

Compilation of U.S. Stalking, Harassment, & Related Offenses

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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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Arkansas	New Jersey
California	New Mexico
Colorado	New York
Connecticut	North Carolina
Delaware	North Dakota
District of Columbia	Northern Mariana Islands
Federal	Ohio
Florida	Oklahoma
Georgia	Oregon
Guam	Pennsylvania
Hawai'i	Puerto Rico
Idaho	Rhode Island
Illinois	South Carolina
Indiana	South Dakota
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Massachusetts	Washington
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Mississippi	
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Montana	

Stalking, Harassment, & Related Offenses: Alabama

Current as of June 2023

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ALABAMA

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>A pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose. Ala. Code § 13A-6-92(a).</p> <p>“When a perpetrator follows or harasses a victim more than once, his conduct becomes criminal.” <i>State v. Randall</i>, 669 So. 2d 223 (Ala. Crim. App. 1995).</p> <p>Acts that occur before a court order is issued may be considered to establish a course of conduct, and jury unanimity as to which events took place is not required to establish a course of conduct and convict. <i>See Latham v. State</i>, No. CR-21-0459, 2022 WL 5396439, (Ala. Crim. App. Oct. 7, 2022).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>The threat must be a “credible threat,” which is defined as “a threat, expressed or implied, made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to fear for his or her safety or the safety of a family member and to cause reasonable mental anxiety, anguish, or fear.” Ala. Code § 13A-6-92(b).</p> <p>The stalking statute does not require the offender to have actually intended to carry out the threat for it to be considered credible, rather it requires that the defendant has the apparent ability to carry out the threat. <i>Hayes v. State</i>, 717 So.2d 30 (Ala. Crim. App. 1997).</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>For first degree stalking, the offender must have a specific intent, meaning the offender both intentionally follows/harasses the victim <i>and</i> intends to place the victim in reasonable fear of death or serious bodily harm. <i>See</i> Ala. Code § 13A-6-90; <i>see also Morton v. State</i>, 651 So.2d 42 (Ala. Crim. App. 1994).</p>

<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Likely yes.</p> <p>A credible threat is defined in part as a threat that causes the target to fear for his safety or the safety of a family member. Al. Code § 13A-6-92(b). For the purposes of stalking in the first degree, this could be reasonably interpreted to mean that actions taken against family members or threats against family members may help establish a course of conduct. <i>See also Hayes v. State</i>, 717 So.2d 30 (Ala. Crim. App. 1997) (upholding a conviction for stalking in the first degree against defendant who, in addition to directly threatening victim, threatened to kill victim's boyfriend); <i>see also Jones v. State</i>, 915 So.2d 78 (Ala. Crim. App. 2005) (upholding a conviction for stalking in the first degree against defendant who, in addition to directly threatened against the victim, threatened her family with a vehicle).</p> <p>Stalking in the second degree under Ala. Code § 13A-6-90.1 explicitly encompasses actions against the target's immediate family “or any third party with whom the [the victim] is acquainted.”</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>For stalking in the first degree, the defendant must intend to place a person in reasonable fear of death or serious bodily harm. However, the victim need not actually fear death or serious bodily harm; all that is required is that the victim suffer “substantial emotional distress.” <i>See Hayes v. State</i>, 717 So.2d 30 (Ala. Crim. App. 1997).</p> <p>For stalking in the second degree, the offender must cause material harm to the mental or emotional health of the other person, or cause such person to reasonably fear that his or her employment, business, or career is threatened. Ala. Code § 13A-6-90.1.</p>
<p>Does fear include emotional distress?</p>	<p>Yes. See above.</p>

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both.</p> <p>“The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress.” Ala. Code § 13A-6-92(c).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is case dependent.</p> <p>In one case, the court found that repeated instances of the offender following the victim, calling the victim at work, calling the victim's acquaintances to talk about her, writing derogatory fliers about the victim, yelling “whore” and “slut” at the victim repeatedly, making a hand gesture as if firing a gun and saying "This is for you, bitch", and threatening to kill the victim's boyfriend was enough to cause a reasonable person to feel emotional distress. <i>See Hayes v. State</i>, 717 So.2d 30 (Ala. Crim. App. 1997).</p> <p>In another case, the court found evidence that defendant coming to the victim's place of residence and throwing things at the house, burning something in her front yard, making threatening phone calls, and stealing multiple items from the victim and her family, including multiple guns and jewelry, could be enough to cause a reasonable fear. <i>See Bartlett v. State</i>, 701 So.2d 305 (Ala. Crim. App. 1997).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>For stalking in the first degree, probably not. There is no published case law that addresses this and the statutory law is silent.</p> <p>For stalking in the second degree, yes. <i>See Ala. Code § 13A-6-90.1</i> (requiring as an explicit element that the offender was previously informed to cease their conduct).</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</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>There is nothing in the statute or interpreting case law for stalking in the first degree that excludes acts of technology-facilitated stalking.</p> <p>Stalking in the second degree explicitly includes acts of electronic communication. See Ala. Code § 13A-6-90.1.</p> <p>The offense of harassment and harassing communications also encompasses electronic communication. See Ala. Code. § 13A-11-8.</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. There is no published case law that addresses this and the statutory law is silent.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>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)</p>	<p>Aggravated stalking in the first degree is a Class B felony under Ala. Code § 13A-6-91.</p> <p>Aggravated stalking in the second degree and stalking in the first degree are both Class C felonies under Ala. Code § 13A-6-90 and Ala. Code § 13A-6-91.1.</p> <p>Stalking in the second degree is a Class B misdemeanor under Ala. Code § 13A-6-90.1.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>The intent to cause reasonable fear of death or serious bodily harm elevates stalking in the second degree to stalking in the first degree. Ala. Code § 13A-6-90.</p> <p>Conduct that violates a court order or injunction elevates crimes of stalking in the first and second degrees to aggravated stalking in the first and second degrees. Ala. Code § 13A-6-91 and Ala. Code § 13A-6-91.1.</p>

Statutes

ALA. CODE § 13A-6-90 (2023). STALKING IN THE FIRST DEGREE

- (a) A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking in the first degree.
- (b) The crime of stalking in the first degree is a Class C felony.

ALA. CODE § 13A-6-90.1 (2023). STALKING IN THE SECOND DEGREE

- (a) A person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct is guilty of the crime of stalking in the second degree.
- (b) The crime of stalking in the second degree is a Class B misdemeanor.

ALA. CODE § 13A-6-91 (2023). AGGRAVATED STALKING IN THE FIRST DEGREE

- (a) A person who violates the provisions of Section 13A-6-90(a) and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the first degree.
- (b) The crime of aggravated stalking in the first degree is a Class B felony.

ALA. CODE § 13A-6-91.1 (2023). AGGRAVATED STALKING IN THE SECOND DEGREE

- (a) A person who violates the provisions of Section 13A-6-90.1 and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the second degree.
- (b) The crime of aggravated stalking in the second degree is a Class C felony.

ALA. CODE § 13A-6-92 (2023). DEFINITIONS

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise.

- (a) **COURSE OF CONDUCT.** A pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose.
- (b) **CREDIBLE THREAT.** A threat, expressed or implied, made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to fear for his or her safety or the safety of a family member and to cause reasonable mental anxiety, anguish, or fear.
- (c) **HARASSES.** Engages in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress. Constitutionally protected conduct is not included within the definition of this term.

ALA. CODE § 13A-6-142 (2023). VIOLATION OF A DOMESTIC VIOLENCE PROTECTION ORDER; PENALTIES

- (a) A person commits the crime of violation of a domestic violence protection order if the person knowingly commits any act prohibited by a domestic violence protection order or willfully fails to abide by any term of a domestic violence protection order.
- (b) A violation of a domestic violence protection order is a Class A misdemeanor which shall be punishable as provided by law. A second conviction for violation of a domestic violence protection order, in addition to any other penalty or fine, shall be punishable by a minimum of 30 days imprisonment which may not be suspended. A third or subsequent conviction is a Class C felony.
- (c) In addition to any other fine or penalty provided by law, the court shall order the defendant to pay an additional fine of fifty dollars (\$50) for a violation of a domestic violence protection order to be distributed to the Domestic Violence Trust Fund, established by Section 30-6-11.

ALA. CODE. § 13A-11-8 (2023). HARASSMENT OR HARASSING COMMUNICATIONS

- (a) (1) **HARASSMENT.** A person commits the crime of harassment if, with intent to harass, annoy, or alarm another person, he or she either:

- a. Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact.
- b. Directs abusive or obscene language or makes an obscene gesture towards another person.

(2) For purposes of this section, harassment shall include a threat, verbal or nonverbal, made with the intent to carry out the threat, that would cause a reasonable person who is the target of the threat to fear for his or her safety.

(3) Harassment is a Class C misdemeanor.

(b) (1) HARASSING COMMUNICATIONS. A person commits the crime of harassing communications if, with intent to harass or alarm another person, he or she does any of the following:

- a. Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm.
- b. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.
- c. Telephones another person and addresses to or about such other person any lewd or obscene words or language.

Nothing in this section shall apply to legitimate business telephone communications.

(2) Harassing communications is a Class C misdemeanor.

Relevant Case Law

***Morton v. State*, 651 So.2d 42 (Ala. Crim. App. 1994)**

Defendant was charged with and convicted of stalking based on conduct that he committed against the victim in 1993. At trial, the victim was allowed to testify to actions the defendant had taken in 1990 — his violent physical assault, the arguments they had, the foul names he called her, the theft of her rings, breaking and entering into her residence, the wrecking of her automobile, following her and physically assaulting her and another man she was on a date with, and stealing her dog. On appeal, the Court of Criminal Appeals found that the conduct in 1990 was relevant to prove the defendant's specific intent to harass and to cause the victim to be fearful in 1993.

***State v. Randall*, 669 So. 2d 223 (Ala. Crim. App. 1995)**

The trial court granted the defendant's motion to dismiss an indictment for stalking and the State appealed. The defendant's motion to dismiss argued that the stalking law is vague because the

statute fails to define the words “repeatedly” and “series.” The Court of Criminal Appeals reversed the trial court’s order granting the motion dismissing. In its holding, the Court of Criminal Appeals noted that “when the ordinary and common meaning of the term ‘repeatedly’ is applied to this statute, it is evident that the statute proscribes the conduct of a perpetrator who follows or harasses a victim ‘more than once’ and who makes a credible threat with the intent to place that victim in reasonable fear of death or serious bodily injury. When a perpetrator follows or harasses a victim ‘more than once,’ his conduct becomes criminal.”

***Hayes v. State*, 717 So.2d 30 (Ala. Crim. App. 1997)**

Defendant was convicted stalking his ex-wife after following her in his car, showing up at various places such as her workplace, sending threatening letters, and even forming a “gun” with his hand. The court found that the stalking statute did not require that the defendant actually intended to carry out the threat for it to be considered credible, but rather that the he had the apparent ability to carry out the threat. In this case, the defendant had the apparent ability to carry out the threats against the victim because the victim knew that the defendant kept a shotgun and a pistol in his home.

Furthermore, the court found that although the statute mentions death or serious bodily injury, Alabama courts do not require the State to prove that the victim was *actually* in fear of death or serious bodily injury. Regarding the victim's mental state, the State is only required to show “that a victim suffered substantial emotional distress.” Quoting *State v. Randall*, 669 So.2d 223, 227 (Ala Crim. App. 1995), the *Hayes* court stated that this lesser showing to prove the victim's actual fear is “consistent with Alabama's position that stalking statutes must be interpreted as broadly as possibly so as to afford the victim maximum protection.”

***Bartlett v. State*, 701 So.2d 305 (Ala. Crim. App. 1997)**

Defendant was convicted of stalking in the first degree. At trial, evidence was presented that the defendant's relationship with the victim had deteriorated after the defendant was convicted of an assault, the victim had filed for a divorce, and the victim had obtained a restraining order against the defendant. Evidence also demonstrated that the defendant had taken actions against the victim on multiple different occasions, including coming to the victim's place of residence, throwing things at her house, burning items in her front yard, making threatening phone calls, and stealing multiple items from the victim and her family, including multiple guns and jewelry. On appeal, the defendant argued that, while his conduct was offensive or even reprehensible, evidence was insufficient to sustain a conviction for stalking. The Court of Criminal Appeals found that sufficient evidence was presented to show the defendant was guilty of stalking.

***Mims v. State*, 816 So.2d 509 (Ala. Crim. App. 2001)**

Defendant was convicted of aggravated stalking. At trial, evidence was presented that the victim left the defendant and obtained a divorce, and that on more than 20 occasions, the defendant had broken into the victim's home, that he was waiting for her and would not leave, and that the victim was forced to leave for her protection. On several instances, the defendant assaulted and threatened to kill the victim. The defendant used a child as a human shield and on one occasion had to be restrained by four police officers. The victim spent six weeks in a shelter for abused women in

order to avoid the defendant. The defendant followed her to her place of work and “embarrassed her” in the presence of her employer. He also threatened to cause the victim serious harm if she pursued charges against him. The victim found it necessary to place her young son in counseling because of the defendant's action. She testified that “the only time that she was free from harassment and fear during this time was when the [defendant] was in jail.” The Court of Criminal Appeals found that the evidence presented by the State indicated that the defendant intentionally and repeatedly followed and harassed the victim; that he made credible threats with the apparent ability to carry them out; and that the threats were “obviously” made with the intent to place her in fear of death or serious bodily harm. The evidence also showed that the defendant’s actions caused the victim to actually suffer from mental anxiety, anguish, and fear of death or serious bodily harm.

***Jones v. State*, 915 So.2d 78 (Ala. Crim. App. 2005)**

Defendant was convicted of stalking in the first degree and appealed. During trial, the victim had testified that in December 2003, the defendant had stared at her and her family in a threatening manner and had threatened her family with a vehicle. The defendant has objected to the victim's testimony regarding the December 2003 incident, arguing that the incident “went past the relevant date ... of this indictment.” On appeal, the defendant argued in part that the trial court erred by allowing evidence of the December 2003 incident. On appeal, the court assumed that the defendant's objection pertained to the relevance of the testimony. The court held that the defendant's argument is without merit. It repeated the State's argument that if an accused is charged with a crime that requires a prerequisite intent, then prior or subsequent criminal acts are admissible to establish that the offender had the necessary intent when he committed the instant crime. In this case, the court reasoned, the subsequent bad act of starting at the victim and her family and threatening her family with a vehicle — an act that took place several months after the defendant actually *did* ram into a vehicle in which the victim was a passenger — was an act that formed the basis of the stalking charge against him. Furthermore, the testimony pertaining to the December 2003 incident was admissible to show the defendant's intent to place the victim in reasonable fear of death or serious bodily injury.

***Latham v. State*, No. CR-21-0459, 2022 WL 5396439, (Ala. Crim. App. Oct. 7, 2022)**

Defendant was convicted of first-degree aggravated stalking and sentenced to 20 years in prison after violating a protection order. The defendant and victim were married, but the victim subsequently left the defendant after physical and emotional abuse escalated throughout their relationship. After an order of protection was issued, the defendant continued to show up to the victim’s home and make contact with her via telephone calls, text messages, and electronic messages. The defendant was charged with aggravated stalking after following the victim from her home to her place of employment and harassing her. The defendant appealed his conviction on two grounds: defendant claimed the court erred by failing to charge the jury on his requested unanimity instruction, and defendant claimed the court erred by permitting the admission of other crimes, wrongs, or acts without requisite notice. The appellate court held that unanimity instructions were not required as the events presented as evidence were to establish the course of conduct required by the statute. The appellate court also held that the evidence presented regarding the defendant’s actions prior to the order of protection were not submitted as evidence of “other crimes” (as referred to in Rule 404(b)) but as evidence of the crime for which he was charged. As such, the

issues raised by the defendant relative to Rule 402 and 403 were also rejected by the court as the evidence of the crime for which the defendant is being tried was relevant and immensely probative.

