

Stalking, Harassment, & Related Offenses: New Jersey

Current as of June 2023

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NEW JERSEY

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>“Course of conduct” means repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person. “Repeatedly” means on two or more occasions. N.J. Stat. § 2C:12-10 (a)(1),(2).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>No threats are required. However, threats can be used to determine course of conduct. Threats can be verbal, written, or implied by conduct. N.J. Stat. § 2C:12-10 (a)(1).</p>
<p>What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)</p>	<p>Offender must knowingly and purposefully engage in a course of conduct. N.J. Stat. § 2C:12-10 (b). <i>See State v. Gandhi</i>, 989 A.2d 256 (N.J. 2010) (The offender must knowingly or purposely intend the conduct that created the fear rather than intending to create the fear).</p> <p>A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. N.J. Stat. § 2C:2-2 (1)(2).</p>

	Courts have acknowledged that determining intent is a common-sense judgement left up to the judge. See <i>D.M.R. v. M.K.G.</i> , 252 A.3d 567, 577 (App. Div. 2021) (finding that showing up with three other people at an inconvenient hour and knocking repeatedly constituted harassment. This is even though “The judge did not find defendant spoke in a crude or offensive manner or in a course of conduct with repeated acts”) <i>Id.</i>
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes. Actions that would cause a victim to fear for the safety of a “third person” can constitute part of the course of conduct. N.J. Stat. § 2C:12-10(b).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	A fear for the victim’s own safety, the safety of a third person, or emotional distress. N.J. Stat. § 2C:12-10(b).
Does fear include emotional distress?	Yes. N.J. Stat. § 2C:12-10(b).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. N.J. Stat. § 2C:12-10(b). <i>See also State v. Gandhi</i> , 989 A.2d 256 (N.J. 2010) (Legislature did not intend to restrict applicability of anti-stalking statute to a defendant who purposefully or knowingly intended that his course of conduct would cause a reasonable victim to fear bodily injury or death; rather, Legislature intended to prohibit a defendant from purposefully or knowingly engaging in a course of conduct that would cause such fear in an objectively reasonable person, even if the defendant is operating under motivation of obsessed and disturbed love that purportedly obscures appreciation of terror that his conduct would reasonably cause to the victimized person).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	What constitutes reasonable fear is highly fact specific. <i>H.E.S. v. J.C.S.</i> , 815 A.2d 405 (N.J. 2003) (husband's alleged acts of installing a microphone and camera in his wife's bedroom

	<p>and connecting them to a VCR in his bedroom could be stalking and, thus, a predicate offense of domestic violence, even though husband and wife were living in the marital home; husband's alleged surveillance of wife's bedroom and his alleged acts of listening to her conversations and then following her after threatening to kill her if she did not drop the divorce action could cause a reasonable person to fear bodily injury).</p> <p><i>State v. Vasquez</i>, No. A-4646-17, 2021 WL 3701376, at *7 (N.J. Super. Ct. App. Div. Aug. 20, 2021) (“Here, the record shows defendant placed a GPS tracker on Martinez's vehicle and threatened her with violence on multiple occasions. The trial judge properly denied both motions to dismiss the stalking charge because there was sufficient evidence from which the jury could find, beyond a reasonable doubt, that defendant purposefully or knowingly engaged in a course of conduct specifically directed at Martinez, from which a reasonable person under her circumstances would fear for their safety or suffer great emotional distress.”).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</p>
<p>Is stalking by proxy included? (i.e., getting a third person to stalk the victim)</p>	<p>Yes. Course of conduct can be committed “directly, indirectly, or through third parties” or by “repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.” N.J. Stat. § 2C:12-10 (a)(1).</p>
<p>Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?</p>	<p>Technology-facilitated stalking is covered under the regular stalking statute and interpreted through case law. N.J. Stat. § 2C:12-10 (a)(1); <i>See also State v. B.A.</i>, 205 A3d 1130 (N.J. Super. 2019) (“In 2009, the statute was ‘broadened to cover stalking by means of new technology, such as situations where the stalker tracks the victim through the use of a global</p>

