led to public service awareness campaigns about street harassment” on public transportation and more trainings for transit workers on how to handle the problem.<sup>248</sup> Thus, community safety audits serve as an ideal stepping stone for spreading the word about street harassment because they would help policy makers understand the seriousness of street harassment and collect information that could be used in drafting the Illinois Safe Spaces Statute.

Conducting safety audits will not only serve as a means of data collection but will also allow Illinois citizens to take an active role in the creation of anti-street harassment legislation. This is important because although “[t]he actions of one person [have] the potential to spark a movement[,] . . . it is movements created by engaged citizens that can lead to transformative change.”<sup>249</sup> Further, similar initiatives in other countries have generated impactful results.<sup>250</sup> Thus, it is very possible to implement a similar change in Illinois.

Another resource that should be utilized in helping enact an Illinois Safe Spaces Statute is the Chicago Sexual Harassment Office, which was implemented in 1994 as a division of the city government.<sup>251</sup> The office was established as a model for centralized sexual harassment complaint resolution.<sup>252</sup> The Chicago Sexual Harassment Office “[e]nsures the [City of Chicago’s] compliance with federal and state laws, and City ordinance[s], policy, and Personnel Rules.”<sup>253</sup> However, this office currently only deals with sexual harassment in the workplace.<sup>254</sup>

Expanding the Chicago Sexual Harassment Office’s efforts to include combating street harassment will generate even more support and resources for enacting a Safe Spaces Statute. Furthermore, the

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246. *Id.*

247. *Safety Audits & Surveying*, *supra* note 244.

248. *Id.*

249. *Igniting Civic Engagement*, CASE FOUND., <http://casefoundation.org/pillar/civic-engagement/> (last visited Sept. 4, 2015).

250. “[T]hrough partnerships with mayors’ offices, national [g]overnments, women’s groups and other [partners,]” countries such as Quito have been able to amend “local ordinances to strengthen action against sexual harassment in public spaces.” UN WOMEN, *supra* note 16.

251. *See* Gomberg, *supra* note 242, at 32.

252. *Id.* at 38.

253. *Human Resources: Our Structure*, *supra* note 242.

254. *Id.*

Office would foster a relationship with government officials who care about addressing the issue of street harassment and may be interested in drafting street harassment legislation, or at least helping push it forward. Moreover, the Chicago Sexual Harassment Office could serve as an advocate to street harassment victims. Currently, the Office has three main functions: (1) to provide a “centralized location for mediation referral, formal investigation, and other” interventions designed to resolve workplace sexual harassment; (2) to conduct specialized trainings tailored to Chicago’s diverse workplaces; and (3) to provide technical assistance to public, nonprofit organizations and “other local, national, and international governmental entities.”<sup>255</sup> Many of these functions could easily be carried over into the street harassment arena. For example, the Office could conduct trainings or classes for individuals who violate the proposed Safe Spaces Statute as a means of educating street harassers about the harms of street harassment. Additionally, the Office could team up with local and national organizations to provide assistance to other cities throughout Illinois. This partnership could eventually lead to establishing sexual harassment offices in cities throughout the state, thus generating more training, outreach, and awareness opportunities.

Existing Illinois groups already devoted to combatting sexual harassment will have the ability to further their efforts by: (1) organizing community outreach programs; (2) educating schools, workplaces, and the general public; and (3) banning together to pave a path for legislators to implement a Safe Spaces Statute in Illinois. Furthermore, these groups and organizations could expand their outreach efforts by partnering with nationwide street harassment advocacy groups, such as Hollaback! and Stop Street Harassment, as well as with international groups, such as UN Women, to leave their mark not only in Illinois but around the world.<sup>256</sup>

### B. *Protecting Liberty Rights*

One of the most fundamental aspects of the U.S. legal system is protecting individuals’ liberty rights.<sup>257</sup> Although there are unique

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255. Gomberg, *supra* note 242, at 31–32.

256. UN Women created the Safe Cities Global Initiative, which has conducted studies of street harassment in countries throughout the world and even helped implement local ordinances and laws specifically targeting street harassment. UN WOMEN, *supra* note 16. Teaming up with organizations like UN Women will provide Illinois with more resources, support, and ideas regarding how to best implement the Illinois Safe Spaces Statute.