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ALASKA

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>“Course of conduct” means repeated acts of nonconsensual contact involving the victim or a family member. Alaska Stat. § 11.41.270(a)(1).</p> <p>The term “repeated” means more than once. <i>Petersen v. State</i>, 930 P.2d 414 (Alaska Ct. App. 1996).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required.
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>The offender must knowingly engage in repeated acts of nonconsensual conduct and the offender must recklessly place another person in fear of bodily injury or death. Alaska Stat § 11.41.270(a).</p> <p>Transferred intent to harass is not recognized. <i>See Martusheff v. State</i>, 474 P.3d 12 (Alaska Ct. App. 2020) (finding that an offender must intend to harass or annoy the individual subjected to the offensive physical contact).</p>
Do offender actions toward persons <i>other than the victim</i> help establish course of conduct?	<p>Yes. Actions toward a family member help establish a course of conduct. Alaska Stat. § 11.41.270(a)(1).</p> <p>Family member means:</p> <ul style="list-style-type: none">- a spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;- a person who lives, or has previously lived, in a spousal relationship with the victim;- a person who lives in the same household as the victim; or- a person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim

	Alaska Stat. § 11.41.270(3).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	The victim must fear death or physical injury, or fear of the death or physical injury of a family member. Alaska Stat. § 11.41.270(a).
Does fear include emotional distress?	No.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. <i>See Kenison v. State</i> , 107 P.3d 355 (Alaska Ct. App. 2005) (“...the stalking statute does not use the word 'fear' in its everyday sense. Rather, the phrase 'fear of death or physical injury means the State must prove that the victim reasonably understood or perceived a threat of death or physical injury...[requiring] the State to prove that [the victim] experienced actual anxiety...would have put the State to a higher burden of proof than the law requires.”).
If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)	What constitutes reasonable fear is highly dependent on case law and is highly contextual. <i>See Cooper v. Cooper</i> , 144 P.3d 451 (Alaska 2006) (finding the fear element was not satisfied when State merely provided evidence that ex-husband was in ex-wife's line of vision at a public event, and that he did not threaten, approach, or engage with the victim in any way other than to make momentary unwanted, unplanned eye contact); <i>But see Vince B. v. Sarah B.</i> , 425 P.3d 55 (Ala. 2018) (finding that a knock on the door, while not normally not giving rise to a reasonable fear of physical injury, can cause reasonable fear based on defendant's previous physical altercation with victim's boyfriend and increasingly aggressive communications between offender and victim).
Must the victim tell the defendant to stop in order to constitute stalking?	Not explicitly, but the contact must be without the victim's consent. This includes all contacts that are “not previously authorized beforehand.” <i>Peterson v. State</i> , 930 P.2d 414 (Alaska Ct. App. 1996); see also <i>Dickie v. State</i> ,

	282 P.3d 382 (Alaska Ct. App. 2012) (finding that defendant's conduct became consensual when he kept going to victims' house and was told that the person he was allegedly looking for did not live at the residence).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	No. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered under the regular stalking statutes. Alaska Stat. § 11.41.270(4)(E),(F),(H),(I).
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?)	No. There is no published case law that addresses this and the statutory law is silent.
Any unique provisions, elements, or requirements?	No.
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)	Stalking in the first degree is a Class C felony and stalking in the second degree is a Class A misdemeanor. Alaska Stat. § 11.41.260.
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking in the second degree is aggravated to stalking in the first degree if the offender commits stalking in the second degree and: <ul style="list-style-type: none"> - violates a specified court order; - violates probation, parole, or conditions of release; - stalks a victim who under 16 years old; - possessed a deadly weapon; - has previously been convicted of stalking; or - has previously been convicted of an enumerated crime against the same victim. Alaska Stat. § 11.41.260.

Statutes

ALASKA STAT. ANN. § 11.41.260 (WEST 2023). STALKING IN THE FIRST DEGREE

- (a) A person commits the crime of stalking in the first degree if the person violates AS 11.41.270 and
- (1) the actions constituting the offense are in violation of an order issued or filed under AS 18.66.100--18.66.180 or issued under former AS 25.35.010(b) or 25.35.020;
 - (2) the actions constituting the offense are in violation of a condition of probation, release before trial, release after conviction, or parole;
 - (3) the victim is under 16 years of age;
 - (4) at any time during the course of conduct constituting the offense, the defendant possessed a deadly weapon;
 - (5) the defendant has been previously convicted of a crime under this section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section, AS 11.41.270, or AS 11.56.740; or
 - (6) the defendant has been previously convicted of a crime, or an attempt or solicitation to commit a crime, under (A) AS 11.41.100--11.41.250, 11.41.300--11.41.460, AS 11.56.807, 11.56.810, AS 11.61.118, 11.61.120, or (B) a law or an ordinance of this or another jurisdiction with elements similar to a crime, or an attempt or solicitation to commit a crime, under AS 11.41.100--11.41.250, 11.41.300--11.41.460, AS 11.56.807, 11.56.810, AS 11.61.118, or 11.61.120, involving the same victim as the present offense.
- (b) In this section, “course of conduct” and “victim” have the meanings given in AS 11.41.270(b).
- (c) Stalking in the first degree is a class C felony.

ALASKA STAT. ANN. § 11.41.270 (WEST 2023). STALKING IN THE SECOND DEGREE

- (a) A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.
- (b) In this section,
- (1) “course of conduct” means repeated acts of nonconsensual contact involving the victim or a family member;

- (2) “device” includes software;
- (3) “family member” means a
- (A) spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;
 - (B) person who lives, or has previously lived, in a spousal relationship with the victim;
 - (C) person who lives in the same household as the victim; or
 - (D) person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim;
- (4) “nonconsensual contact” means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; “nonconsensual contact” includes
- (A) following or appearing within the sight of that person;
 - (B) approaching or confronting that person in a public place or on private property;
 - (C) appearing at the workplace or residence of that person;
 - (D) entering onto or remaining on property owned, leased, or occupied by that person;
 - (E) contacting that person by telephone;
 - (F) sending mail or electronic communications to that person;
 - (G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;
 - (H) following or monitoring that person with a global positioning device or similar technological means;
 - (I) using, installing, or attempting to use or install a device for observing, recording, or photographing events occurring in the residence, vehicle, or workplace used by that person, or on the personal telephone or computer used by that person;
- (5) “victim” means a person who is the target of a course of conduct.

(c) Stalking in the second degree is a class A misdemeanor.

ALASKA STAT. ANN. § 11.56.740 (WEST 2023). VIOLATING A PROTECTIVE ORDER

- (a) A person commits the crime of violating a protective order if the person is subject to a protective order
- (1) issued, filed, or recognized under AS 18.66 and containing a provision listed in AS 18.66.100(c)(1)--(7) and knowingly commits or attempts to commit an act with reckless disregard that the act violates or would violate a provision of the protective order;
 - (2) issued or recognized under AS 18.65.850, 18.65.855, 18.65.860, or 18.65.867 and knowingly commits or attempts to commit an act that violates or would violate a provision listed in AS 18.65.850(c)(1)--(3); or
 - (3) issued under AS 13.26.450--13.26.460 and knowingly commits or attempts to commit an act with reckless disregard that the act violates or would violate a provision of the protective order.
- (b) Violation of this section is a class A misdemeanor.
- (c) In this section, “protective order” means an order issued, filed, or recognized under AS 13.26.450--13.26.460, AS 18.65.850--18.65.870, or AS 18.66.100--18.66.180.

ALASKA STAT. ANN. § 11.61.118 (WEST 2023). HARASSMENT IN THE FIRST DEGREE

- (a) A person commits the crime of harassment in the first degree if, under circumstances not proscribed under AS 11.41.410 – 11.41.427 or 11.41.434 – 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact
- (1) with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces; or
 - (2) by the person touching through clothing another person’s genitals, buttocks, or female breast.
- (b) Harassment in the first degree is a class A misdemeanor.

ALASKA STAT. ANN. § 11.61.120 (WEST 2023). HARASSMENT IN THE SECOND DEGREE

- (a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person
- (1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

- (2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;
- (3) makes repeated telephone calls at extremely inconvenient hours;
- (4) makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact;
- (5) subjects another person to offensive physical contact;
- (6) except as provided in AS 11.61.116, publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act;
- (7) repeatedly sends or publishes an electronic communication that insults, taunts, challenges, or intimidates a person under 18 years of age in a manner that places the person in reasonable fear of physical injury; or
- (8) under circumstances not proscribed under AS 11.41.455, AS 11.61.125, or 11.61.128, repeatedly sends to another person, publishes, or distributes electronic or printed photographs, pictures, or films that show the genitals of any person.

(b) Harassment in the second degree is a class B misdemeanor.

Relevant Case Law

***Peterson v. State*, 930 P.2d 414 (Alaska Ct. App. 1996)**

Defendant was convicted of stalking his therapist and appealed, claiming that the language of the statute was too vague to be understood by a layperson, and more importantly, that the stalking statute over-criminalized innocent behaviors, such as “appearing within the sight” of a person in a public place. The Court of Appeals upheld the conviction, stating that the average person should be able to understand what kind of behavior the statute prohibits. The Court noted that the *mens rea* of “knowingly” tempers the over-criminalization of behavior proscribed by the statute. A defendant, who inadvertently encounters another person in a public place has not “knowingly” approached or appeared within sight of that person. The Court also noted that the phrase “without the person's consent” in the stalking statute appears to cover all contacts not previously authorized beforehand. However, due to the other elements of the stalking statute — requiring the victim to fear bodily death or injury and having the defendant act in reckless disregard of that result — the stalking statutes do not criminalize nonconsensual acts made for legitimate purposes, even when the defendant knows that the person contacted may unreasonably perceive the contact as threatening. The court did acknowledge potential due process and overbreadth problems with the definition of stalking, but said that such issues should be resolved on a case-by-case basis.

Cook v. State, 36 P.3d 710 (Alaska Ct. App. 2001)

Defendant was convicted of first-degree stalking for conduct that occurred between October and December of 1998. On appeal, the defendant argued in part that the trial court erred in allowing the State to introduce evidence of a February 1999 letter that the defendant wrote to the victim from jail, where he was detained for violating a protective order. The Court of Appeals held that such evidence was relevant to show the defendant's continuing attitude toward the victim, his attitude toward the protective order, and his perception of his relationship with victim, thus tending to prove the defendant's state of mind between October and December of 1998, when he committed the acts of nonconsensual contact with which he was charged.

Kenison v. State, 107 P.3d 335 (Alaska Ct. App. 2005)

The defendant was convicted of stalking his ex-wife and appealed. On appeal, the defendant argued, *inter alia*, that the State presented insufficient evidence to the grand jury to support his indictment and that the trial court erred by allowing the State to introduce evidence of various instances of the defendant past conduct toward the victim. The defendant argued that the State did not present sufficient evidence that the defendant engaged in a "course of conduct." The Court of Appeals disagreed and held that the State proved that the defendant engaged in a series of non-consensual contacts with the victim where the victim testified that the defendant violated multiple protective orders, made numerous hang-up telephone calls, followed and cursed at the victim, and slashed her tires. Regarding the introduction of the defendant's prior conduct, the Court of Appeals held that evidence the deteriorating relationship starting from the time of the marital separation in August 1998 was relevant to the stalking charge, even if that charge is confined to conduct between May and December 2001 because this evidence was relevant for non-propensity purposes, but rather to show that the contact was non-consensual and that the victim's fear was reasonable.

Cooper v. Cooper, 144 P.3d 451 (Alaska 2006)

Husband was arrested for assaulting his wife and wife obtained long-term domestic violence protective order. The order prohibited the husband from stalking his ex-wife, indefinitely. Following the judge's issuance of the protective order, the ex-wife saw the husband at the mall, and on another occasion, saw him at a conference at hotel. The wife called the police and the husband was arrested for violating the protective order. The husband then moved for clarification on the terms of the protective order and the wife requested a long-term protective order. The judge denied the wife's request, finding evidence of stalking insufficient. On appeal, the wife argued that the judge did not apply the appropriate standard to the fear element of stalking. The Supreme Court pointed to the holding in *Kenison v. State*, which found that the fear element is an individualized-objective standard: whether a reasonable person in the same circumstances would also experience fear. The Court concluded that the judge did not err in concluding evidence of stalking was insufficient to support the issuance of a protective order. The husband's mere presence in the wife's line of vision, if repeated, could satisfy the "nonconsensual conduct" element of stalking, but not the fear element. However, the husband did not threaten, approach, or engage with the victim in any way other than to make momentary unplanned and unwanted eye contact.

***Dickie v. State*, 282 P.3d 382 (Alaska Ct. App. 2012)**

Defendant was convicted of first-degree stalking. Defendant appealed, arguing in part that his conduct did not fall within the definition of stalking because his conduct did not meet the definition of “nonconsensual conduct.” At trial, evidence was presented that the defendant knocked on the victims' door, asked for Sherry Anson, and was told by the victims that Sherry Anson did not live there. From that point on, the defendant repeatedly left food at the victims' door, and at one point was caught stumbling drunk in their backyard carrying several guns. Pointing to its holding in *Peterson*, interpreting “nonconsensual conduct” as “all contacts not previously authorized beforehand,” the court reasoned that the defendant was put on notice that his continuing contacts were not consensual once victims told him that Sherry Anson did not live at the residence. Furthermore, when he returned to the victims’ house, he gave a false name, suggesting the defendant knew that he did not have the victims’ consent and that his conduct was criminal. Thus, the court held, a jury, could reasonably infer that the defendant' contacts with the victims were without their consent.

***Johnson v. State*, 390 P.3d 1212 (Ala. Ct. App. 2017)**

Defendant was convicted of first-degree stalking and appealed, arguing in part that evidence was insufficient to support the conviction. Evidence was presented at trial that the defendant and minor victim had several weeks of consensual interactions. The Court of Appeals found that the State did not prove “nonconsensual contact” between the victim and the defendant, because the victim never told the defendant to stop contacting him, the victim was never aware of the contacts the chief of police had with the defendant via text, and the defendant's continued contact was not actually with the victim, but with the police. Furthermore, the State failed to prove that the victim actually feared physical injury or death; the stalking statute requires that the fear *results from* the defendant's course of conduct, and even assuming for the sake of argument that the text messages between the police chief and the defendant constituted nonconsensual contact, as the victim was this contact. At most, the State proved that the victim had a fear of physical injury or death resulting from *consensual* contacts with the defendant.

***Vince B. v. Sarah B.*, 425 P.3d 55 (Ala. 2018)**

Respondent appealed a long-term domestic violence protective order entered against him for stalking his ex-wife, arguing in part that the court failed to make requisite findings of fact meeting the elements of stalking. Namely, he argued that the Court did not expressly find the December 2016 incidents that were the subject of the order placed the victim in fear of physical injury and could not have plausibly done so, because “not knowing why someone knocks on your door is not a reasonable basis to fear physical injury.” The Court of Appeals acknowledged that, while a knock on the door would not typically give rise to a fear of physical injury, the fear must be evaluated within the context of the surrounding circumstances. Evidence of a prior violent encounter between the former husband and the victim's boyfriend that occurred on the boyfriend's property, and anger that had escalated in communications between the former husband and the victim in the 48 hours prior to the incidence supported the superior court's finding of a reasonable fear.

***Martusheff v. State*, 474 P.3d 12 (Alaska Ct. App. 2020)**

Defendant was convicted of three counts of first-degree harassment – one count for each of three alleged victims. The charges followed from the defendant’s act of launching a container of feces and urine at a corrections nurse while incarcerated, hitting the nurse, and splashing two nearby corrections officers. Defendant appealed conviction, conceding that he had acted with intent to harass or annoy the nurse and was therefore guilty of one count of harassment but arguing that he was not guilty of the two charges involving the officers. The defense argued that the crime of harassment is committed only when there is intent to harass or annoy a person and that person is the one subjected to offensive physical contact. The appellate court overturned two of the three convictions and interpreted the laws of both first- and second- degree harassment as requiring the State to prove that the defendant intended to harass or annoy the person who was subjected to the offensive physical contact.

Stalking, Harassment, & Related Offenses: American Samoa

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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AMERICAN SAMOA

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct” means following by maintaining visual or physical proximity to a specific person or directing verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity. Am. Samoa Code § 46.3501 (c).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threats are not required but can be part of a course of conduct and can include “verbal, written or other threats, whether express or implied.” Am. Samoa Code § 46.3501(c).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender has to knowingly and purposely engage in a course of conduct but does not need to intend to cause fear. Am. Samoa Code §46.3525(a).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, if directed at “immediate family, or a third party with whom he is acquainted.” Am. Samoa Code §46.3525(a)(1). Immediate family member “means a spouse, parent, child or sibling or any other person who regularly resides in a person’s household or resided in a person’s household within the past six months.” Am. Samoa Code § 46.3501(d).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear of harm to victim, immediate family member, or acquaintance’s physical health, safety, or property; or harm to mental or emotion health, or fear that victim’s employment, business, or career is threatened. Am. Samoa Code § 46.3525 (1)-(3).
Does fear include emotional distress?	Yes, but only if the victim advised the offender to stop. Am. Samoa Code § 46.3525(2).

Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	It depends on which section the stalking is charged under. Reasonable person standard under Am. Samoa Code §46.3525 (a)(1), (a)(3) and subjective standard under Am. Samoa Code § 46.3525 (a)(2).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	There is no published case law that addresses this and the statutory law is silent.
Must the victim tell the defendant to stop in order to constitute stalking?	Yes, if stalking is charged under Am. Samoa Code § 46.3525 (a)(2),(a)(3).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	No. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is not criminalized. However, harassment by telephone is criminalized. Am. Samoa Code § 46.3524.
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?)	No. There is no published case law that addresses this and the statutory law is silent.
Any unique provisions, elements, or requirements?	No.
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)	Stalking is either a class B misdemeanor or a class A misdemeanor Am. Samoa Code § 46.3525 (b).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking increases from a class B misdemeanor to a class A misdemeanor if the offense was committed when there is a temporary restraining order or an injunction in place. Am. Samoa Code § 46.3525 (b).

Statutes

AM. SAMOA CODE ANN. § 46.3501 (2023). DEFINITIONS

The following definitions are applicable in this chapter unless the context otherwise requires:

- (a) “Criminal homicide” means conduct which causes the death of a person under circumstances constituting murder in the 1st or 2nd degree, manslaughter, or criminally negligent homicide.
- (b) “Person”, when referring to the victim of a homicide, means a human being who had been born and was alive at the time of the homicidal act.
- (c) “Course of conduct” means following by maintaining visual or physical proximity to a specific person or directing verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity.
- (d) “Immediate family member” means a spouse, parent, child or sibling or any other person who regularly resides in a person’s household or resided in a person’s household within the past six months.

AM. SAMOA CODE ANN. § 46.3524 (2023). HARASSMENT¹

- (a) A person commits the crime of harassment if, with the purpose to harass, annoy, or alarm another person, he:
 - (1) communicates with a person by telephone, telegraph, mail, or any other form of written communication in a manner which he knows is likely to cause annoyance or alarm including, but not limited to, telephone calls initiated by vendors for the purpose of selling goods or services; or
 - (2) makes repeated or anonymous telephone calls to another person, whether or not conversation ensues, knowing that he is thereby likely to cause annoyance or alarm; or
 - (3) knowingly permits any telephone under his control to be used for a purpose prohibited by this section.
- (b) Harassment is a class A misdemeanor.

¹ Harassment is considered a crime involving domestic violence but not stalking. See 47.0401 Crime involving domestic or family violence defined.

AM. SAMOA CODE ANN. § 46.3525 (2023). STALKING

- (a) A person commits the crime of stalking if he purposely or knowingly engages in a course of conduct that is directed toward another person and that conduct:
- (1) causes reasonable fear of harm to the physical health, safety, or property of such person, a member of his immediate family, or a third party with whom he is acquainted; or
 - (2) causes harm to the mental or emotional health of such person after the actor was previously clearly informed to cease that conduct; or
 - (3) is likely to cause such person to reasonably fear that his employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at his place of employment or business, and the actor was previously clearly informed to cease that conduct.
- (b) Stalking is a class B misdemeanor, unless the offense was committed when there is a temporary restraining order or an injunction, or both, or any other court order in effect prohibiting the conduct by the offender, then it is a Class A misdemeanor.

Relevant Case Law

No relevant case law.

Stalking, Harassment, & Related Offenses: Arizona

Current as of June 2023

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and is being furnished strictly for informational purposes.

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ARIZONA

Summary

What constitutes a "course of conduct" / pattern of behavior?

A course of conduct means directly or indirectly, in person or through one or more third persons or by any other means, to do any of the following:

- Maintain visual or physical proximity to a specific person or direct verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short.
- Use any electronic, digital or global positioning system device to surveil a specific person or a specific person's internet or wireless activity continuously for twelve hours or more or on two or more occasions over a period of time, however short, without authorization.
- Communicate, or cause to be communicated, on more than one occasion words, images or language by or through the use of electronic mail or an electronic communication that is directed at a specific person without authorization and without a legitimate purpose.

“Course of conduct” does not include constitutionally protected activity or other activity authorized by law, the other person, the other person's authorized representative or if the other person is a minor, the minor's parent or guardian. Ariz. Rev. Stat. § 13-2923(D)(1).

Charging a defendant with individual counts of harassment for each of multiple violative messages probably does not violate double jeopardy, even if a collection of those earlier messages is used to establish a course of conduct for later incidents of harassment or stalking. *See State v. Rios*, 502 P.3d 474 (Ct. App. 2021), review denied (Apr. 5, 2022).

<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threats can be express or implied, but “threats” are just one type of action that fall under the definition of course of conduct. Ariz. Rev. Stat. § 13-2923(D)(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>The defendant must intentionally or knowingly engage in a course of conduct directed at another person that causes emotional distress or reasonable fear. Ariz. Rev. Stat. § 13-2923.</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>In general, yes.</p> <p>All the statute requires is that the defendant's actions are directed toward “another person.” From a plain reading of the statute, actions can be directed at anyone if they cause the victim to have the requisite emotional distress or fear. See Ariz. Rev. Stat. § 13-2923.</p> <p>Prior actions toward a person other than the victim are insufficient to elevate conduct from harassment to aggravated harassment. See Ariz. Rev. Stat. § 13-2921.01 (“A court has issued any of the following orders in favor of the victim of harassment”; “A court has issued an order of protection... against the person in favor of the victim of harassment”; “The person has previously been convicted of an offense... committed against the victim of harassment”; “A court has imposed a condition of release on the person that prohibits any contact with the victim of harassment.”).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>A victim must suffer emotional distress or reasonably fear:</p> <ul style="list-style-type: none"> - Damage or destruction to victim's property will be damaged/destroyed - Injury or death to victim, victim's family member, victim's domestic animal, victim's livestock, current or previous romantic or sexual partner of victim, or victim's current co-resident or co-resident within the past six months. <p>Ariz. Rev. Stat. § 13-2923</p>

<p>Does fear include emotional distress?</p>	<p>Yes. Emotional distress is defined as “significant mental suffering or distress that may, but does not have to, require medical or other professional treatment or counseling.” Ariz. Rev. Stat. § 13-2923(D)(2).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both, under a plain reading of Ariz. Rev. Stat. § 13-2923. <i>See also State v. Garrison</i>, No. 1 CA–CR 12–0505 PRPC, 2014 WL 2619400 (Ariz. Ct. App. June 12, 2014) (acknowledging that the only issue for the jury to decide whether the defendant's conduct would cause a reasonable person to have fear, and whether the victims did in fact have fear).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is highly fact dependent.</p> <p><i>See State v. Ditko</i>, No. 1 CA–CR 06–0633, 2007 WL 5187937 (Ariz. Aug. 9, 2007) (finding that evidence presented by State was not sufficient for a finding of reasonable fear; while letters defendant wrote to victim were “creepy” and “slanderous” and victim told testifying officer that defendant would one day resort to killing her, and the court itself acknowledged the defendant was “dangerous,” there was no evidence presented that the letters contained any express or implied threats that would cause the victim to be fearful).</p> <p><i>But see State v. Jurado</i>, No. 2 CA-CR 2018-0089, 2019 WL 1417364 (Ariz. Ct. App. March 27, 2019) (holding evidence was sufficient to support a stalking conviction where defendant placed GPS monitor on victim's vehicle, called her a slut, told her to watch her back and that he was following her movements, and victim testified that she was “paranoid, scared and terrified.”).</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, stalking by proxy is explicitly included in the statute. Course of conduct is defined in part as “directly or indirectly, in person or through one or more third persons or by any other means” taking the statutorily proscribed actions. Ariz. Rev. Stat. § 13-2923(D)(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 by the regular stalking statute. The definition of “course of conduct” includes electronic, digital, and GPS monitoring and electronic communication. Ariz. Rev. Stat. § 13-2923(D)(1).</p> <p>Similar conduct is criminalized under use of electronic means to harass and threaten. See Ariz. Rev. Stat. §. 13-2916.</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>There is no residency requirement. Further, stalking can be prosecuted in Arizona conduct constituting any element of the offense or a result of such conduct occurs within the state. Ariz. Rev. Stat. § 13-108(a)(1).</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>Yes. Stalking includes fear of injury or death to the victim’s current or previous romantic or sexual partner while most jurisdictions do not include romantic partners. Ariz. Rev. Stat. § 13-2923(A)(1)(b)(iii).</p>
<p>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)</p>	<p>Stalking under Ariz. Rev. Stat. § 13-2923(A)(2) is a Class 3 felony.</p> <p>Stalking under Ariz. Rev. Stat. § 13-2923(A)(1), aggravated harassment under Ariz. Rev. Stat. § 13-2921.01(A)(3), and harassment under Ariz. Rev. Stat. § 13-2921(B) are Class 5 felonies. A second or subsequent violation of Ariz. Rev. Stat. § 13-2921.01(A)(1-2,4) is also a Class 5 felony.</p> <p>Aggravated harassment under Ariz. Rev. Stat. § 13-2921.01(A)(1-2,4) is a Class 6 felony.</p>

	Harassment under Ariz. Rev. Stat. § 13-2921(A) is a Class 1 misdemeanor.
What aggravating circumstances elevate the gradation of a stalking offense?	If defendant's conduct causes victim to fear their death or the death of their family member, animal, current or past sexual or romantic partner, or co-resident, stalking is elevated from a Class 5 to a Class 3 felony. Ariz. Rev. Stat. § 13-2923(A)(2).

Statutes

ARIZ. REV. STAT. ANN. § 13-2916 (WEST 2023). USE OF AN ELECTRONIC COMMUNICATION TO TERRIFY, INTIMIDATE, THREATEN OR HARASS; UNLAWFUL USE OF ELECTRONIC COMMUNICATION DEVICE; APPLICABILITY; CLASSIFICATION; DEFINITIONS

A. It is unlawful for a person to knowingly terrify, intimidate, threaten or harass a specific person or persons by doing any of the following:

1. Directing any obscene, lewd or profane language or suggesting any lewd or lascivious act to the person in an electronic communication.
2. Threatening to inflict physical harm on any person or to property in any electronic communication.
3. Otherwise disturbing by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received.
4. Without the person's consent and for the purpose of imminently causing the person unwanted physical contact, injury or harassment by a third party, use an electronic communication device to electronically distribute, publish, email, hyperlink or make available for downloading the person's personal identifying information, including a digital image of the person, and the use does in fact incite or produce that unwanted physical contact, injury or harassment. This paragraph also applies to a person who intends to terrify, intimidate, threaten or harass an immediate family member of the person whose personal identifying information is used.

B. Any offense committed by use of an electronic communication in violation of this section is deemed to have been committed at either the place where the communications originated or at the place where the communications were received.

C. This section does not apply to:

1. Constitutionally protected speech or activity or to any other activity authorized by law.
2. An interactive computer service, as defined in 47 United States Code § 230(f)(2), or to an information service or telecommunications service, as defined in 47 United States Code § 153, for content that is provided by another person.

D. A person who violates this section is guilty of a class 1 misdemeanor.

E. For the purposes of this section:

1. “Electronic communication” means a social media post, a wire line, cable, wireless or cellular telephone call, a text message, an instant message or electronic mail.
2. “Electronic communication device” includes a telephone, mobile telephone, computer, internet website, internet telephone, hybrid cellular, internet or wireless device, personal digital assistant, video recorder, fax machine or pager.
3. “Harassment” means a knowing and willful course of conduct that is directed at a specific person, that a reasonable person would consider as seriously alarming, seriously disruptive, seriously tormenting or seriously terrorizing the person and that serves no legitimate purpose.
4. “Personal identifying information”:
 - (a) Means information that would allow the identified person to be located, contacted or harassed.
 - (b) Includes the person's home address, work address, phone number, email address or other contact information that would allow the identified person to be located, contacted or harassed.
5. “Social media post” means a social media communication that is knowingly intended to communicate to a specific person or persons in violation of subsection A of this section.

ARIZ. REV. STAT. ANN. § 13-2921 (WEST 2023). HARASSMENT; CLASSIFICATION; DEFINITION

- A. A person commits harassment if the person knowingly and repeatedly commits an act or acts that harass another person or the person knowingly commits any one of the following acts in a manner that harasses:
1. Contacts or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means.

2. Continues to follow another person in or about a public place after being asked by that person to desist.
 3. Surveils or causes a person to surveil another person.
 4. Makes a false report to a law enforcement, credit or social service agency against another person.
 5. Interferes with the delivery of any public or regulated utility to a person.
- B. A person commits harassment against a public officer or employee if the person, with intent to harass, files a nonconsensual lien against any public officer or employee that is not accompanied by an order or a judgment from a court of competent jurisdiction authorizing the filing of the lien or is not issued by a governmental entity or political subdivision or agency pursuant to its statutory authority, a validly licensed utility or water delivery company, a mechanics' lien claimant or an entity created under covenants, conditions, restrictions or declarations affecting real property.
- C. Harassment under subsection A is a class 1 misdemeanor. Harassment under subsection B is a class 5 felony.
- D. This section does not apply to any of the following:
1. A lawful demonstration, assembly or picketing.
 2. A professional investigator or peace officer who is licensed by this state and who is acting within the scope of the investigator's or officer's duties in connection with any criminal or civil investigation.
 3. A certified and duly authorized process server who is acting within the scope of the process server's duties in connection with any judicial or administrative action or proceeding.
- E. For the purposes of this section, "harass" means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, humiliated or mentally distressed and the conduct in fact seriously alarms, annoys, humiliates or mentally distresses the person.

**ARIZ. REV. STAT. ANN. § 13-2921.01 (WEST 2023). AGGRAVATED HARASSMENT;
CLASSIFICATION; DEFINITION**

- A. A person commits aggravated harassment if the person commits harassment as provided in § 13-2921 and, at the time of the offense, any of the following applies:

1. A court has issued any of the following orders in favor of the victim of harassment, the order was served on the person and the order was valid at the time of the offense:
 - (a) An order of protection issued pursuant to § 13-3602.
 - (b) An injunction against harassment issued pursuant to § 12-1809.
 - (c) Any other criminal-related injunction issued under the laws of this state.
 2. A court has issued an order of protection on an emergency basis pursuant to § 13-3624 against the person in favor of the victim of harassment and the order was still in effect on the date of the offense.
 3. The person has previously been convicted of an offense included in § 13-3601 committed against the victim of harassment.
 4. A court has imposed a condition of release on the person that prohibits any contact with the victim of harassment and the court order was still in effect on the date of the offense.
- B. A person who violates subsection A, paragraph 1, 2 or 4 of this section is guilty of a class 6 felony. A person who commits a second or subsequent violation of subsection A, paragraph 1, 2 or 4 of this section is guilty of a class 5 felony. A person who violates subsection A, paragraph 3 of this section is guilty of a class 5 felony.
- C. For the purposes of this section, “convicted” means a person who was convicted of an offense included in § 13-3601 or who was adjudicated delinquent for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult for an offense included in § 13-3601.

ARIZ. REV. STAT. ANN. § 13-2923 (WEST 2023). STALKING; CLASSIFICATION; EXCEPTIONS; DEFINITIONS

- A. A person commits stalking if the person intentionally or knowingly engages in a course of conduct that is directed toward another person and if that conduct causes the victim to:
1. Suffer emotional distress or reasonably fear that either:
 - (a) The victim's property will be damaged or destroyed.
 - (b) Any of the following will be physically injured:
 - (i) The victim.

- (ii) The victim's family member, domestic animal or livestock.
- (iii) A person with whom the victim has or has previously had a romantic or sexual relationship.
- (iv) A person who regularly resides in the victim's household or has resided in the victim's household within the six months before the last conduct occurred.

2. Reasonably fear death or the death of any of the following:

- (a) The victim's family member, domestic animal or livestock.
- (b) A person with whom the victim has or has previously had a romantic or sexual relationship.
- (c) A person who regularly resides in the victim's household or has resided in the victim's household within the six months before the last conduct occurred.

B. This section does not apply to an interactive computer service, as defined in 47 United States Code § 230(f)(2), or to an information service or telecommunications service, as defined in 47 United States Code § 153, for content that is provided by another person.

C. Stalking under subsection A, paragraph 1 of this section is a class 5 felony. Stalking under subsection A, paragraph 2 of this section is a class 3 felony.

D. For the purposes of this section:

1. "Course of conduct":

- (a) Means directly or indirectly, in person or through one or more third persons or by any other means, to do any of the following:
 - (i) Maintain visual or physical proximity to a specific person or direct verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short.
 - (ii) Use any electronic, digital or global positioning system device to surveil a specific person or a specific person's internet or wireless activity continuously for twelve hours or more or on two or more occasions over a period of time, however short, without authorization.
 - (iii) Communicate, or cause to be communicated, on more than one occasion words, images or language by or through the use of electronic mail or an electronic

communication that is directed at a specific person without authorization and without a legitimate purpose.

