

# Stalking, Harassment, & Related Offenses: Maryland

*Current as of June 2023*

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*This project was supported by Grant No. 15JOVW-22-GK-03986-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*

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# MARYLAND

## Summary

<b>What constitutes a "course of conduct" / pattern of behavior?</b>	Course of conduct is a persistent pattern of conduct, composed of a series of acts over time, that shows a continuity of purpose. Md. Code § 3-801.  Further, the course of conduct must be malicious. Md. Code § 3-802(a).
<b>What types of threats are required (credible, explicit, implicit, bodily injury?)</b>	Threat is not required by the statute.  <i>See also Murray v. State</i> , No. 1581, 2018 WL 394884 (Md. Ct. Spec. App. Jan. 12, 2018) holding that even where defendant did not threaten the victim, his conduct of watching her, opening her car door, confronting her in her garage, looking into her windows, and knocking on her door and tapping on her windows was sufficient to support conviction of stalking.
<b>What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)</b>	The offender must intend to place victim in reasonable fear or suffer serious emotional distress; or the offender must know/reasonably should know that the conduct would place victim in reasonable fear or suffer emotional distress. Md. Code § 3-802 (1)-(2).
<b>Do offender actions toward persons other than the victim help establish course of conduct?</b>	Yes, the statute includes a reasonable fear that a third person will suffer harm. Md. Code § 3-802 (a)(1)(ii).
<b>Does fear include emotional distress?</b>	Yes, when the offender “intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another.” Md. Code § 3-802(2).

<p><b>What type of victim fear is required? (for safety, of bodily injury, etc.)?</b></p>	<p>Fear serious bodily injury, assault, rape and/or sexual offense, false imprisonment, or death of victim or a third party; or to cause serious emotional distress to another. Md. Code § 3-802 (a)(1)-(2).</p>
<p><b>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</b></p>	<p>Reasonable person standard. Md. Code Ann. § 3-802 (a)(1)(2).</p> <p><i>See also Chavira v. Taylor</i>, No. 1642, 2021 WL 463633, at *3 (Md. Ct. Spec. App. Feb. 9, 2021) (“As to the standard for ‘reasonable fear’ or ‘serious emotional distress,’ we agree with Ms. Taylor that the ‘the proper standard is an individualized objective one—one that looks at the situation in the light of the circumstances as would be perceived by a reasonable person in the petitioner’s position.’”).</p>
<p><b>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</b></p>	<p>What constitutes reasonable fear is case specific.</p> <p>Courts have found reasonable fear when offender makes threats to harm and to commit arson. <i>Kaufman v. Motley</i>, 705 A.2d 330, 331 (Md. Ct. Spec. App. 1998) (“... [I] find by clear and convincing evidence that there were threats of ruining [the appellee's] life, arson in the middle of the night, threats to do harm to all who associated with [the appellee], things happening in the middle of the night, the stalking behavior with the children present, the threatening behavior with the children present, all are acts that I find by clear and convincing evidence would place [the appellee and the minor children] in fear of imminent serious bodily harm.”)</p> <p><i>Murray v. State</i>, No. 1581, 2018 WL 394884 (Md. Ct. Spec. App. Jan. 12, 2018) (finding reasonable fear when neighbor continually watched the victim, knocked on her door</p>