257. Bowman, *supra* note 2, at 520.

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## 2016] ILLINOIS STREET HARASSMENT LEGISLATION 869

challenges for holding street harassers accountable for their actions,<sup>258</sup> most people believe street harassment can, and should, be combated.<sup>259</sup> Thus, although some individuals believe street harassment is not a serious enough issue to be regulated by the government,<sup>260</sup> for those who endure this type of harassment on a daily basis, a legal remedy may be the only viable option. Currently, many street harassment victims fail to report the harasser's behavior to law enforcement.<sup>261</sup> This is most likely because victims realize that they are not legally protected from this type of behavior and are often not taken seriously by law enforcement officials.<sup>262</sup> The Illinois Safe Spaces Statute would provide victims with the courage needed to report the harassment because they would have legal protection under the statute.

By sweeping this pervasive issue under the rug, our legal system reinforces these harassing behaviors and sends the message to offenders that making others feel unsafe in public places is “no big deal.” However, street harassment is a big deal. Street harassers make victims feel unsafe while simply walking down a public street in broad daylight.<sup>263</sup> Harassers impact the routes victims take to work, the places victims live, and even cause victims to quit their jobs or relocate to an entirely new city.<sup>264</sup> Illinois has already implemented laws to protect individuals from being harassed in the workplace,<sup>265</sup> in

258. *Law and Policy on Street Harassment*, ADVOCS. FOR HUMAN RTS. (Aug. 2013), [http://www.stopvaw.org/law\\_policy\\_street\\_harassment](http://www.stopvaw.org/law_policy_street_harassment). (explaining that although street harassment is a form of sexual harassment, the public nature of the abuse, the anonymity of the offender, and the fleeting aspect of most instances of harassment might cause difficulties for developing legislation).

259. KEARL, *supra* note 8, at 7.

260. Lizzie Crocker, *Street Harassment Shouldn't Be a Crime*, DAILY BEAST (Oct. 29, 2014, 9:13 AM), <http://www.thedailybeast.com/articles/2014/10/29/street-harassment-shouldn-t-be-a-crime.html> (“[W]hile calling a passerby ‘sexy’ may be uncouth, it shouldn’t be illegal.”); E.W., *Catcalls and Street Harassment: Can Decency Be Regulated?*, ECONOMIST (Nov. 7, 2014, 3:13 PM), <http://www.economist.com/blogs/democracyinamerica/2014/11/catcalls-and-street-harassment> (noting that critics of a street harassment ban suggest that there is a “fuzzy” line between a compliment and a catcall and that it should not be punishable by a law).

261. *Law and Policy on Street Harassment*, *supra* note 258.

262. *See supra* note 11 and accompanying text (explaining the various reactions police exhibited when street harassment victims reported the incidents).

263. KEARL, *supra* note 8, at 7.

264. *See, e.g.*, Kearl, *supra* note 147. “I feel unsafe almost every day on my walk home from the subway after work. I am constantly cat-called, harassed, touched, whistled at, threatened, followed, leered at. My neighborhood is my home, though, and I don’t want to leave. But what else can I do?” Holly Kearl, *Always on Guard: Women and Street Harassment*, OUTLOOK, Spring/Summer 2009, at 18, 18 (quoting an anonymous survey respondent) (explaining what can be done to help better protect victims from the harms of street harassment).

265. 775 ILL. COMP. STAT. 5/2-101(E), 5/2-102(D) (2012).

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schools,<sup>266</sup> and even over the Internet;<sup>267</sup> thus, the same can be done to protect individuals' liberty to be in public places without experiencing street harassment. By addressing the predominance and pervasiveness of street harassment in many individuals' day-to-day lives, Illinois will finally address a problem that has unfortunately been brushed aside for centuries.<sup>268</sup> By drastically reshaping the law to criminalize street harassment, harassers will be punished for the harm they cause victims, and the acceptance of these behaviors will begin to subside. This, in turn, should lead to a decrease in incidents and, consequently, create safer cities in Illinois.