(b) Does not include constitutionally protected activity or other activity authorized by law, the other person, the other person's authorized representative or if the other person is a minor, the minor's parent or guardian.

2. "Emotional distress" means significant mental suffering or distress that may, but does not have to, require medical or other professional treatment or counseling.

ARIZ. REV. STAT. ANN. § 13-3004 (WEST 2023). SENDING THREATENING OR ANONYMOUS LETTER; CLASSIFICATION

A person who knowingly sends or delivers to another a letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish his failings or infirmities, and a writer or sender of an anonymous letter or writing calculated to create distrust of another or tending to impute dishonesty, want of chastity, drunkenness or any crime or infirmity to the receiver of the letter or to any other person, is guilty of a class 2 misdemeanor.

Relevant Case Law

State v. Ditko, No. 1 CA–CR 06–0633, 2007 WL 5187937 (Ariz. Aug. 9, 2007)

Defendant was indicted for stalking, but the indictment was dismissed, and the State appealed. The State argued that the trial court erred in dismissing the indictment because it ignored the implicit threats in letters the defendant sent to the victim. The State presented evidence to the grand jury that the victim and the defendant had recently been divorced, that they were in a heated custody dispute, that the defendant had mailed hundreds of letters to the victim and to others with whom she was associated, and the letters were "demeaning, derogatory, and slanderous." The letters themselves were not presented to the grand jury, but the investigating officer testified that they contained statements that defendant was abused by victim, that victim had taken the couple's joint savings and had ruined her business, that victim had made false accusations against defendant, that victim was a poor mother, and that victim was mentally ill and abused drugs. The investigating officer also testified that the victim had stated that when the offender was not successful in alienating the victim from her friends, secluding her, getting her fired from her job, and getting custody of their daughter, then he would resort to killing her. However, the Court upheld the dismissal, stating that while the letters were demeaning, derogatory, and slanderous, there was no proof that the wife was reasonably in fear for her life. The trial court acknowledged that defendant needed mental health care, was dangerous, and was capable of hurting someone; however, the court also stated that despite the "creepy" nature of the letters, they did not make any express or implied threats. The Court of Appeals agreed with the trial court's conclusion, and stated that there was no evidence presented that the letters caused the victim to fear for her life.

State v. Sebba, Case No. 1 CA–CR 10–0687, 2012 WL 209751 (Ariz. Ct. App. Jan. 24, 2012)

Defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient to support his conviction. Evidence was presented at trial that defendant had violated a number of harassment injunctions that the victim had obtained against him. In December 2008, defendant went to the building where victim worked, alleging that he was visiting a temporary employment agency. However, he failed to sign in as a visitor, called for an elevator, and when he found the open elevator with the victim who just happened to be inside, he stepped into the elevator. A security guard asked the defendant to leave because of the victim's restraining order. Victim testified that defendant looked at her in a “threatening manner” and said, “Oh, I'll be back.” Two and a half months later, defendant called the security guard, a site manager, and a property manager at the building where the victim worked. He asked the security guard for the names and numbers of property managers, asked the site manager if this was the correct number to call to lease space in the building, complained to the property manager about the handling of the December 2008 incident, and indicated he might sue the victim and possibly others. The site manager and property manager reported their contacts with the defendant to the victim. Defendant argued that that evidence demonstrated a number of unforeseeable intervening events with the elevator caused him to encounter the victim at the building, that the victim just happened to be in the elevator, and that the State failed to prove that the defendant knowingly and intentionally stalked the victim. The Court of Appeals disagreed, stating that it was not unforeseeable that the defendant would encounter the victim in the building where she worked, that the building was a prohibited site on the injunctions against him, that the defendant actually entered the elevator when he saw the victim, and that, upon being instructed to leave, told the victim he'd be back. The Court upheld the sufficiency of the evidence.

State v. Tiggs, No. 1 CA–CR 12–0373, 2013 WL 5503686 (Ariz. Ct. App. Oct. 1, 2013)

Defendant was convicted of stalking and appealed, arguing that the State did not present sufficient evidence to support his conviction. Evidence was presented at trial that on three separate nights in March 2011, the defendant was caught peering into the victim's window through blinds for sustained periods of time. The victim reported the incident to her apartment complex's security officer. When the security officer caught the defendant on the third occasion, the defendant ran. The defendant argued on appeal that the State did not provide sufficient evidence that he stalked the victim because he never attempted to bring the victim's attention to his presence, and the victim did not testify that she feared for her safety. The Court of Appeals stated that nothing in the stalking statute requires that the defendant purposefully draw his victim's attention to his conduct. Further, the State provided ample evidence that the victim was actually aware of the defendant's conduct and that she was afraid — the victim outright testified that she was afraid during all three incidents, that she called the complex's security officer and manager following the first incident, and that she was afraid to get close to the defendant went police officers asked her to identify him. The defendant further argued that because he was a resident of the apartment complex and allowed to use public areas, including the area outside of the victim's apartment, his actions were authorized. The Court of Appeals stated that the stalking statute does not limit stalking to acts committed on private property, and there was no evidence that the defendant's conduct was constitutionally protected.

***State v. Garrison*, No. 1 CA–CR 12–0505 PRPC, 2014 WL 2619400 (Ariz. Ct. App. June 12, 2014)**

Defendant was convicted of stalking based upon numerous voicemails he left for the victims, a husband and a wife. The defendant filed a petition for post-conviction relief, arguing that his trial counsel was ineffective for failing to object to the admission of certain evidence. The trial court dismissed the defendant's petition and the defendant sought appellate review. The defendant argued that his counsel should have objected to testimony from the victim's daughter, who discussed her relationship with the defendant, said that he was an “angry and violent” person based upon the way the he yelled and screamed at her, called her names, pulled her hair, hit her and kicked her, threw and destroyed “things,” and punched a wall through her home. Defendant also argued counsel should have objected when the victim testified that the defendant fit profiles of stalkers she found online, that some of the defendant's statements made her think of OJ Simpson, and that it caused the victim to image how the defendant might kill her daughter. The Court of Appeals found that the defendant failed to demonstrate a reasonable probability that the results of the trial would have been different had his counsel objected to the evidence in question. The only issue for the jury to decide was whether the voicemails to the victims — the husband and the wife — would cause a reasonable person to fear for the person's safety or the safety of an immediate family member, and whether the victims in fact felt fear. Arguably, the testimony of the wife and daughter placed the defendant's voicemails to the wife and husband in context and was admissible to prove reasonable fear and fear in fact.

***State v. Jurado*, No. 2 CA-CR 2018-0089, 2019 WL 1417364 (Ariz. Ct. App. March 27, 2019)**

Defendant was convicted of stalking and aggravated harassment and appealed. The Court of Appeals found that evidence was sufficient to support the jury's finding of guilt for both charges. The evidence presented at trial showed that the defendant has placed a GPS system underneath the victim's vehicle for “at least a couple of weeks,” and that during the same time, the victim received text messages from the defendant that she was “out sleeping around,” that she was a “slut,” telling her to “watch her back,” and telling her that he knew her whereabouts. Several weeks later, victim discovered the GPS on her vehicle and received a protective order against the defendant, but she still received text messages from the defendant. The victim also testified that she felt “paranoid, scared, and terrified.”

***State v. Meeds*, 421 P.3d 653 (Ariz. Ct. App. 2018) (abrogated on other grounds by *State v. Arevalo*, 430 P.3d 644 (Ariz. 2020)**

Defendant was convicted of stalking and appealed, arguing in part that the evidence was insufficient to support his conviction because the State did not present evidence that the victim feared for her life or the life of her family members. The Court of Appeals held that the evidence was sufficient to prove beyond a reasonable doubt that the defendant engaged in a course of conduct that caused the victim to fear for her life and the life of her family members, and that her fear was reasonable under the circumstances. The victim testified that she feared for her life since defendant's conduct and threats had escalated in the past. She also testified that the defendant texted her that he was going to blow her face off if she did not acquiesce to his demands, texted a photo of where victim lived and stated that her nephew's wife, who lived with the victim, would enjoy his “firework show,” and texted that the victim and her nephew had 24 hours to leave the city or he would gun them down.

Additionally, the detective testified that victim conveyed that she felt her life and her family's lives were in danger.

State v. Jackson, No. CA-CR 2020-0079, 2021 WL 2808598 (Ariz. Ct. App. July 6, 2021)

Defendant was convicted of stalking, among other offenses, and appealed. The Court of Appeals found that the evidence presented was sufficient to support jury's finding of guilt. Evidence presented at trial showed that the defendant, who was in a romantic relationship with the victim, strangled the victim, that victim filed a protective order, and that following the protective order the defendant continued to contact the victim by email, text, and Facebook messaging, causing the victim to fear for her safety. The defendant also sent the victim cards and a package, some of which he “personally delivered” to her home, and he came to her residence and did work she had not asked him to do.

State v. Ortiz, No. 2 CA-CR 2020-0045, 2021 WL 1235056 (Ariz. Ct. App. March 31, 2021)

Defendant was convicted of stalking, among other offenses, and appealed. At trial, evidence was presented that the victim and defendant were in a romantic relationship, and that defendant had threatened to kill himself, so victim drove him to the hospital. After that incident, the defendant quit his ROTC program because he was afraid the Marine Corps would never accept him after he threatened to commit suicide. Several months later, the defendant showed up at victim's apartment with a rifle in his hand, demanded victim turn over her phone, and asked victim to get in her car so they could talk. The victim complied because she was frightened that defendant was holding a rifle. Several months later, the defendant called victim and told her that he had contacted people in Mexico to “get revenge” on the victim so that she would “feel the same pain that he felt not having his career.” He told her he had considered hiring someone to kill her, break her knees, or blind her with acid, but he decided against it because it was too expensive. The defendant argued that evidence was insufficient that established a course of conduct and that the victim did not take him seriously and was not threatened when he called her. However, the victim testified that she was holding back tears during the phone call. The Court of Appeals disagreed with the defendant, pointing to the above incidents to hold that evidence was sufficient to support the stalking conviction, and maintaining that the jury was free to believe the victim's testimony.

State v. Rios, 502 P.3d 474 (Ct. App. 2021), review denied (Apr. 5, 2022)

Defendant was convicted of two counts of aggravated harassment related to persistent attempts at communication with his previous romantic partner in violation of a restraining order. As part of his appeal, the defendant claimed that his convictions violated double jeopardy because they arose from a single, uninterrupted course of conduct: a series of text messages. Because the defendant did not raise the double jeopardy argument at trial, the appellate court reviewed for fundamental error, concluding that each text message sent constituted a separate act of harassment. Therefore, the convictions did not violate double jeopardy. Given the recent changes to § 13-2921 and § 13-2921.01, a future court could arrive at a different outcome when faced with the same issue or similar facts.

Stalking, Harassment, & Related Offenses: Arkansas

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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ARKANSAS

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>A pattern of conduct composed of two (2) or more acts, separated by at least thirty-six (36) hours, but occurring within one (1) year, including without limitation an act in which the actor directly, indirectly, or through a third party by any action, method, device, or means follows, monitors, observes, places under surveillance, threatens, or communicates to or about a person or interferes with a person's property. Ark. Code § 5-71-229(f)(1).</p> <p>Does not include constitutionally protected activity. Ark. Code § 5-71-229(f)(2).</p> <p>A "course of conduct" is required for stalking in the first and second degrees, but not stalking in the third degree, which merely requires "an act." Ark. Code § 5-71-229(c)(1).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>For stalking in the first and third degrees, there is no explicit requirement of a "threat" per se, but offender must engage in course of conduct (for first degree stalking) or an act (for third degree stalking) that places a victim under emotional distress and in fear of safety.</p> <p>Stalking in the second degree requires a terroristic threat. A terroristic threat is a threat to cause death, physical injury, or property damage to another person. See Ark. Code § 5-13-301. A terroristic threat need not be verbal; nor must the threat be communicated by the accused directly to the person threatened; nor must the victim actually be terrorized; nor must the offender have the immediate ability to carry out the threats. <i>Lowry v. State</i>, 216 S.W.3d 101 (Ark. 2005).</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>The required intent depends on the gradation of the crime.</p> <p>Stalking in the first degree requires knowingly engaging in a course of conduct that would place victim under emotional distress and in fear for safety of themselves or third party. Ark. Code § 5-71-229(a)(1).</p> <p>Stalking in the second degree (<i>two levels of intent</i>) requires knowingly engaging in a course of conduct with the purpose of placing that person in imminent fear of death or serious bodily injury to themselves or an immediate family member. Ark. Code § 5-71-229(b)(1).</p> <p>Stalking in the third degree requires knowingly committing an act that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety. Ark. Code § 5-71-229(c)(1).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes. Stalking in the first degree and third degrees encompasses acts that would cause victim to fear for safety of a third party. See Ark. Code § 5-71-229(a)(1); (c)(1).</p> <p>Stalking in the second degree encompasses acts that would cause victim to imminently fear serious bodily injury or death to victim's immediate family member. Ark. Code § 5-71-229(b)(1).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>The type of fear required depends on the gradation of the crime.</p> <p>Stalking in the first degree requires emotional distress and fear for safety or safety of a third party. Ark. Code § 5-71-229(a)(1).</p> <p>Stalking in the second degree requires imminent fear of serious bodily injury or death to themselves or immediate family member</p>

	<p>Ark. Code § 5-71-229(b)(1). <i>See also Dye v. State</i>, 17 S.W.3d 505 (Ark. Ct. App. 2000) (Evidence was sufficient to establish that defendant placed victim in imminent fear of death or serious bodily injury both to herself and to a member of her immediate family, and thus, was sufficient to support conviction for stalking in the second degree).</p> <p>Stalking in the third degree requires emotional distress and fear for safety or safety of a third party. Ark. Code § 5-71-229(c)(1).</p>
<p>Does fear include emotional distress?</p>	<p>Stalking in the first and third degrees require both fear <i>and</i> emotional distress. <i>See</i> Ark. Code § 5-71-229(a)(1); (c)(1).</p> <p>Emotional distress is defined as “significant mental suffering or distress.” Ark. Code § 5-71-229(f)(2)(A).</p> <p>“Emotional distress” does not require that the victim sought or received medical or other professional treatment or counseling. Ark. Code § 5-71-229(f)(2)(B).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Stalking in the first and third degrees have a reasonable person standard. <i>See</i> Ark. Code § 5-71-229(a)(1), (c)(1).</p> <p>Stalking in the second degree has no explicit statutory requirement of either subjective or reasonable person standard, but in determining the sufficiency of evidence, courts have effectively applied a reasonable person standard. <i>See, e.g., Wesson v. State</i>, 896 S.W.2d 874 (Ark. 1995) (holding evidence of defendant's calls to victim as sufficient to constitute a terroristic threat). Courts have also held that to uphold a conviction for stalking in the second degree, a victim need not have actually been terrorized by a terroristic threat. <i>Lowry v. State</i>, 216 S.W.3d 101 (Ark. 2005).</p>

<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>There are no explicit case law interpretations of the reasonable fear standard for purposes of stalking in the first and third degrees; only interpretations of “terroristic threat” for purposes of stalking in the second degree.</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No. Further, the statute explicitly states that “it is not a defense to a prosecution under this section that the actor was not given actual notice by the victim that the actor's conduct was not wanted.” See Ark. Code § 5-71-229(e).</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>Yes. The definition of “course of conduct” encompasses actions by a third party. Ark. Code § 5-71-229(f)(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, as acts constituting a “course of conduct” can take place by “by any action, method, device, or means.” Ark. Code Ann. § 5-71-229(f)(1)(A).</p> <p>Other statutes criminalize similar conduct such as internet stalking of a child, unlawful computerized communications, harassing communications, and cyberbullying. Ark. Code § 5-27-306, 5-41-108, 5-71-209, 5-71-217.</p>
<p>Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)</p>	<p>There is no residency requirement. Further, a person can be convicted of stalking if “the conduct or a result that is an element of the offense occurs within this state.” Ark. Code § 5-1-104 (1)(a).</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>Gradation of crimes (<i>list out statues in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)</p>	<p>Stalking in the first degree is a Class C felony, stalking in the second degree is a Class D felony, and stalking in the third degree is a Class A misdemeanor. Ark. Code § 5-71-229(a)(1), (b)(1).</p>

<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is elevated from stalking in the third degree to stalking in the second degree if the offender:</p> <ul style="list-style-type: none"> - commits more than one act; - commits harassment and terroristic threats; and <p>with the purpose of placing the person in imminent fear of death or serious bodily injury or death/serious bodily injury to immediate family (elevated mens rea). Ark. Code § 5-71-229(b)(1).</p> <p>Stalking is elevated to stalking in the first degree if the offender:</p> <ul style="list-style-type: none"> - violates a protection order; - if the defendant has previously been convicted of stalking in the second degree or terroristic threats or equivalent convictions in other jurisdictions; or - is armed with a deadly weapon or represents by words or conducts that they are armed with deadly weapon. <p>Ark. Code § 5-71-229(a)(1).</p>
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Statutes

ARK. CODE ANN. § 5-13-301 (WEST 2023). TERRORISTIC THREATENING

(a) (1) A person commits the offense of terroristic threatening in the first degree if:

(A) With the purpose of terrorizing another person, the person threatens to cause death or serious physical injury or substantial property damage to another person; or

(B) With the purpose of terrorizing another person, the person threatens to cause physical injury or property damage to a teacher or other school employee acting in the line of duty.