	repeatedly, and looked through victim’s windows).
<b>Must the victim tell the defendant to stop in order to constitute stalking?</b>	The law is silent regarding whether a victim of stalking must tell the defendant to stop. However, the harassment statute requires victim to tell defendant to stop. Md. Code § 3-803(a)(2).
<b>Is stalking by proxy included? (i.e., getting a third person to stalk the victim)</b>	Maybe. One case addresses this issue in which the defendant tried to have process serving company beyond the scope of their duty to relay certain messages to the victim. <i>Hall v. State</i> , No. 558, 2020 WL 6691421, at *3 (Md. Ct. Spec. App. Nov. 13, 2020) (Witness testified that she manages a process serving company that the defendant engaged to serve the victim with a package. After the company served the package, the defendant sent to the company an e-mail in which he stated that “the recent Brief which needs to be served also has four accompanying books,” and “[i]f the woman providing service happened to indicate that this is incredibly romantic, it would also be appreciated.” When the witness replied that “going forward [the company would] only serve legal documents,” the defendant sent additional e-mails in which he stated that the victim “already knows how romantic She is.”).
<b>Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?</b>	The stalking statute includes conduct that occurs by electronic communication or through use of tracking devices without the person’s knowledge or consent. See Md. Code Ann. § 3-802(a)(2)(ii) & (iii),  Other statutes criminalize similar conduct such as misuse of telephone facilities or equipment, misuse of electronic mail, visual surveillance, and camera surveillance. Md. Code §§ 3-804; 3-805, 3-901, 3-902, 3-903.

<p><b>Do the stalking laws have a resident requirement? (i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?)</b></p>	<p>The law is silent regarding whether the victim/defendant must reside in the jurisdiction. However, not every element of the crime needs to occur within Maryland. See <i>Ali v. State</i>, No. 0362, 2018 WL 3342822, at *3 (Md. Ct. Spec. App. July 9, 2018) (“Maryland follows the common law rule concerning territorial jurisdiction which “generally focuses on one element, which is deemed ‘essential’ or ‘key’ or ‘vital’ or the ‘gravamen’ of the offense, and the offense may be prosecuted only in a jurisdiction where that essential or key element takes place ... territorial jurisdiction is determined by the location of the defendant's prohibited conduct.”).</p>
<p><b>Any unique provisions, elements, or requirements?</b></p>	<p>Yes. There are no aggravating factors for stalking and stalking is a misdemeanor that can be punished by up to 5 years imprisonment.</p>
<p><b>Gradation of crimes (list out statutes in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor)</b></p>	<p>Stalking is a misdemeanor. Md. Code Ann. § 3-802(d).</p>
<p><b>What aggravating circumstances elevate the gradation of a stalking offense?</b></p>	<p>There are no aggravating circumstances to elevate the crime from a misdemeanor</p>

**Statutes**

**MD. CODE ANN. § 3-801 (WEST 2023). "COURSE OF CONDUCT" DEFINED**

In this subtitle, “course of conduct” means a persistent pattern of conduct, composed of a series of acts over time, that shows a continuity of purpose.

**MD. CODE ANN. § 3-802 (WEST 2023). STALKING**

(a) In this section:

- (1) “stalking” means a malicious course of conduct that includes approaching or pursuing another where:
- (i) the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear:
    - 1. A. of serious bodily injury;
    - B. of an assault in any degree;
    - C. of rape or sexual offense as defined by §§ 3-303 through 3-308 of this title or attempted rape or sexual offense in any degree;
    - D. of false imprisonment; or
    - E. of death; or
    - 2. that a third person likely will suffer any of the acts listed in item 1 of this item;
  - (ii) the person intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another; and

(2) “stalking” includes conduct described in item (1) of this subsection that occurs:

- (i) in person;
- (ii) by electronic communication, as defined in § 3-805 of this subtitle; or
- (iii) through the use of a device that can pinpoint or track the location of another without the person's knowledge or consent.

(b) The provisions of this section do not apply to conduct that is:

- (1) performed to ensure compliance with a court order;
- (2) performed to carry out a specific lawful commercial purpose; or
- (3) authorized, required, or protected by local, State, or federal law.

(c) A person may not engage in stalking.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

(e) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any other crime based on the acts establishing a violation of this section.

### **MD. CODE ANN. § 3-803 (WEST 2023). HARASSMENT**

(a) A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:

(1) with the intent to harass, alarm, or annoy the other;

(2) after receiving a reasonable warning or request to stop by or on behalf of the other; and

(3) without a legal purpose.