	<p>positioning system attached to the victim’s car.’ [internal citations omitted] ... With respect to ‘new technology,’ the [National Center for the Victims of Crime] report noted that ‘[n]ew, affordable technology has fundamentally and profoundly changed the way stalkers monitor and initiate contact with their victims.’”).</p> <p>Other statutes criminalize similar conduct such as cyber-harassment. See N.J. Stat. § 2C:33-4.1.</p>
<p>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?)</p>	<p>No. New Jersey recognizes jurisdiction if “[e]ither the conduct which is an element of the offense or the result which is such an element occurs within [New Jersey.]”. N.J. Stat. § 2C:1-3(a)(1).</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>Gradation of crimes (list out statues in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor)</p>	<p>Stalking is a crime in the fourth degree. N.J. Stat. § 2C:12-10 (b).</p> <p>Stalking can also be a crime in the third degree if certain aggravating factors are present. N.J. Stat. § 2C:12-10 (c)-(e).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes crime of the 3rd degree if:</p> <ul style="list-style-type: none"> - It is committed in violation of an existing order prohibiting the behavior; - It is a second or subsequent offense against the same victim; or - It is committed while serving a term of imprisonment or while on parole or probation. <p>N.J. Stat. § 2C:12-10 (c)-(e).</p>

Statutes

N.J. STAT. ANN. § 2C:12-10 (WEST 2023). STALKING

a. As used in this act:

(1) “Course of conduct” means repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

(2) “Repeatedly” means on two or more occasions.

(3) “Emotional distress” means significant mental suffering or distress.

(4) “Cause a reasonable person to fear” means to cause fear which a reasonable victim, similarly situated, would have under the circumstances.

- b. A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress.
- c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.
- d. A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.
- e. A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.
- f. This act shall not apply to conduct which occurs during organized group picketing.

N.J. STAT. ANN. § 2c:12-10.1 (WEST 2023). STALKING CONVICTION TO OPERATE AS APPLICATION FOR PERMANENT RESTRAINING ORDER; HEARING; DISSOLUTION OF ORDER; NOTICE; VIOLATIONS

- a. A judgment of conviction for stalking shall operate as an application for a permanent restraining order limiting the contact of the defendant and the victim who was stalked.
- b. A hearing shall be held on the application for a permanent restraining order at the time of the verdict or plea of guilty unless the victim requests otherwise. This hearing shall be in Superior Court. A permanent restraining order may grant the following specific relief:

- (1) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim.
 - (2) An order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the victim, the victim's employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim. As used in this paragraph, "communication" shall have the same meaning as defined in subsection q. of N.J.S. 2C:1-14.
- c. The permanent restraining order entered by the court subsequent to a conviction for stalking as provided in this act may be dissolved upon the application of the stalking victim to the court which granted the order.
 - d. Notice of permanent restraining orders issued pursuant to this act shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.
 - e. Any permanent restraining order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.
 - f. A violation by the defendant of an order issued pursuant to this act shall constitute an offense under subsection a. of N.J.S.2C:29-9 and each order shall so state. Violations of these orders may be enforced in a civil or criminal action initiated by the stalking victim or by the court, on its own motion, pursuant to applicable court rules. Nothing in this act shall preclude the filing of a criminal complaint for stalking based on the same act which is the basis for the violation of the permanent restraining order.

N.J. STAT. ANN. § 2C:12-10.2 (WEST 2023). STALKING OF CHILDREN AND PERSONS INCAPABLE OF UNDERSTANDING DUE TO MENTAL DISEASE OR DEFECT; RESTRAINING ORDER

- a. In any case involving an allegation of stalking where the victim is a child under the age of 18 years or is developmentally disabled as defined in section 3 of P.L.1977, c. 200 (C.5:5-44.4) or where the victim is 18 years of age or older and has a mental disease or defect which renders the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent, the court may issue a temporary restraining order against the defendant which limits the contact of the defendant and the victim.
- b. The provisions of subsection a. of this section are in addition to, and not in lieu of, the provisions of section 3 of P.L.1996, c. 39 (C.2C:12-10.1) which provide that a judgment of conviction for

stalking shall operate as an application for a permanent restraining order limiting the contact of the defendant and the victim.