(2) Terroristic threatening in the first degree is a Class D felony

(b) (1) A person commits the offense of terroristic threatening in the second degree if, with the purpose of terrorizing another person, the person threatens to cause physical injury or property damage to another person.

(2) Terroristic threatening in the second degree is a Class A misdemeanor.

- (c) (1)(A) Upon pretrial release of the defendant, a judicial officer shall:
- (i) Enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure; and
 - (ii) Give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.
- (B) The no contact order under subdivision (c)(1)(A) of this section remains in effect during the pendency of any appeal of a conviction under this section.
- (C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order under subdivision (c)(1)(A) of this section to the victim and arresting agency without unnecessary delay.
- (2) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

ARK. CODE ANN. § 5-27-306. (WEST 2023). INTERNET STALKING OF A CHILD

- (a) A person commits the offense of internet stalking of a child if the person being twenty-one (21) years of age or older knowingly uses a computer online service, internet service, local internet bulletin board service, or any means of electronic communication to:
- (1) Seduce, solicit, lure, or entice a child fifteen (15) years of age or younger in an effort to arrange a meeting with the child for the purpose of engaging in:
 - (A) Sexual intercourse;
 - (B) Sexually explicit conduct; or
 - (C) Deviate sexual activity;
 - (2) Seduce, solicit, lure, or entice an individual that the person believes to be fifteen (15) years of age or younger in an effort to arrange a meeting with the individual for the purpose of engaging in:
 - (A) Sexual intercourse;
 - (B) Sexually explicit conduct; or

(C) Deviate sexual activity;

(3) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, email address, residence address, picture, physical description, characteristics, or any other identifying information on a child fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the child for the purpose of engaging in:

(A) Sexual intercourse;

(B) Sexually explicit conduct; or

(C) Deviate sexual activity;

(4) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, email address, residence address, picture, physical description, characteristics, or any other identifying information on an individual that the person believes to be fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the individual for the purpose of engaging in:

(A) Sexual intercourse;

(B) Sexually explicit conduct; or

(C) Deviate sexual activity; or

(5) Arrange a meeting with another person who holds himself or herself out as the parent, guardian, family member, or other person of authority over a child fifteen (15) years of age or younger or an individual that the person believes to be fifteen (15) years of age or younger in order to seduce, solicit, lure, or entice the child fifteen (15) years of age or younger or an individual that the person believes to be fifteen (15) years of age or younger for the purpose of engaging in:

(A) Sexual intercourse;

(B) Sexually explicit conduct; or

(C) Deviate sexual activity.

(b) Internet stalking of a child is a:

(1) Class B felony if the person attempts to arrange a meeting with:

(A) A child fifteen (15) years of age or younger, even if a meeting with the child never takes place;

(B) An individual that the person believes to be fifteen (15) years of age or younger, even if a meeting with the individual never takes place; or

(C) A person who holds himself or herself out as the parent, guardian, family member, or other person of authority over a child fifteen (15) years of age or younger or an individual that the person believes to be fifteen (15) years of age or younger, even if a meeting with the person never takes place; or

(2) Class Y felony if the person arranges a meeting with a child fifteen (15) years of age or younger or an individual that the person believes to be fifteen (15) years of age or younger and an actual meeting with the child or the individual takes place, even if the person fails to engage the child or individual in:

(A) Sexual intercourse;

(B) Sexually explicit conduct; or

(C) Deviate sexual activity.

(c) This section does not apply to a person or entity providing an electronic communications service to the public that is used by another person to violate this section, unless the person or entity providing an electronic communications service to the public:

(1) Conspires with another person to violate this section; or

(2) Knowingly aids and abets a violation of this section.

ARK. CODE ANN. § 5-41-108 (WEST 2023). UNLAWFUL COMPUTERIZED COMMUNICATIONS

(a) A person commits the offense of unlawful computerized communications if, with the purpose to frighten, intimidate, threaten, abuse, or harass another person, the person sends a message:

(1) To the other person on an electronic mail or other computerized communication system and in that message threatens to cause physical injury to any person or damage to the property of any person;

(2) On an electronic mail or other computerized communication system with the reasonable expectation that the other person will receive the message and in that message threatens to cause physical injury to any person or damage to the property of any person;

(3) To another person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd, or profane language; or

(4) On an electronic mail or other computerized communication system with the reasonable expectation that the other person will receive the message and in that message uses any obscene, lewd, or profane language.

(b) Unlawful computerized communications is a Class A misdemeanor.

(c) (1) The judicial officer in a court of competent jurisdiction shall upon pretrial release of the defendant enter an order consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) A protective order under subdivision (c)(1) of this section remains in effect during the pendency of any appeal of a conviction under this section.

ARK. CODE ANN. § 5-53-134 (WEST 2023). VIOLATION OF A PROTECTION ORDER

(a) (1) A person commits the offense of violation of an order of protection if:

(A) A circuit court or other court with competent jurisdiction has issued a temporary order of protection or an order of protection against the person pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.;

(B) The person has received actual notice or notice pursuant to the Arkansas Rules of Civil Procedure of a temporary order of protection or an order of protection pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.; and

(C) The person knowingly violates a condition of an order of protection issued pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.

(2) A person commits the offense of violation of an out-of-state order of protection if:

(A) The court of another state, a federally recognized Indian tribe, or a territory with jurisdiction over the parties and matters has issued a temporary order of protection or an order of protection against the person pursuant to the laws or rules of the other state, federally recognized Indian tribe, or territory;

(B) The person has received actual notice or other lawful notice of a temporary order of protection or an order of protection pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory;

(C) The person knowingly violates a condition of an order of protection issued pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory; and

(D) The requirements of § 9-15-302 concerning the full faith and credit for an out-of-state order of protection have been met.

(3) (A) A service member commits the offense of violation of a military order of protection if:

(i) The commanding general, a military judge, or a special courts-martial convening authority as authorized by § 12-64-406(b) issues a military order of protection against the service member;

(ii) The service member receives actual notice or other lawful notice of the military order of protection as authorized under United States Department of Defense Instruction 6400.06, as it existed on January 1, 2017; and

(iii) The service member knowingly violates a condition of the military order of protection.

(B) A prosecution against a service member for the offense of violation of a military order of protection does not prohibit the commanding general or military commander who issued the military order of protection from pursuing appropriate disciplinary action against the service member under the Military Code of Arkansas.

(b) (1) Except as provided in subdivision (b)(2) of this section, violation of an order of protection under this section is a Class A misdemeanor.

(2) Violation of an order of protection under this section is a Class D felony if:

(A) The offense is committed within five (5) years of a previous conviction for violation of an order of protection under this section; and

(B) The order of protection was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate.

(c) (1) A law enforcement officer may arrest and take into custody without a warrant a person whom the law enforcement officer has probable cause to believe:

(A) Is subject to an order of protection issued under the laws of this state; and

(B) Has violated the terms of the order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(2) Under § 9-15-302, a law enforcement officer or law enforcement agency may arrest and take into custody without a warrant a person whom the law enforcement officer or law enforcement agency has probable cause to believe:

(A) Is subject to:

(i) An order of protection issued under the laws or rules of another state, a federally recognized Indian tribe, or a territory; or

(ii) A military order of protection; and

(B) Has violated the terms of the order of protection issued under the laws or rules of the other state, federally recognized Indian tribe, or territory, or the military order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(3) (A) If a service member is in the custody of a law enforcement agency as authorized in subdivision (c)(2) of this section, the law enforcement agency shall notify the office of the Adjutant General of the Arkansas National Guard within twenty-four (24) hours from the time the service member was placed in the custody of the law enforcement agency.

(B) (i) The Arkansas National Guard shall take custody of the service member within forty-eight (48) hours from the time the service member was placed in the custody of the law enforcement agency.

(ii) However, if the Arkansas National Guard does not take custody of the service member as required by subdivision (c)(3)(B)(i) of this section, the law enforcement agency shall release the service member.

(d) It is an affirmative defense to a prosecution under this section if:

(1) The parties have reconciled prior to the violation of the order of protection;

(2) The petitioner for the order of protection:

(A) Invited the defendant to come to the petitioner's residence or place of employment listed in the order of protection; and

(B) Knew that the defendant's presence at the petitioner's residence or place of employment would be in violation of the order of protection;

(3) The petitioner for the order of protection arranged or invited the defendant into meeting at a location or took affirmative steps to communicate with the defendant with the promise that the petitioner would not report the defendant to law enforcement for violating the order of protection; or

(4) The petitioner for the order of protection visited the residence or place of employment of the defendant on his or her own accord and without any threat, duress, or coercion on the part of the defendant.

(e) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse in an effort to comply with this subchapter shall have immunity from civil or criminal liability.

(f) As used in this section:

(1) “Military order of protection” means an official command directed at a service member for the purpose of preventing violent and threatening acts against a person who:

(A) Is the current or former spouse of the service member;

(B) Is or was a child, stepchild, parent, stepparent, sibling, guardian, or ward of the service member;

(C) Is residing or cohabitating or in the past has resided or cohabitated with the service member;

(D) Has or had a child in common with the service member;

(E) Is or has been in a dating relationship with the service member as defined by § 9-15-103;

(F) Has had an intimate sexual relationship with the service member; or

(G) Has made allegations against the service member of violations of the punitive article of sexual assault as defined by § 12-64-852; and

(2) “Service member” means a person serving in:

(A) Any branch or reserve component of the United States Armed Forces; or

(B) The National Guard of any state.

ARK. CODE ANN. § 5-71-208 (WEST 2023). HARASSMENT

(a) A person commits the offense of harassment if, with purpose to harass, annoy, or alarm another person, without good cause, he or she:

(1) Strikes, shoves, kicks, or otherwise touches a person, subjects that person to offensive physical contact or attempts or threatens to do so;

(2) In a public place, directs obscene language or makes an obscene gesture to or at another person in a manner likely to provoke a violent or disorderly response;

- (3) Follows a person in or about a public place;
- (4) In a public place repeatedly insults, taunts, or challenges another person in a manner likely to provoke a violent or disorderly response;
- (5) Engages in conduct or repeatedly commits an act that alarms or seriously annoys another person and that serves no legitimate purpose; or
- (6) Places a person under surveillance by remaining present outside that person's school, place of employment, vehicle, other place occupied by that person, or residence, other than the residence of the defendant, for no purpose other than to harass, alarm, or annoy.

(b) Harassment is a Class A misdemeanor.

(c) It is an affirmative defense to prosecution under this section if the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty while conducting surveillance on an official work assignment.

(d) (1) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) This no contact order remains in effect during the pendency of any appeal of a conviction under this section.

(3) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(e) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

ARK. CODE ANN. § 5-71-209 (WEST 2023). HARASSING COMMUNICATIONS

(a) As used in this section, “electronic device” includes a computer, cell phone, tablet, smartphone, or any other device that connects to the internet or is used in the electronic transmission of communication or information.

(b) A person commits the offense of harassing communications if:

(1) With the purpose to harass, annoy, or alarm another person, the person:

- (A) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, email, message delivered to an electronic device, or any other form of written or electronic communication, in a manner likely to harass, annoy, or cause alarm;
 - (B) Makes a telephone call or causes a telephone to ring repeatedly, with no purpose of legitimate communication, regardless of whether a conversation ensues;
 - (C) Knowingly permits any telephone or electronic device under his or her control to be used for any purpose prohibited by this section;
 - (D) Threatens by telephone, in writing, or by electronic communication, including without limitation by text message, social media post, facsimile transmission, email, and internet service to take an action against another person that is known by the person to be unlawful; or
 - (E) Places two (2) or more telephone calls anonymously, at an hour or hours known by the person to be inconvenient to another person, in an offensively repetitious manner or without a legitimate purpose of communication, and by this action knowingly annoys or alarms the other person; or
- (2) With the purpose to frighten, intimidate, or distress emotionally another person, the person:
- (A) Communicates by telephone to another person that a person has been injured, killed, or is ill when the communication is known by the person to be false; or
 - (B) Communicates with another person by any method described in subdivision (b)(1) of this section, without legitimate purpose in a manner the person knows, or reasonably should know, would frighten, intimidate, or cause emotional distress to a similarly situated person of reasonable sensibilities.
- (c) An offense involving use of a telephone or electronic device may be prosecuted in the county where the defendant was located when he or she used the telephone or electronic device, or in the county where the telephone made to ring by the defendant or the electronic device that received a message or email from the defendant was located.
- (d) Harassing communications is a Class A misdemeanor.
- (e) (1) Upon the pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rule 9.3 and Rule 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.
- (2) The no contact order under subdivision (e)(1) of this section remains in effect during the pendency of any appeal of a conviction under this section.

- (3) The judicial officer or prosecuting attorney shall provide a copy of the no contact order under subdivision (e)(1) of this section to the victim and arresting agency without unnecessary delay.
- (f) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

ARK. CODE ANN. § 5-71-217 (WEST 2023). CYBERBULLYING

(a) As used in this section:

- (1) “Communication” means the electronic communication of information of a person's choosing between or among points specified by the person without change in the form or content of the information as sent and received;
- (2) “Electronic means” means any textual, visual, written, or oral communication of any kind made through the use of a computer online service, Internet service, telephone, or any other means of electronic communication, including without limitation to a local bulletin board service, an Internet chat room, electronic mail, a social networking site, or an online messaging service; and
- (3) “School employee” means a person who is employed full time or part time at a school that serves students in any of the grades kindergarten through grade twelve (K-12), including without limitation a:
 - (A) Public school operated by a school district;
 - (B) Public school operated by a state agency or institution of higher education;
 - (C) Public charter school; or
 - (D) Private school.

(b) A person commits the offense of cyberbullying if:

- (1) He or she transmits, sends, or posts a communication by electronic means with the purpose to frighten, coerce, intimidate, threaten, abuse, or harass another person; and
- (2) The transmission was in furtherance of severe, repeated, or hostile behavior toward the other person.

(c) The offense of cyberbullying may be prosecuted in the county where the defendant was located when he or she transmitted, sent, or posted a communication by electronic means, in the county where the communication by electronic means was received by the person, or in the county where the person targeted by the electronic communications resides.

(d) (1) Cyberbullying is a Class B misdemeanor.

(2) Cyberbullying is a Class A misdemeanor if the victim is a school employee.

ARK. CODE ANN. § 5-71-229 (WEST 2023). STALKING

(a) (1) A person commits stalking in the first degree if he or she knowingly engages in a course of conduct that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety, and the actor:

(A) Does so in contravention of an order of protection consistent with the Domestic Abuse Act of 1991, § 9-15-101 et seq., or a no contact order as set out in subdivision (a)(2)(A) of this section, protecting the same victim, or any other order issued by any court protecting the same victim;

(B) Has been convicted within the previous ten (10) years of:

(i) Stalking in the second degree;

(ii) Terroristic threatening, § 5-13-301, or terroristic act, § 5-13-310; or

(iii) Stalking or threats against another person's safety under the statutory provisions of any other state jurisdiction; or

(C) Is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon.

(2) (A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and the arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the first degree is a Class C felony.

(b) (1) A person commits stalking in the second degree if he or she knowingly engages in a course of conduct that harasses another person and makes a terroristic threat with the purpose of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family.

(2) (A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the second degree is a Class D felony.

(c) (1) A person commits stalking in the third degree if he or she knowingly commits an act that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety.

(2) (A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the third degree is a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this section if the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty while conducting surveillance on an official work assignment.

(e) It is not a defense to a prosecution under this section that the actor was not given actual notice by the victim that the actor's conduct was not wanted.