(b) This section does not apply to a peaceable activity intended to express a political view or provide information to others.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first offense, imprisonment not exceeding 90 days or a fine not exceeding \$500 or both; and

(2) for a second or subsequent offense, imprisonment not exceeding 180 days or a fine not exceeding \$1,000 or both.

### **MD. CODE ANN. § 3-804 (WEST 2023). MISUSE OF TELEPHONE FACILITIES AND EQUIPMENT**

(a) A person may not use telephone facilities or equipment to make:

(1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another;

(2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another; or

(3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$500 or both.



## **MD. CODE ANN. § 3-805 (WEST 2023). MISUSE OF ELECTRONIC MAIL**

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Electronic communication” means the act of transmitting any information, data, writing, image, or communication by the use of a computer or any other electronic means, including a communication that involves the use of e-mail, an instant messaging service, an Internet website, a social media application, a network call, a facsimile machine, or any other Internet-based communication tool.
- (3) “Electronic conduct” means the use of a computer or a computer network to:
- (i) build a fake social media profile;
  - (ii) pose as another, including a fictitious person in an electronic communication;
  - (iii) disseminate or encourage others to disseminate information concerning the sexual activity, as defined in § 3-809 of this subtitle, of a minor;
  - (iv) disseminate a real or doctored image of a minor;
  - (v) engage or encourage others to engage in the repeated, continuing, or sustained use of electronic communication to contact a minor;
  - (vi) make a statement to provoke a third party to stalk or harass a minor; or
  - (vii) subscribe a minor to a pornographic website.
- (4) “Instant messaging service” means a computer service allowing two or more users to communicate with each other in real time.
- (5) “Interactive computer service” means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a system that provides access to the Internet and cellular phones.
- (6) “Social media application” means any program, software, or website that allows a person to become a registered user for the purpose of establishing personal relationships with one or more other users through:
- (i) direct or real-time communication; or
  - (ii) the creation of websites or profiles capable of being viewed by the public or other users.
- (7) “Social media profile” means a website or profile created using a social media application.

- (b) (1) A person may not maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another:
- (i) with the intent to harass, alarm, or annoy the other;
  - (ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and
  - (iii) without a legal purpose.
- (2) A person may not use an interactive computer service to maliciously engage in a course of conduct that inflicts serious emotional distress on a minor or places a minor in reasonable fear of death or serious bodily injury with the intent:
- (i) to kill, injure, harass, or cause serious emotional distress to the minor; or
  - (ii) to place the minor in reasonable fear of death or serious bodily injury.
- (3) A person may not maliciously engage in an electronic communication if:
- (i) the electronic communication is part of a series of communications and has the effect of:
    - 1. intimidating or harassing a minor; and
    - 2. causing physical injury or serious emotional distress to a minor; and
  - (ii) the person engaging in the electronic communication intends to:
    - 1. intimidate or harass the minor; and
    - 2. cause physical injury or serious emotional distress to the minor.
- (4) A person may not maliciously engage in a single significant act or course of conduct using an electronic communication if:
- (i) the person's conduct, when considered in its entirety, has the effect of:
    - 1. intimidating or harassing a minor; and
    - 2. causing physical injury or serious emotional distress to a minor;
  - (ii) the person intends to:
    - 1. intimidate or harass the minor; and
    - 2. cause physical injury or serious emotional distress to the minor; and

(iii) in the case of a single significant act, the communication:

1. is made after receiving a reasonable warning or request to stop;
2. is sent with a reasonable expectation that the recipient would share the communication with a third party; or
3. shocks the conscience.

(5) A person may not maliciously engage in electronic conduct if:

(i) the act of electronic conduct has the effect of:

1. intimidating or harassing a minor; and
2. causing physical injury or serious emotional distress to a minor; and

(ii) the person intends to:

1. intimidate or harass the minor; and
2. cause physical injury or serious emotional distress to the minor.