The Safe Spaces Statute proposed in this Comment will undoubtedly displease some individuals because it will place a limit on speech, increase police presence, and criminalize activity that has been normalized for centuries.<sup>269</sup> Although laws criminalizing street harassment would limit words and gestures that can be said and exhibited in public places, it has long been established that freedom of speech is not absolute.<sup>270</sup> Deborah Tuerkheimer explained that "[I]ike the validation that comes from having a remedy at law, recognition that street harassment is not protected by the Constitution would be an affirmation of the worth of [individuals] and a symbol of our right to equal citizenship."<sup>271</sup> Moreover, as one victim stated, "I am sick of people telling me that [someone's] First Amendment right is more important than my right to feel safe in public places."<sup>272</sup> Criminalizing street harassment would help regulate the harmful speech directed toward individuals, which, in turn, would promote safer, more peaceful cities throughout Illinois. Further, although increased police presence

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266. *Id.* at 5/27-23.7. The Illinois anti-bullying statute states that school districts may make suitable provisions for instruction in bullying prevention education and training. *Id.*

267. 720 ILL. COMP. STAT. 5/12-7.5 (2012) (defining cyberstalking and implementing punishments for violation of the statute); *Governor Quinn Signs Legislation To Outlaw Cyberbullying of Illinois Students*, ILL. GOV'T NEWS NETWORK (Aug. 1, 2014), <http://www3.illinois.gov/Press-Releases/ShowPressRelease.cfm?SubjectID=2&RecNum=12475>.

268. *See supra* notes 49–73 and accompanying text (discussing the historical underpinnings of street harassment).

269. *See* Laniya, *supra* note 6, at 116 (noting that street harassment has become normalized). The frequent and unwanted attention individuals receive on a public street has even become expected because the notion that catcalls and sexualized comments are just part of life has gone unchallenged. Janey Stephenson, *Street Harassment Isn't a Woman's Problem, It's Everybody's Problem*, INDEPENDENT (July 21, 2014), <http://www.independent.co.uk/voices/comment/street-harassment-isnt-a-womans-problem-its-everybodys-problem-9618412.html>.

270. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942).

271. Tuerkheimer, *supra* note 119, at 205.

272. Eric Owens, *New York Times: Should Black and Hispanic Men Be Banned from Chatting Up White Feminist Women?*, DAILY CALLER (Nov. 2, 2014, 10:51 PM), <http://dailycaller.com/2014/11/02/new-york-times-should-black-and-hispanic-men-be-banned-from-chatting-up-white-feminist-women/>.

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2016] *ILLINOIS STREET HARASSMENT LEGISLATION* 871

would be necessary to implement the Safe Spaces Statute, this presence would not only increase victims' safety but would allow for more accessible reporting measures.

Olatokunbo Olukemi Laniya put it best when she stated: "Contrary to popular belief, street harassment is a real injury that must be named, blamed, and claimed."<sup>273</sup> Through implementing the Safe Spaces Statute, Illinois has the opportunity to restore the sense of human dignity that has been stripped from victims, create safer cities, and ensure that fundamental rights are secured.

## V. CONCLUSION

Street harassment is not simply a feminist's issue or a victim's issue; street harassment is everyone's issue. Street harassment affects individuals of different genders, races, sexual orientations, and socioeconomic classes.<sup>274</sup> It occurs on a daily basis in cities and countries throughout the globe and slowly strips away individuals' sense of safety, self-dignity and self-worth.<sup>275</sup> One street harassment victim stated: "It's not really about any one incident, but about the constant, daily wearing away of your sense of safety. Every day I am reminded that we live in a world where [people] are a commodity because, every day, I am treated like a piece of public property."<sup>276</sup> Whether society is willing to realize it or not, street harassment affects the lives of many individuals on a daily basis.

Unfortunately, despite its prevalence, effects on victims, and intrusion on fundamental liberty rights, street harassment is an issue that remains largely neglected. Consequently, individuals' liberty rights of bodily integrity and mobility are not being properly protected, and public streets remain a sexually objectified warzone. Through implementing legislation to fight street harassment, Illinois would position itself to become one of the leading legal advocates, pave the path for

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273. Laniya, *supra* note 6, at 129.

274. See generally KEARL, *supra* note 8, at 6–7 (summarizing findings from a 2,000 person, nationwide street harassment study).

275. Kearl, *supra* note 264, at 19; see also Dierdre E. Davis, *The Harm That Has No Name: Street Harassment, Embodiment, and African American Women*, in *GENDER STRUGGLES: PRACTICAL APPROACHES TO CONTEMPORARY FEMINISM* 214, 216 (Constance L. Mui & Julien S. Murphy eds., 2002) (noting that street harassment is a pervasive part of everyday life).

276. KEARL, *supra* note 8, at 98.

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states and countries to draft similar legislation, and help finally restore individuals' right to walk the streets without fear.

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