(f) As used in this section:

(1) (A) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, separated by at least thirty-six (36) hours, but occurring within one (1) year, including without limitation an act in which the actor directly, indirectly, or through a third party by any action, method, device, or means follows, monitors, observes, places under surveillance, threatens, or communicates to or about a person or interferes with a person's property.

(B) (i) "Course of conduct" does not include constitutionally protected activity.

(ii) If the defendant claims that he or she was engaged in a constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence;

(2) (A) "Emotional distress" means significant mental suffering or distress.

(B) "Emotional distress" does not require that the victim sought or received medical or other professional treatment or counseling; and

(3) "Harasses" means an act of harassment as prohibited by § 5-71-208.

ARK. CODE. ANN. § 16-85-714 (WEST 2023). No CONTACT ORDERS

(a) (1) A person commits the offense of violation of an order of protection if:

(A) A circuit court or other court with competent jurisdiction has issued a temporary order of protection or an order of protection against the person pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.;

- (B) The person has received actual notice or notice pursuant to the Arkansas Rules of Civil Procedure of a temporary order of protection or an order of protection pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.; and
- (C) The person knowingly violates a condition of an order of protection issued pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.

(2) A person commits the offense of violation of an out-of-state order of protection if:

- (A) The court of another state, a federally recognized Indian tribe, or a territory with jurisdiction over the parties and matters has issued a temporary order of protection or an order of protection against the person pursuant to the laws or rules of the other state, federally recognized Indian tribe, or territory;
- (B) The person has received actual notice or other lawful notice of a temporary order of protection or an order of protection pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory;
- (C) The person knowingly violates a condition of an order of protection issued pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory; and
- (D) The requirements of § 9-15-302 concerning the full faith and credit for an out-of-state order of protection have been met.

(3) (A) A service member commits the offense of violation of a military order of protection if:

- (i) The commanding general, a military judge, or a special courts-martial convening authority as authorized by § 12-64-406(b) issues a military order of protection against the service member;
- (ii) The service member receives actual notice or other lawful notice of the military order of protection as authorized under United States Department of Defense Instruction 6400.06, as it existed on January 1, 2017; and
- (iii) The service member knowingly violates a condition of the military order of protection.

(B) A prosecution against a service member for the offense of violation of a military order of protection does not prohibit the commanding general or military commander who issued the military order of protection from pursuing appropriate disciplinary action against the service member under the Military Code of Arkansas.

(b) (1) Except as provided in subdivision (b)(2) of this section, violation of an order of protection under this section is a Class A misdemeanor.

(2) Violation of an order of protection under this section is a Class D felony if:

- (A) The offense is committed within five (5) years of a previous conviction for violation of an order of protection under this section; and
 - (B) The order of protection was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate.
- (c) (1) A law enforcement officer may arrest and take into custody without a warrant a person whom the law enforcement officer has probable cause to believe:
- (A) Is subject to an order of protection issued under the laws of this state; and
 - (B) Has violated the terms of the order of protection, even if the violation did not take place in the presence of the law enforcement officer.
- (2) Under § 9-15-302, a law enforcement officer or law enforcement agency may arrest and take into custody without a warrant a person whom the law enforcement officer or law enforcement agency has probable cause to believe:
- (A) Is subject to:
 - (i) An order of protection issued under the laws or rules of another state, a federally recognized Indian tribe, or a territory; or
 - (ii) A military order of protection; and
 - (B) Has violated the terms of the order of protection issued under the laws or rules of the other state, federally recognized Indian tribe, or territory, or the military order of protection, even if the violation did not take place in the presence of the law enforcement officer.
- (3) (A) If a service member is in the custody of a law enforcement agency as authorized in subdivision (c)(2) of this section, the law enforcement agency shall notify the office of the Adjutant General of the Arkansas National Guard within twenty-four (24) hours from the time the service member was placed in the custody of the law enforcement agency.
- (B) (i) The Arkansas National Guard shall take custody of the service member within forty-eight (48) hours from the time the service member was placed in the custody of the law enforcement agency.
 - (ii) However, if the Arkansas National Guard does not take custody of the service member as required by subdivision (c)(3)(B)(i) of this section, the law enforcement agency shall release the service member.
- (d) It is an affirmative defense to a prosecution under this section if:

- (1) The parties have reconciled prior to the violation of the order of protection;
 - (2) The petitioner for the order of protection:
 - (A) Invited the defendant to come to the petitioner's residence or place of employment listed in the order of protection; and
 - (B) Knew that the defendant's presence at the petitioner's residence or place of employment would be in violation of the order of protection;
 - (3) The petitioner for the order of protection arranged or invited the defendant into meeting at a location or took affirmative steps to communicate with the defendant with the promise that the petitioner would not report the defendant to law enforcement for violating the order of protection; or
 - (4) The petitioner for the order of protection visited the residence or place of employment of the defendant on his or her own accord and without any threat, duress, or coercion on the part of the defendant.
- (e) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse in an effort to comply with this subchapter shall have immunity from civil or criminal liability.
- (f) As used in this section:
- (1) "Military order of protection" means an official command directed at a service member for the purpose of preventing violent and threatening acts against a person who:
 - (A) Is the current or former spouse of the service member;
 - (B) Is or was a child, stepchild, parent, stepparent, sibling, guardian, or ward of the service member;
 - (C) Is residing or cohabitating or in the past has resided or cohabitated with the service member;
 - (D) Has or had a child in common with the service member;
 - (E) Is or has been in a dating relationship with the service member as defined by § 9-15-103;
 - (F) Has had an intimate sexual relationship with the service member; or
 - (G) Has made allegations against the service member of violations of the punitive article of sexual assault as defined by § 12-64-852; and

(2) “Service member” means a person serving in:

(A) Any branch or reserve component of the United States Armed Forces; or

(B) The National Guard of any state.

Relevant Case Law

***Wesson v. State*, 896 S.W.2d 874 (Ark. 1995)**

The defendant was convicted of stalking and appealed, arguing with the trial court's interpretation of “terroristic threat.” He argued that the requirement of a “terroristic threat” requires that the defendant make an “actual threat” of death or serious bodily injury to the victim. The Court held that the use of the term “terroristic threat” when defining the crime of stalking does not require that it be shown that the accused has the immediate ability to carry out the threats. The Court also held that in this case, evidence was sufficient to prove that the defendant threatened the victim with both death and serious bodily injury where the defendant stated on phone that he was coming over to victim's apartment right away and that he was going to hurt her, told her that he had thoughts of killing her, and said he would do everything in his power to hurt her.

***Dye v. State*, 17 S.W.3d 505 (Ark. Ct. App. 2000)**

Defendant was convicted of stalking in the second degree. On appeal, the defendant argued the trial court erred in denying his motion for a directed verdict, which challenged the sufficiency of the evidence. Defendant argued that the stalking statute required an express threat of physical injury and that the threat he made to the victim on February 5, 1998 was ambiguous, vague, and inadequate to prove that he intended physical injury. At trial, the victim testified that the defendant called her repeatedly and persistently after she tried to terminate the relationship, and threatened at one point to find her husband and kill him. Moreover, after arguing on February 5, the defendant told the victim, “You can get me arrested but that will be the last thing that you do.” The Court of Appeals disagreed with the defendant's argument that such statement was an implied threat. Instead, the court said that the February 5th phone call constituted an express threat to the victim and her husband.

***Moses v. State*, 39 S.W.3d 459 (Ark. Ct. App. 2001)**

Defendant was convicted of stalking and appealed. The defendant argued in part on appeal that the State failed to show that there was a 36-hour period between acts of harassment toward the victim after a no-contact order was issued. The defendant interpreted the statute to require that all acts constituting the course of conduct occur after the issuance of a no-contact order. The Court of Appeals found that there was no requirement that only behavior after a no-contact order could be used to prove stalking, as this went against the legislative intent of the statute. Defendant also contended that he made no terroristic threats on his voicemail to the victim on December 22nd. However, the victim testified that the defendant told her in the voicemail to call him before it was “too late,” which she interpreted as a threat that he would do something to her if she did not call him back, and she was afraid for her live and the lives of her children and her mother. The Court of

Appeals found that there was sufficient evidence of a terroristic threat to support a conviction for stalking.

Lowry v. State, 216 S.W.3d 101 (Ark. 2005)

Defendant was convicted of first-degree stalking, among other offenses, and appealed. On appeal, the defendant argued in part that there was insufficient evidence that he made a terroristic threat during the time a protection order was in effect. The Supreme Court, further defining “terroristic threats” as statutorily defined in Ark. Code Ann. § 5-13-301, stated that a terroristic threat need not be verbal; nor must the threat be communicated by the accused directly to the person threatened; nor must the victim actually be terrorized; nor must the offender have the immediate ability to carry out the threats. The Court held that the evidence was sufficient to demonstrate that following the issuance of a protective order, the defendant engaged in a course of conduct spanning more than two months in which he harassed and threatened the victim and her family on at least three occasions. The first incident occurred when defendant apologized to victim's teenage daughter for something “he was going to have to do” was later overheard by a third party that “they're going to burn for this shit,” and then the victims awoke to find their vehicles on fire just feet from their mobile home. The second incident occurred the next day when the defendant chased the victim's daughter at a high speed in his car. The third incident occurred 6 weeks later when the defendant waited for the victim to leave work and tailgated her while holding up a handmade sign and while armed with a loaded gun.

Van Winkle v. State, 445 S.W.3d 542 (Ark. Ct. App. 2014)

Defendant was convicted of first-degree stalking (*now second-degree stalking*) among other offenses, and appealed. On appeal, the defendant argued in part that there was no “course of conduct” of harassment, claiming there was no evidence he had previously harassed the victim. The evidence, however, showed that mere weeks before the incident that was the subject of this case, the defendant forced the victim to engage in oral sex with him, threatening to tell her probation officer about her improper prescriptions if she did not. He also threatened the victim that she would never see her son again. The Court of Appeals held that from this evidence, a jury could reasonably conclude that the defendant had engaged in a course of conduct of harassment as required by the stalking statute.

Stalking, Harassment, & Related Offenses: California

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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CALIFORNIA

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>Two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity not included. Cal. Penal Code § 646(f).</p> <p>It is permissible to convict and sentence a defendant for multiple charges arising from a single act or course of conduct. <i>See People v. Cruz</i>, 259 Cal.Rptr.3d 870 (Cal. Ct. App. 2020).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>A credible threat is required and can be verbal or written, including through the use of an electronic communication device.</p> <p>The threat can be express or implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct.</p> <p>Must be made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family.</p> <p>Not necessary to prove that the defendant had the intent to actually carry out the threat.</p> <p>Cal. Penal Code § 646(g).</p> <p>Threats must be “unambiguous and have such immediacy that they convincingly express an intention of being carried out.” <i>Orellana v. Barr</i>, 967 F.3d 927 (9th Cir. 2020). <i>See also People v. Choi</i>, 274 Cal. Rptr. 3d 6 (Cal. Ct. App. 2021) (emphasizing that a threat conveying an immediate <i>prospect</i> of execution may be credible).</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>Willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family. Cal. Penal Code § 646(a).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Actions against a victim's immediate family member can help establish a course of conduct. See Cal. Penal Code § 646(a).</p> <p>“Immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. Cal. Penal Code §646.9(g).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Reasonable fear for victim's safety or the safety of his or her family. See Cal. Crim. Code § 646.9(a). If defendant's conduct constitutes harassment (as opposed to following), victim must be seriously “alarm[ed], annoy[ed], torment[ed], or terroriz[ed].” See Cal. Penal Code § 646.9(e).</p> <p>Safety is not limited to only physical safety. <i>People v. Borelli</i>, 91 Cal. Rptr. 2d 851 (Cal. Ct. App. 2000).</p> <p>Victim's fear need not be contemporaneous with defendant's threats and harassment. <i>People v. Norman</i>, 89 Cal. Rptr. 2d 806 (Cal. Ct. App. 1999).</p>
<p>Does fear include emotional distress?</p>	<p>No. The definition of “harassment” previously required that the conduct be such that would cause a reasonable person to suffer substantial emotional distress and actually cause such distress. That requirement was removed from the stalking statute in 2002 by S.B. 1320, 2002 Legis. Serv. (Cal. 2002).</p>

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both. The plain language of statute requires a subjective and objective standard.</p> <p>A credible threat must be made with the apparent ability to carry out the threat “so as to cause [the victim] to reasonably fear for his or her safety or the safety of his or her family...” Cal. Penal Code § 646.9(g).</p> <p>Furthermore, defendant can either “follow” victim or “harass” victim, and harassment is defined as conduct that “seriously” alarms, annoys, torments, or terrorizes “the victim.” Cal. Penal Code § 646.9(e).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is highly fact-dependent.</p> <p>See, e.g., <i>People v. Uecker</i>, 91 Cal. Rptr. 3d 355 (Cal. Ct. App. 2009) (finding fear was reasonable where defendant hung around outside victim's car in her employer's parking lot for seven months, regularly left notes on her car, and implied that he was watching her).</p> <p>See, e.g., <i>People v. Norman</i>, 89 Cal. Rptr. 2d 806 (Cal. Ct. App. 1999) (finding that fear was reasonable where evidence indicated that defendant attempted to enter victim's home and rape him, notwithstanding the fact that victim was out of country when the acts occurred and victim only found out about the attempts when defendant was in custody).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, but it can help establish defendant's intent to create reasonable fear. See <i>People v. Uecker</i>, 91 Cal. Rptr. 3d 355 (Cal. Ct. App. 2009) (holding that a jury could reasonably infer that defendant intended to place victim in fear when he persisted in calling victim despite her attempts to end the calls).</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>Maybe. While not explicitly outlined in the stalking statute, one case upheld convictions from stalking and criminal threats where the</p>

	<p>defendant intended his threat to be relayed to the victim through a third party. <i>See People v. Choi</i>, 274 Cal. Rptr. 3d 6 (Cal. Ct. App. 2021) (sufficient evidence supported finding that it was clear that defendant wanted his threat to be relayed to victims in prosecution for criminal threats; defendant and victims were close-knit group, taking same classes, studying together, and hanging out socially, defendant made threat on call with first victim as she was driving to sit for final exams they were all taking, so he undoubtedly knew she would see others in group when she arrived at school).</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>Yes, the definition of “credible threat” encompasses threats through electronically communicated statements. <i>See</i> Cal. Penal Code § 646.9(g).</p> <p>Other statutes criminalize similar conduct such as Telephone calls or contact by electronic communication device with intent to annoy, criminal threats by electronic means, and unlawful use of an electronic tracking device, Cal. Penal Code §§ 653m, 422, 637.7.</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>There is no residency requirement and the defendant can be charged if he commits, “in whole or in part, any crime within this state.” Cal. Penal Code § 27 (a)(1).</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>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)</p>	<p>Stalking is a felony punishable by 2, 3 or 5 years in state prison under Cal. Penal Code § 646.9(c)(2), a felony punishable by 2, 3, or 4 years in state prison under Cal. Penal Code § 646.9(b), and a misdemeanor OR felony under Cal. Penal Code § 646.9 (a),(c)(1).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is aggravated to a felony if the offender:</p> <ul style="list-style-type: none"> - Violates a temporary restraining order, injunction, or any other court order;

- | | |
|--|---|
| | <ul style="list-style-type: none"> - Has previously convicted of a willful infliction or corporal injury; intentional and knowing violation of court order to prevent harassment, disturbing the peace, or threats or acts of violence; or criminal threats; or - Has previously convicted of stalking. <p>Cal. Penal Code § 646.9.</p> |
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Statutes

CAL. PENAL CODE § 273.6 (WEST 2023). INTENTIONAL AND KNOWING VIOLATION OF COURT ORDER TO PREVENT HARASSMENT, DISTURBING THE PEACE, OR THREATS OR ACTS OF VIOLENCE

- (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.
- (b) In the event of a violation of subdivision (a) that results in physical injury, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.
- (c) Subdivisions (a) and (b) shall apply to the following court orders:
 - (1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.
 - (2) An order excluding one party from the family dwelling or from the dwelling of the other.
 - (3) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order described in subdivision (a).
 - (4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

- (d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or “a credible threat” of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or pursuant to subdivision (h) of Section 1170.
- (e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.
- (f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).
- (g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under Section 29825.
- (2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.
- (h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:
- (1) That the defendant make payments to a domestic violence shelter-based program or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.
- (2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

- (i) For any order to pay a fine, make payments to a domestic violence shelter-based program, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

CAL. PENAL CODE § 422 (WEST 2023). ELEMENTS OF OFFENSE; PUNISHMENT

- (a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.
- (b) For purposes of this section, "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.
- (c) "Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

CAL. PENAL CODE § 637.7 (WEST 2023). ELECTRONIC TRACKING DEVICE

*** Unconstitutional as applied in *People v. Agnelli*, 1, 283 Cal. Rptr. 3d 777 (Cal. App. Super. Ct. 2021) where defendant who installed tracking device on vehicle for which he and victim were co-registered owners ***

- (a) No person or entity in this state shall use an electronic tracking device to determine the location or movement of a person.