(6) A person may not violate this section with the intent to induce a minor to commit suicide.

(c) It is not a violation of this section for any of the following persons to provide information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic communication or to conduct surveillance of electronic communication, if a court order directs the person to provide the information, facilities, or technical assistance:

(1) a provider of electronic communication;

(2) an officer, employee, agent, landlord, or custodian of a provider of electronic communication;  
or

(3) a person specified in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic communication or to conduct surveillance of electronic communication.

(d) Subsection (b)(1) through (5) of this section does not apply to a peaceable activity:

(1) intended to express a political view or provide information to others; or

(2) conducted for a lawful purpose.

- (e) (1) A person who violates subsection (b)(1), (2), (3), (4), or (5) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.
- (2) A person who violates subsection (b)(6) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

**MD. CODE ANN. § 3-903 (WEST 2023). CAMERA SURVEILLANCE**

- (a) In this section, “camera” includes any electronic device that can be used surreptitiously to observe an individual.
- (b) This section does not apply to:
- (1) an adult resident of the private residence where a camera is placed;
  - (2) a person who places or procures another to place a camera on real property without the intent to conduct deliberate surreptitious observation of an individual inside the private residence;
  - (3) a person who has obtained the consent of an adult resident, or the adult resident's legal guardian, to place a camera on real property to conduct deliberate surreptitious observation of an individual inside the private residence;
  - (4) any otherwise lawful observation with a camera conducted by a law enforcement officer while performing official duties;
  - (5) filming conducted by a person by or for the print or broadcast media through use of a camera that is not secreted from view;
  - (6) any part of a private residence used for business purposes, including any part of a private residence used as a family child care home for the care and custody of a child;
  - (7) filming of a private residence by a person through use of a camera that is not located on the real property where the private residence is located; or
  - (8) any otherwise lawful observation with a camera of the common area of multiunit family dwellings by a person that holds a license under Title 13 or Title 19 of the Business Occupations and Professions Article, acting within the scope of the person's occupation.

- (c) A person may not place or procure another to place a camera on real property where a private residence is located to conduct deliberate surreptitious observation of an individual inside the private residence.
- (d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$2,500 or both.
- (e) Subject to subsection (b)(1) of this section, it is not a defense to a prosecution under this section that the defendant owns the private residence.
- (f) A good faith reliance on a court order is a complete defense to a civil or criminal action brought under this section.
- (g) (1) An individual who was observed through the use of a camera in violation of this section has a civil cause of action against any person who placed or procured another to place the camera on the real property.  
  
(2) In an action under this subsection, the court may award damages and reasonable attorney's fees.
- (h) This section does not affect any legal or equitable right or remedy otherwise provided by law.

#### **Md. CODE ANN. § 4-508 (WEST 2023). PENALTIES FOR VIOLATIONS OF ORDERS**

- (a) An interim protective order, temporary protective order, and final protective order issued under this subtitle shall state that a violation of the order may result in:
  - (1) criminal prosecution; and
  - (2) imprisonment or fine or both.
- (b) A temporary protective order and final protective order issued under this subtitle shall state that a violation of the order may result in a finding of contempt.

#### **Md. CODE ANN. § 4-509 (WEST 2023). FAILURE TO COMPLY WITH PROTECTIVE ORDER**

- (a) A person may not fail to comply with the relief granted in an interim protective order under § 4-504.1(c)(1), (2), (3), (4)(i), (7), or (8) of this subtitle, a temporary protective order under § 4-505(a)(2)(i), (ii), (iii), (iv), (v), or (viii) of this subtitle, or a final protective order under § 4-506(d)(1), (2), (3), (4), or (5), or (f) of this subtitle, or a final protective order under § 4-506(d)(1), (2), (3), (4), or (5), or (f) of this subtitle.