- c. The parent or guardian of the child or the person described in subsection a. of this section may file a complaint with the Superior Court in conformity with the rules of court seeking a temporary restraining order against a person alleged to have committed stalking against the child or the person described in subsection a. of this section. The parent or guardian may seek emergency, ex parte relief. A decision shall be made by the judge regarding the emergency relief forthwith. If it appears that the child or the person described in subsection a. of this section is in danger of being stalked by the defendant, the judge shall issue a temporary restraining order pursuant to subsection e. of this section.
- d. A conviction of stalking shall not be a prerequisite for the grant of a temporary restraining order under this act.
- e. A temporary restraining order issued under this act shall limit the contact of the defendant and the child or the person described in subsection a. of this section who was stalked and in addition may grant all other relief specified in section 3 of P.L.1996, c. 39 (C.2C:12-10.1).
- f. A hearing shall be held in the Superior Court within 10 days of the issuance of any temporary restraining order which was issued on an emergency, ex parte basis. A copy of the complaint shall be served on the defendant in conformity with the rules of court. At the hearing the standard for continuing the temporary restraining order shall be by a preponderance of the evidence.
- g. If the court rules that the temporary restraining order shall be continued, the order shall remain in effect until either:
 - (1) the defendant is convicted of stalking, in which case the court shall hold a hearing on the issue of whether a permanent restraining order shall be entered pursuant to section 3 of P.L.1996, c. 39 (C.2C:12-10.1); or
 - (2) the victim's parent or guardian or, in the case of a victim who has reached the age of 18, the victim, requests that the restraining order be dismissed and the court finds just cause to do so.

N.J. STAT. ANN. § 2C:25-30 (WEST 2023). VIOLATION OF ORDER; CONTEMPT PROCEEDINGS; SUBSEQUENT OFFENSES

Except as provided below, a violation by the defendant of an order issued pursuant to this act shall constitute an offense under subsection b. of N.J.S.2C:29-9 and each order shall so state. All contempt proceedings conducted pursuant to N.J.S.2C:29-9 involving domestic violence orders, other than those constituting indictable offenses, shall be heard by the Family Part of the Chancery

Division of the Superior Court. All contempt proceedings brought pursuant to P.L.1991, c. 261 (C.2C:25-17 et seq.) shall be subject to any rules or guidelines established by the Supreme Court to guarantee the prompt disposition of criminal matters. Additionally, and notwithstanding the term of imprisonment provided in N.J.S.2C:43-8, any person convicted of a second or subsequent nonindictable domestic violence contempt offense shall serve a minimum term of not less than 30 days. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of this act¹ shall be excluded from enforcement under subsection b. of N.J.S.2C:29-9; however, violations of these orders may be enforced in a civil or criminal action initiated by the plaintiff or by the court, on its own motion, pursuant to applicable court rules.

N.J. STAT. ANN. § 2C:33-4. (WEST 2023). HARASSMENT

*** Section (c) limited on constitutional grounds by *State v. Burkert*, 174 A.3d 987 (N.J. 2017)***

Harassment.

Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

- a. Makes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
- b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
- c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c. 443).

- e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States or he knowingly directs such action to a current or former judge that relates to the performance of the judge's public duties.