- (b) This section shall not apply when the registered owner, lessor, or lessee of a vehicle has consented to the use of the electronic tracking device with respect to that vehicle.
- (c) This section shall not apply to the lawful use of an electronic tracking device by a law enforcement agency.
- (d) As used in this section, “electronic tracking device” means any device attached to a vehicle or other movable thing that reveals its location or movement by the transmission of electronic signals.
- (e) A violation of this section is a misdemeanor.
- (f) A violation of this section by a person, business, firm, company, association, partnership, or corporation licensed under Division 3 (commencing with Section 5000) of the Business and Professions Code shall constitute grounds for revocation of the license issued to that person, business, firm, company, association, partnership, or corporation, pursuant to the provisions that provide for the revocation of the license as set forth in Division 3 (commencing with Section 5000) of the Business and Professions Code.

CAL. PENAL CODE § 646.9 (WEST 2023). STALKING

- (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.
- (b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.
- (c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

- (d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.
- (e) For the purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.
- (f) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”
- (g) For the purposes of this section, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of “credible threat.”
- (h) For purposes of this section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.
- (i) This section shall not apply to conduct that occurs during labor picketing.
- (j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.
- (k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.
- (2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

- (l) For purposes of this section, “immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.
- (m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

CAL. PENAL CODE § 646.91 (WEST 2023). STALKING; EMERGENCY PROTECTIVE ORDERS; ISSUANCE; EXPIRATION; SERVICE; FILING; ENFORCEMENT; LIABILITY; SCOPE OF SECTION; PUNISHMENT

- (a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order if a peace officer, as defined in Section 830.1, 830.2, 830.32, or subdivision (a) of Section 830.33, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.
- (b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.
- (c) An emergency protective order shall include all of the following:
 - (1) A statement of the grounds asserted for the order.
 - (2) The date and time the order expires.
 - (3) The address of the superior court for the district or county in which the protected party resides.
 - (4) The following statements, which shall be printed in English and Spanish:
 - (A) “To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application.”

(B) “To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application. You may not own, possess, purchase, or receive, or attempt to purchase or receive, a firearm while this order is in effect.”

- (d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:
- (1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.
 - (2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.
- (e) An emergency protective order may include either of the following specific orders as appropriate:
- (1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.
 - (2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.
- (f) An emergency protective order shall be issued without prejudice to any person.
- (g) An emergency protective order expires at the earlier of the following times:
- (1) The close of judicial business on the fifth court day following the day of its issuance.
 - (2) The seventh calendar day following the day of its issuance.
- (h) A peace officer who requests an emergency protective order shall do all of the following:
- (1) Serve the order on the restrained person, if the restrained person can reasonably be located.
 - (2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.
 - (3) File a copy of the order with the court as soon as practicable after issuance.
 - (4) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.
- (i) A peace officer shall use every reasonable means to enforce an emergency protective order.

- (j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.
- (k) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located after issuance of the order.
- (l) "Judicial officer," as used in this section, means a judge, commissioner, or referee.
- (m) A person subject to an emergency protective order under this section shall not own, possess, purchase, or receive a firearm while the order is in effect.
- (n) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including, but not limited to, picketing and hand billing.
- (o) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.
- (p) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven.

CAL. PENAL CODE § 646.92 (WEST 2023). NOTIFICATION TO VICTIM OR WITNESS OF RELEASE OF PERSON CONVICTED OF STALKING OR DOMESTIC VIOLENCE

- (a) (1) The Department of Corrections and Rehabilitation, county sheriff, or director of the local department of corrections shall give notice not less than 15 days prior to the release from the state prison or a county jail of any person who is convicted of violating Section 646.9 or convicted of a felony offense involving domestic violence, as defined in Section 6211 of the Family Code, or any change in the parole status or relevant change in the parole location of the convicted person, or if the convicted person absconds from supervision while on parole, to any person the court identifies as a victim of the offense, a family member of the victim, or a witness to the offense by telephone, electronic mail, or certified mail at his or her last known address, upon request and using the method of communication selected by the requesting party, if that method is available. A victim, family member, or witness shall keep the department or county sheriff informed of his or her current contact information to be entitled to receive notice. A victim may designate another person for the purpose of receiving notification. The department, county sheriff, or director of the local department of corrections, shall make reasonable attempts to locate a person who has requested notification but whose contact information is

correct incorrect or not current. However, the duty to keep the department or county sheriff informed of current contact information shall remain with the victim.

(2) Following notification by the department pursuant to Section 3058.61, in the event the victim had not originally requested notification under this section, the sheriff or the chief of police, as appropriate, shall make an attempt to advise the victim or, if the victim is a minor, the parent or guardian of the victim, of the victim's right to notification under this section.

(b) All information relating to any person who receives notice under this section shall remain confidential and shall not be made available to the person convicted of violating this section.

(c) For purposes of this section, "release" includes a release from the state prison or a county jail because time has been served, a release from the state prison or a county jail to parole or probation supervision, or an escape from an institution or reentry facility.

(d) The department or county sheriff shall give notice of an escape from an institution or reentry facility of any person convicted of violating Section 646.9 or convicted of a felony offense involving domestic violence, as defined in Section 6211 of the Family Code, to the notice recipients described in subdivision (a).

(e) Substantial compliance satisfies the notification requirements of subdivision (a).

CAL. PENAL CODE § 646.94 (WEST 2023). PAROLEE CONVICTED OF STALKING; SPECIALIZED PAROLE SUPERVISION PROGRAM; SPECIALIZED SERVICES

(a) Contingent upon a Budget Act appropriation, the Department of Corrections shall ensure that any parolee convicted of violating Section 646.9 on or after January 1, 2002, who is deemed to pose a high risk of committing a repeat stalking offense be placed on an intensive and specialized parole supervision program for a period not to exceed the period of parole.

(b) (1) The program shall include referral to specialized services, for example substance abuse treatment, for offenders needing those specialized services.

(2) Parolees participating in this program shall be required to participate in relapse prevention classes as a condition of parole.

(3) Parole agents may conduct group counseling sessions as part of the program.

(4) The department may include other appropriate offenders in the treatment program if doing so facilitates the effectiveness of the treatment program.

- (c) The program shall be established with the assistance and supervision of the staff of the department primarily by obtaining the services of mental health providers specializing in the treatment of stalking patients. Each parolee placed into this program shall be required to participate in clinical counseling programs aimed at reducing the likelihood that the parolee will commit or attempt to commit acts of violence or stalk their victim.

- (d) The department may require persons subject to this section to pay some or all of the costs associated with this treatment, subject to the person's ability to pay. "Ability to pay" means the overall capability of the person to reimburse the costs, or a portion of the costs, of providing mental health treatment, and shall include, but shall not be limited to, consideration of all of the following factors:
 - (2) Present financial position.
 - (3) Reasonably discernible future financial position.
 - (4) Likelihood that the person shall be able to obtain employment after the date of parole.
 - (5) Any other factor or factors that may bear upon the person's financial capability to reimburse the department for the costs.

- (e) For purposes of this section, a mental health provider specializing in the treatment of stalking patients shall meet all of the following requirements:
 - (1) Be a licensed clinical social worker, as defined in Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, a clinical psychologist, as defined in Section 1316.5 of the Health and Safety Code, or a physician and surgeon engaged in the practice of psychiatry.
 - (2) Have clinical experience in the area of assessment and treatment of stalking patients.
 - (3) Have two letters of reference from professionals who can attest to the applicant's experience in counseling stalking patients.

- (f) The program shall target parolees convicted of violating Section 646.9 who meet the following conditions:
 - (1) The offender has been subject to a clinical assessment.
 - (2) A review of the offender's criminal history indicates that the offender poses a high risk of committing further acts of stalking or acts of violence against his or her victim or other persons upon his or her release on parole.
 - (3) The parolee, based on his or her clinical assessment, may be amenable to treatment.

- (g) On or before January 1, 2006, the Department of Corrections shall evaluate the intensive and specialized parole supervision program and make a report to the Legislature regarding the results of the program, including, but not limited to, the recidivism rate for repeat stalking related offenses committed by persons placed into the program and a cost-benefit analysis of the program.
- (h) This section shall become operative upon the appropriation of sufficient funds in the Budget Act to implement this section.

CAL. PENAL CODE § 653M (WEST 2023). TELEPHONE CALLS OR CONTACT BY ELECTRONIC COMMUNICATION DEVICE WITH INTENT TO ANNOY

- (a) Every person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith.
- (b) Every person who, with the intent to annoy or harass makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to, another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business.
- (c) Any offense committed by use of a telephone may be deemed to have been committed when and where the telephone call or calls were made or received. Any offense committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed when and where the electronic communication or communications were originally sent or first viewed by the recipient.
- (d) Subdivision (a) or (b) is violated when the person acting with intent to annoy makes a telephone call or contact by means of an electronic communication device a return call and performs the acts prohibited under subdivision (a) or (b) upon receiving the return call.
- (e) Subdivision (a) or (b) is violated when a person knowingly permits any telephone or electronic communication under the person's control to be used for purposes prohibited by those subdivisions.
- (f) If probation is granted, or the execution or imposition of sentence is suspended, for any person convicted under this section, the court may order as a condition of probation that the person participate in counseling.

(g) For purposes of this section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, facsimile machines, pagers, personal digital assistants, smartphones, and any other device that transfers signs, signals, writing, images, sounds, or data. “Electronic communication device” also includes, but is not limited to, videophones, TTY/TDD devices, and all other devices used to aid or assist communication to or from deaf or disabled persons. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

Relevant Case Law

***People v. McClelland*, 49 Cal. Rptr. 2d 587 (Ct. Ct. App. 1996)**

The defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient. The court disagreed, finding that the defendant's conduct of ramming the victim's front gate with his car, calling the victim and stating “Fire bomb at 6:00,” calling the victim and her children “vile names,” throwing what appeared to be explosive device at the victim's home, and leaving his car in front of the victim's property was “harassment” within the meaning of the stalking statute. The court also found that the defendant had the “apparent ability” to carry out threat against complainant, within the meaning of the stalking statute, in view of the defendant's conviction for attempted murder of his former wife, his threatening display of matches to the victim, his throwing a bottle at the victim's house, and his overall behavior.

***People v. Falck*, 60 Cal. Rptr. 2d 624 (Cal. Ct. App. 1997)**

The defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient. First, defendant argued that he did not make a “credible threat.” The court disagreed, pointing to the defendant's letters to the victim, which disclosed his obsessive desire to engage in sexual acts with her, and made references to eternity and his proficiency with a rifle, which reasonably could be construed as an intention to kill victim and commit suicide so that they might spend eternity together. Furthermore, evidence was sufficient to support the finding that the defendant intended to place the victim in fear for her safety, since the defendant insisted on maintaining contact with the victim, despite her clear attempts to avoid him and although he had been warned away, and the defendant's letters referred to his desire to engage in sexual acts, which often included elements of bondage or violence.

***People v. Norman*, 89 Cal. Rptr. 2d 806 (Cal. Ct. App. 1999)**

Defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient to find a reasonable fear on the part of the victim. Evidence was presented at trial that victim left his residence on June 3rd and flew to Ireland to be with his family; 6 days later, on June 29th defendant drove to victim's home and demanded to speak to victim, even though victim's security guard stated he wasn't there. Several days later, defendant drove a friend by victim's home and showed his friend a photo of the victim's head attached to a photo of a naked male body. Later, defendant told his friend he was going to rape the victim. On July 11th, security guards spotted defendant's car parked outside victim's home and saw defendant in the backyards of some of victim's neighbors. Police

arrested defendant, but upon his release, he returned to defendant's residence. Upon detaining defendant again, police searched defendant and found two pairs of handcuffs, a box cutter, duct tape, and a day planner with photos of the victim and names of his wife and children. On July 14th, victim was informed of the events on June 29th and July 11th. Victim also learned that defendant had a record of prior assaultive conduct. He authorized additional security measures for his family and himself in Europe, for his home, and for his mother's home.

Defendant argued that the stalking statute required contemporaneous fear, but the court held that the victim's fear need not be contemporaneous with defendant's threats and harassment; nothing in the language of the statute requires a concurrence of act and reaction. Furthermore, the fact that the victim was absent from the country did not make his fear unreasonable; the court pointed to the victim's testimony that he feared for his safety and the safety of his family members, the fact that he made additional security arrangements. Finally, the fact that the defendant was in jail at the time he confessed was irrelevant to the victim's reasonable fear.

***People v. Zavala*, 30 Cal. Rptr. 3d 398 (Cal. Ct. App. 2005)**

Defendant was convicted of stalking his wife and appealed, arguing in part that evidence was insufficient to sustain the conviction. In particular, the defendant argued that he did not have the “apparent ability” to carry out his threat, pointing to character witnesses vouching for his peaceful nature, as well as his wife's statement to a police officer that she did not believe the defendant would kill her. The court disagreed and held that evidence was sufficient to prove that the defendant had the “apparent ability” to carry out his threat, notwithstanding the character evidence and the wife's statement that she did not believe he would kill her. The court pointed to evidence of the defendant's previous assault on his wife by throwing a plate at her and grabbing her arm, as well as a later choking incident, to demonstrate that he had a violent character. Furthermore, the wife's belief that defendant was not capable of *murder* did not exclude a reasonable belief that he was capable of violently assaulting her.

***People v. Uecker*, 91 Cal. Rptr. 3d 355 (Cal. Ct. App. 2009)**

Defendant was convicted of stalking two women and appealed, arguing in part that evidence was insufficient to support both stalking convictions. Regarding stalking of the first victim, M., evidence was presented at trial that defendant repeatedly hung out around M.'s car in her employer's parking lot; repeatedly left notes on her car asking her out on dates, even when she moved from her regular parking spot; left a derogatory note saying that M. was an “immature trouble making brat” when M. rejected his advances; and positioned himself in his car with a good view of the employee entrance where M. worked. The court found that evidence was sufficient to prove that defendant stalked M because a jury could have found that the defendant willfully, maliciously, and repeatedly followed or willfully and maliciously harassed M. Further, his pattern of conduct, which consisted of following and/or leaving notes for M. almost every work day for almost seven months, even after she told him she was not interested, implied that he was going to do whatever it took to get her to go out with him. Regarding the second victim, J., the court also affirmed the conviction holding there was sufficient evidence to prove stalking where the defendant made suggestive comments about the victim's voice, asked if she liked surprises, told her he wanted to come by the office, was irate when she tried to get rid of him, called over 30 times in 3 weeks, and left cryptic voice messages on her

answering machine. It was clear that the defendant's actions were not directed toward the legitimate purpose of buying real estate, given his refusal to provide the victim with information to help him qualify for a loan and his failure to give her the correct spelling of his name.

***People v. Cruz*, 259 Cal.Rptr.3d 870 (Cal. Ct. App. 2020)**

Defendant was convicted of multiple offenses against his former girlfriend, including one count of stalking while a restraining order was in effect, four counts of violating a criminal protective order, and two counts of making criminal threats. On appeal, defendant argued in part that his criminal threats convictions must be reversed because making a criminal threat is a lesser included offense of stalking, and a person cannot be convicted of both a greater offense and a necessarily included lesser offense. Defendant claimed that his stalking and criminal threats convictions were separate statements of the same offense in violation of the double jeopardy clause of the Fifth Amendment, because his criminal threats convictions were necessarily included in his stalking conviction. Defendant also argued for a stay of sentencing on the two criminal threats convictions and four violation of restraining order convictions on the grounds that they were part of the same indivisible course of conduct and shared the same intent and objective as the stalking conviction. The court reasoned that a course of conduct divisible in time although directed to one objective may give rise to multiple violations and punishment. The appellate court affirmed that separate and distinct acts, occurring on separate days, and divisible in time, support defendant's convictions on all counts.