- (b) A person who violates subsection (a) of this section is guilty of a misdemeanor and on conviction is subject, for each offense, to:
- (1) for a first offense, a fine not exceeding \$1,000 or imprisonment not exceeding 90 days or both; and
  - (2) for a second or subsequent offense, a fine not exceeding \$2,500 or imprisonment not exceeding 1 year or both.
- (c) Notwithstanding any other law, a conviction under this section may not merge with a conviction for any other crime based on the act establishing the violation of this section.
- (d) A sentence imposed under this section may be imposed separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.
- (e) For the purpose of second or subsequent offender penalties provided under subsection (b)(2) of this section, a prior conviction under § 3-1508 of the Courts Article shall be considered a conviction under this section.
- (f) An officer shall arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an interim, temporary, or final protective order in effect at the time of the violation.

### **Relevant Case law**

#### ***Hackley v. State, 885 A.2d 816 (Md. 2005)***

Defendant was convicted of stalking and other crimes and appealed arguing that there was insufficient evidence to support his stalking conviction because the statute requires that the stalker act “in the victim's presence and with the victim’s awareness.” The victim testified that, on separate occasions, the defendant beat the victim with a gun, left multiple threatening letters to the victim and her daughter on the victim’s car windshield, and drove up and down the victim’s block. The defendant argued that the letters he left on the victim’s car did not come within the statute’s prohibited conduct because there was no evidence that he acted in the victim’s presence. The Court of Appeals affirmed the conviction and stated that malicious conduct may include approaching or pursuing another person but does not require approaching and pursuing. Further, the statute does not require that the victim actually be present and aware of the conduct.

#### ***Ali v. State, No. 0362, 2018 WL 3342822 (Md. Ct. Spec. App. July 9, 2018)***

Defendant was convicted of 90 counts of criminal conduct related to telephone and electronic mail harassment, stalking, and violating a protective order on multiple dates. The defendant’s conduct included calling the victim at least 10 times a day on all 3 of her phones, sending threatening messages, and showing up at the victim’s employment. On appeal, the defendant challenged the

jurisdiction, arguing that there was insufficient evidence to prove the victim was in Maryland for each incident. The Court of Appeals rejected this argument, stating that territorial jurisdiction is determined by the location of the defendant's prohibited conduct rather than the location of the victim. The Court of Appeals reasoned that the general rule in Maryland is that “the crime, or essential elements of it, must have occurred within the geographic territory of Maryland” and that territorial jurisdiction is not an element of the offense that must be proved in every case.

***Murray v. State*, No. 1581, 2018 WL 394884 (Md. Ct. Spec. App. Jan. 12, 2018)**

Defendant appealed his stalking conviction arguing that, because he did not threaten the victim, there was insufficient evidence to prove beyond a reasonable doubt that the victim’s fear was reasonable. The defendant, who was the victim’s neighbor, would go to the victim’s house uninvited, stand and stare at her house, knock on the door, look into her windows, confront her while in her garage, and knock on her bathroom window while she was in the shower. The Court of Appeals found that there was sufficient evidence to prove that the defendant’s conduct would cause a reasonable person fear. The Court noted that the victim was a single woman living alone with her, then, 13–year old daughter throughout the course of these events. She also testified that the feeling of always being watched made her very uncomfortable.

***Hall v. State*, No. 558, 2020 WL 6691421 (Md. Ct. Spec. App. Nov. 13, 2020)**

Defendant was convicted of stalking and other crimes and appealed arguing, *inter alia*, there was insufficient evidence to support his convictions. The stalking conviction was based on the defendant sending multiple Facebook messages, following the victim, incessantly staring at the victim, and finding the victim’s phone number and calling her multiple times. When the victim blocked the defendant on Facebook, she began receiving messages from someone only identifiable as “Facebook User.” The victim identified “Facebook User” as the defendant based on the content of the messages and the similar wording used in previous messages. The Court of Appeals affirmed the convictions finding that all the elements of stalking were proven beyond a reasonable doubt.