N.J. STAT. ANN. § 2C:33-4.1 (WEST 2023). CYBER-HARASSMENT

- a. A person commits the crime of cyber-harassment if, while making one or more communications in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:
 - (1) threatens to inflict injury or physical harm to any person or the property of any person;
 - (2) knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or
 - (3) threatens to commit any crime against the person or the person's property.
- b. Cyber-harassment is a crime of the fourth degree, unless the person is 21 years of age or older at the time of the offense and impersonates a minor for the purpose of cyber-harassing a minor, in which case it is a crime of the third degree.
- c. If a minor under the age of 16 is adjudicated delinquent for cyber-harassment, the court may order as a condition of the sentence that the minor, accompanied by a parent or guardian, complete, in a satisfactory manner, one or both of the following:
 - (1) a class or training program intended to reduce the tendency toward cyber-harassment behavior; or
 - (2) a class or training program intended to bring awareness to the dangers associated with cyber-harassment.
- d. A parent or guardian who fails to comply with a condition imposed by the court pursuant to subsection c. of this section is a disorderly person and shall be fined not more than \$100 for a first offense and not more than \$500 for each subsequent offense.
- e. The trier of fact may infer that a person acted with a purpose to harass another if the person knows or should have known that any of the person's actions constituting an offense under this section are knowingly directed to or are about a judicial officer, and there is a nexus between the offense and relates to the performance of the judge's public duties. For the purposes of this subsection, "judicial officer" has the same meaning as defined in section 1 of P.L.1995, c.23 (C.47:1A-1.1).
- f. In addition to any other disposition or condition imposed pursuant to this section, a parent or guardian having legal custody of a minor who demonstrates willful or wanton disregard in the exercise of the supervision and control of the conduct of a minor adjudicated delinquent of cyber-harassment pursuant to this section may be liable in a civil action pursuant to section 4 of P.L.2021, c. 338 (C.2A:53A-17.1).

Relevant Case Law

***H.E.S. v. J.C.S.*, 815 A.2d 405 (N.J. 2003)**

After wife petitioned for divorce, wife and husband each filed domestic violence complaints and obtained temporary restraining orders against each other. The Superior Court dismissed the temporary restraining order against the wife and entered a final restraining order against husband. Husband appealed. The Supreme Court of New Jersey reversed the issuance of the final restraining order against the husband because his due process rights were violated when requiring him to defend against imposition of a final restraining order less than twenty-four hours after receiving the complaint. However, the Court noted that husband's video surveillance of wife's bedroom presented a prima facie case of stalking or harassment under the Domestic Violence Act. In its finding, the Court stated that the elements of stalking are that: 1) defendant engaged in speech or conduct that was directed at or toward a person, 2) that speech or conduct occurred on at least two occasions, 3) defendant purposely engaged in speech or a course of conduct that is capable of causing a reasonable person to fear for herself or her immediate family bodily injury or death, and 4) defendant knowingly, recklessly or negligently caused a reasonable fear of bodily injury or death.

***State v. Burkert*, 174 A.3d 987 (N.J. 2017)**

The defendant was convicted of two counts of harassment and appealed. The Appellate Court reversed the convictions and the State petitioned review. The Superior Court of New Jersey affirmed the Appellate Court's decision finding that evidence was insufficient to support a harassment conviction and that the vaguely and broadly worded standard of the statute, which prohibits a person from engaging in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person, does not put a reasonable person on sufficient notice of the kinds of speech that the statute proscribes. The statute's vagueness also gives prosecuting authorities undue discretion to bring charges related to permissive expressive activities

***State v. B.A.*, 205 A.3d 1130 (N.J. Super. Ct. App. Div. 2019)**

Defendant was convicted of third degree stalking and appealed, arguing, *inter alia*, that the statute's phrase "communicating to or about, a person" is unconstitutionally overbroad and vague. The Court noted that, although the 2009 amendment to the definition of course of conduct added additional protection for victims, it did not do so in a way that extended it to a "substantial amount of constitutionally protected conduct." The Superior Court affirmed the defendant's conviction as his repeatedly posting videos on social media that he purposely tagged the victim was violative of the restraining order she obtained against him. His actions were not protected by the First Amendment since freedom of speech does not encompass a right to abuse or annoy another person intentionally.

***D.M.R. v. M.K.G.*, 252 A.3d 567 (N.J. Super. Ct. App. Div. 2021)**

Petitioner filed for a Family Restraining Order against the Respondent, his ex-girlfriend, after she came to his home after midnight to discuss the custody of a shared pet. To obtain a FRO, the Petitioner must show that the Respondent committed one of the predicate acts set forth in N.J.S.A. 2C:25-19(a) and show that a restraining order is necessary to protect the plaintiff from future

danger or threats. The appellate court found that minimal but sufficient evidence was presented at the hearing to support the determination that the Respondent committed the act of harassment as she arrived at the home at an inconvenient hour and knocked on the door with the purpose to annoy. The court determined, however, that there was an insufficient showing of facts to support the determination that a restraining order was necessary and overturned the trial court's ruling.