***People v. Choi*, 274 Cal.Rptr.3d 6 (Cal. Ct. App. 2021)**

Defendant was convicted of three counts of stalking and two counts of criminal threats. The defendant, along with three victims, were students in the same paralegal program and formed a study group together. In December 2017, the defendant was prohibited from attending class due to his erratic and concerning behavior. Following this incident, the defendant continued to contact members of the study group and made derogatory and threatening references to other members of the group, specifically the defendant stated, "I need to end Kareem and Leslie." The defendant appealed his conviction on the basis that the evidence presented was insufficient to establish a criminal threat. The appellate court outlined that the criminal statute requires that a threat be made willfully, and that the defendant make the threat with specific intent for it to be received as a threat. The court found that an ambiguous statement may be found to be threatening if the surrounding circumstances clarify the communication's meaning. The court also determined that a speaker's intention of having a message relayed to the victim can be inferred from the evidence. As such, the conviction was affirmed.

Stalking, Harassment, & Related Offenses: Colorado

Current as of June 2023

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COLORADO

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>Acts that further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat. Colo. Rev. Stat. § 18-3-601(2)(a).</p> <p>Acts must be repeated, which means “more than once.” Colo. Rev. Stat. § 18-3-601(2)(d).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>Colo. Rev. Stat. § 18-3-601 §§ (1)(a) and (1)(b) require a credible threat, but § (1)(c) does not require a credible threat.</p> <p>A “credible threat” means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear. Colo. Rev. Stat. § 18-3-601(2)(b).</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>Offender must act knowingly. Colo. Rev. Stat. § 18-3-602(1)</p> <p>This <i>mens rea</i> requirement applies to the “course of conduct” part of the statute, <i>not</i> whether the conduct would reasonably cause the victim to have fear/suffer emotional distress. <i>People v. Cross</i>, 127 P.3d 71 (Colo. 2006).</p>
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	<p>Yes, stalking includes actions against the victim's immediate family member or person with whom victim has or has had a continuing relationship. Colo. Rev. Stat. § 18-3-601.</p> <p>“Immediate family” means spouse and the person's parent, grandparent, sibling, or child. Colo. Rev. Stat. § 18-3-601(2)(c).</p>

<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>For Colo. Rev. Stat. §§ 18-3-601(1)(a) and (1)(b), requires fear for safety.</p> <p>For Colo. Rev. Stat. § 18-3-601(1)(c), requires serious emotional distress.</p>
<p>Does fear include emotional distress?</p>	<p>Colo. Rev. Stat. § 18-3-601(1)(c) requires that the victim, a member of the victim's immediate family, or someone with whom the victim has or has had a continuing relationship to suffer serious emotional distress.</p> <p>A victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress. <i>Id.</i></p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>For Colo. Rev. Stat. § 18-3-601 §§ (1)(a) and (1)(b), reasonable person standard only (see definition of “credible threat,” which is defined in part by conduct that would cause a reasonable person to be in fear, Colo. Rev. Stat. § 18-3-601(2)(b)).</p> <p>For Colo. Rev. Stat. Ann. § 17-3-601(1)(c), reasonable person standard and actual serious emotional distress. <i>See also People v. Cross</i>, 127 P.3d 71 (Colo. 2006) (discussing the state legislature's conscious choice to employ both an objective and subjective standard for this stalking provision).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>See, e.g., People v. Folsom</i>, 431 P.3d 652 (Colo. App.2017) (finding that evidence that defendant was twice standing in victim's yard outside her window, a place where he had no legal right to be, could lead a reasonable juror to find a reasonable person would suffer serious emotional distress). <i>See also People v. Chase</i>, 411 P.3d 740 (Colo. App. 2013) (holding that implicit and explicit threats in emails, referencing defendant's past conviction for</p>

	arson, saying the victims better not “fuck” with him, saying that “they better put him away for life” or there would be “hell to pay” and claiming he had “nothing to lose” could cause a reasonable person to fear for their safety).
Must the victim tell the defendant to stop in order to constitute stalking?	No.
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Yes. See Colo. Rev. Stat. Ann. § 18-3-602(1) (“...or indirectly through another person...”).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	<p>While not explicitly mentioned, technology-facilitated stalking is covered by the regular stalking statute and accompanying case law. <i>See, e.g., People v. Chase</i>, 411 P.3d 740 (Colo. App. 2013) (upholding stalking conviction where defendant sent threatening emails to victims); <i>see also People v. Sullivan</i>, 53 P.3d 1181 (Colo. App. 2002) (holding that “surveillance” for purposes of Colo. Rev. Stat. Ann. § 18-3-602(1)(c) includes electronic surveillance); <i>see also People v. Burgandine</i>, 484 P.3d 739 (Colo. App. 2020) (holding that “contacts” under Colo. Rev. Stat. Ann. § 18-3-602(1)(a) included text and phone communications).</p> <p>Other statutes criminalize similar conduct such as harassing through electronic means. Colo. Rev. Stat. § 18-9-11.</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?)	There is no residency requirement. Further, (1) a person is subject to prosecution in Colorado “for an offense which he commits, by his own conduct or that of another for which he is legally accountable, if the conduct constitutes an offense and is committed either wholly or partly within the state.” Colo. Rev. Stat. § 18-1-201 (1)(a).
Any unique provisions, elements, or requirements?	No.

<p>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)</p>	<p>Stalking is a Class 4 felony for a second or subsequent offense, if committed within 7 years of prior offense for which defendant was convicted; OR if conduct was in violation of a court order.</p> <p>Stalking is Class 5 felony for first offense. Colo. Rev. Stat. § 18-3-602.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Second or subsequent offense committed within 7 years of first offense, or conduct violates a court order. See Colo. Rev. Stat. § 18-3-602(3)(b), (5).</p>

Statutes

COLO. REV. STAT. ANN. § 18-3-601 (WEST 2023). LEGISLATIVE DECLARATION

(1) The general assembly hereby finds and declares that:

- (a) Stalking is a serious problem in this state and nationwide;
- (b) Although stalking often involves persons who have had an intimate relationship with one another, it can also involve persons who have little or no past relationship;
- (c) A stalker will often maintain strong, unshakable, and irrational emotional feelings for his or her victim and may likewise believe that the victim either returns these feelings of affection or will do so if the stalker is persistent enough. Further, the stalker often maintains this belief, despite a trivial or nonexistent basis for it and despite rejection, lack of reciprocation, efforts to restrict or avoid the stalker, and other facts that conflict with this belief.
- (d) A stalker may also develop jealousy and animosity for persons who are in relationships with the victim, including family members, employers and co-workers, and friends, perceiving them as obstacles or as threats to the stalker's own "relationship" with the victim;
- (e) Because stalking involves highly inappropriate intensity, persistence, and possessiveness, it entails great unpredictability and creates great stress and fear for the victim;
- (f) Stalking involves severe intrusions on the victim's personal privacy and autonomy, with an immediate and long-lasting impact on quality of life as well as risks to security and safety of the victim and persons close to the victim, even in the absence of express threats of physical harm.

(2) The general assembly hereby recognizes the seriousness posed by stalking and adopts the provisions of this part 6 with the goal of encouraging and authorizing effective intervention before stalking can escalate into behavior that has even more serious consequences.

**COLO. REV. STAT. ANN. § 18-3-602 (WEST 2023). STALKING--PENALTY--DEFINITIONS--
VONNIE'S LAW**

(1) A person commits stalking if directly, or indirectly through another person, the person knowingly:

- (a) Makes a credible threat to another person and, in connection with the threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or
- (b) Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or
- (c) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress. For purposes of this paragraph (c), a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress.

(2) For the purposes of this part 6:

- (a) Conduct “in connection with” a credible threat means acts that further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat.
- (b) “Credible threat” means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.
- (c) “Immediate family” includes the person's spouse and the person's parent, grandparent, sibling, or child.
- (d) “Repeated” or “repeatedly” means on more than one occasion.

- (3) A person who commits stalking:
- (a) Commits a class 5 felony for a first offense except as otherwise provided in subsection (5) of this section; or
 - (b) Commits a class 4 felony for a second or subsequent offense, if the offense occurs within seven years after the date of a prior offense for which the person was convicted.
- (4) Stalking is an extraordinary risk crime that is subject to the modified presumptive sentencing range specified in section 18-1.3-401(10).
- (5) If, at the time of the offense, there was a temporary or permanent protection order, injunction, or condition of bond, probation, or parole or any other court order in effect against the person, prohibiting the behavior described in this section, the person commits a class 4 felony.
- (6) Nothing in this section shall be construed to alter or diminish the inherent authority of the court to enforce its orders through civil or criminal contempt proceedings; however, before a criminal contempt proceeding is heard before the court, notice of the proceedings shall be provided to the district attorney for the judicial district of the court where the proceedings are to be heard and the district attorney for the judicial district in which the alleged act of criminal contempt occurred. The district attorney for either district shall be allowed to appear and argue for the imposition of contempt sanctions.
- (7) A peace officer shall have a duty to respond as soon as reasonably possible to a report of stalking and to cooperate with the alleged victim in investigating the report.
- (8) (a) When a person is arrested for an alleged violation of this section, the fixing of bail for the crime of stalking shall be done in accordance with section 16-4-105(4), C.R.S., and a protection order shall issue in accordance with section 18-1-1001(5).
- (b) This subsection (8) shall be known and may be cited as “Vonnie's law”.
- (9) When a violation under this section is committed in connection with a violation of a court order, including but not limited to any protection order or any order that sets forth the conditions of a bond, any sentences imposed pursuant to this section and pursuant to section 18-6-803.5 or any sentence imposed in a contempt proceeding for violation of the court order shall be served consecutively and not concurrently.

COLO. REV. STAT. ANN. § 18-6-803.5 (WEST 2023). CRIME OF VIOLATION OF A PROTECTION ORDER--PENALTY--PEACE OFFICERS' DUTIES--DEFINITIONS

- (1) A person commits the crime of violation of a protection order if, after the person has been personally served with a protection order that identifies the person as a restrained person or otherwise has acquired from the court or law enforcement personnel actual knowledge of the contents of a protection order that identifies the person as a restrained person, the person:
- (a) Contacts, harasses, injures, intimidates, molests, threatens, or touches the protected person or protected property, including an animal, identified in the protection order or enters or remains on premises or comes within a specified distance of the protected person, protected property, including an animal, or premises or violates any other provision of the protection order to protect the protected person from imminent danger to life or health, and such conduct is prohibited by the protection order;
 - (b) Except as permitted pursuant to section 18-13-126(1)(b), hires, employs, or otherwise contracts with another person to locate or assist in the location of the protected person; or
 - (c) Violates a civil protection order issued pursuant to section 13-14-105.5 or a mandatory protection order issued pursuant to section 18-1-1001(9) by:
 - (I) Possessing or attempting to purchase or receive a firearm or ammunition while the protection order is in effect; or
 - (II) Failing to timely file a signed affidavit or written statement with the court as described in section 13-14-105.5(10), 18-1-1001(9)(i), or 18-6-801(8)(i).
- (1.5) As used in this section:
- (a) “Protected person” means the person or persons identified in the protection order as the person or persons for whose benefit the protection order was issued. “Protected person” does not include the defendant.
 - (a.5)(I) “Protection order” means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any protected person or protected animal, or from entering or remaining on premises, or from coming within a specified distance of a protected person or protected animal or premises or any other provision to protect the protected person or protected animal from imminent danger to life or health, that is issued by a court of this state or a municipal court, and that is issued pursuant to:
 - (A) Article 14 of title 13, section 18-1-1001, section 19-2.5-607, section 19-4-111, or rule 365 of the Colorado rules of county court civil procedure;

(B) Sections 14-4-101 to 14-4-105, C.R.S., section 14-10-107, C.R.S., section 14-10-108, C.R.S., or section 19-3-316, C.R.S., as those sections existed prior to July 1, 2004;

(C) An order issued as part of the proceedings concerning a criminal municipal ordinance violation; or

(D) Any other order of a court that prohibits a person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises.

(II) For purposes of this section only, “protection order” includes any order that amends, modifies, supplements, or supersedes the initial protection order. “Protection order” also includes any restraining order entered prior to July 1, 2003, and any foreign protection order as defined in section 13-14-110, C.R.S.

(b) “Registry” means the computerized information system created in section 18-6-803.7 or the national crime information center created pursuant to 28 U.S.C. sec. 534.

(c) “Restrained person” means the person identified in the order as the person prohibited from doing the specified act or acts.

(d) Deleted by Laws 2003, Ch. 139, § 6, eff. July 1, 2003.

(2) (a) Violation of a protection order is a class 2 misdemeanor; except that, if the restrained person has previously been convicted of violating this section or a former version of this section or an analogous municipal ordinance, or if the protection order is issued pursuant to section 18-1-1001, or the basis for issuing the protection order included an allegation of stalking or the parties were in an intimate relationship, the violation is a class 1 misdemeanor.

(a.5) Repealed by Laws 2022, Ch. 68 (H.B. 22-1229), § 26, eff. March 1, 2022.

(b) Deleted by Laws 1995, H.B.95-1179, § 3, eff. July 1, 1995.

(c) Nothing in this section shall preclude the ability of a municipality to enact concurrent ordinances. Any sentence imposed for a violation of this section shall run consecutively and not concurrently with any sentence imposed for any crime which gave rise to the issuing of the protection order.

(3) (a) Whenever a protection order is issued, the protected person shall be provided with a copy of such order. A peace officer shall use every reasonable means to enforce a protection order.

(b) A peace officer shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of a restrained person when the peace officer has information amounting to probable cause that:

- (I) The restrained person has violated or attempted to violate any provision of a protection order; and
 - (II) The restrained person has been properly served with a copy of the protection order or the restrained person has received actual notice of the existence and substance of such order.
- (c) In making the probable cause determination described in paragraph (b) of this subsection (3), a peace officer shall assume that the information received from the registry is accurate. A peace officer shall enforce a valid protection order whether or not there is a record of the protection order in the registry.
- (d) The arrest and detention of a restrained person is governed by applicable constitutional and applicable state rules of criminal procedure. The arrested person shall be removed from the scene of the arrest and shall be taken to the peace officer's station for booking, whereupon the arrested person may be held or released in accordance with the adopted bonding schedules for the jurisdiction in which the arrest is made, or the arrested person may be taken to the jail in the county where the protection order was issued. The law enforcement agency or any other locally designated agency shall make all reasonable efforts to contact the protected party upon the arrest of the restrained person. The prosecuting attorney shall present any available arrest affidavits and the criminal history of the restrained person to the court at the time of the first appearance of the restrained person before the court.
- (e) The arresting agency arresting the restrained person shall forward to the issuing court a copy of such agency's report, a list of witnesses to the violation, and, if applicable, a list of any charges filed or requested against the restrained person. The agency shall give a copy of the agency's report, witness list, and charging list to the protected party. The agency shall delete the address and telephone number of a witness from the list sent to the court upon request of such witness, and such address and telephone number shall not thereafter be made available to any person, except law enforcement officials and the prosecuting agency, without order of the court.
- (4) If a restrained person is on bond in connection with a violation or attempted violation of a protection order in this or any other state and is subsequently arrested for violating or attempting to violate a protection order, the arresting agency shall notify the prosecuting attorney who shall file a motion with the court which issued the prior bond for the revocation of the bond and for the issuance of a warrant for the arrest of the restrained person if such court is satisfied that probable cause exists to believe that a violation of the protection order issued by the court has occurred.
- (5) A peace officer arresting a person for violating a protection order or otherwise enforcing a protection order shall not be held criminally or civilly liable for such arrest or enforcement unless the peace officer acts in bad faith and with malice or does not act in compliance with rules adopted by the Colorado supreme court.

- (6) (a) A peace officer is authorized to use every reasonable means to protect the alleged victim or the alleged victim's children to prevent further violence. Such peace officer may transport, or obtain transportation for, the alleged victim to shelter. Upon the request of the protected person, the peace officer may also transport the minor child of the protected person, who is not an emancipated minor, to the same shelter if such shelter is willing to accept the child, whether or not there is a custody order or an order allocating parental responsibilities with respect to such child or an order for the care and control of the child and whether or not the other parent objects. A peace officer who transports a minor child over the objection of the other parent shall not be held liable for any damages that may result from interference with the custody, parental responsibilities, care, and control of or access to a minor child in complying with this subsection (6).
- (b) For purposes of this subsection (6), “shelter” means a battered women's shelter, a friend's or family member's home, or such other safe haven as may be designated by the protected person and which is within a reasonable distance from the location at which the peace officer found the victim.
- (7) The protection order shall contain in capital letters and bold print a notice informing the protected person that such protected person may either initiate contempt proceedings against the restrained person if the order is issued in a civil action or request the prosecuting attorney to initiate contempt proceedings if the order is issued in a criminal action.
- (8) A protection order issued in the state of Colorado shall contain a statement that:
- (a) The order or injunction shall be accorded full faith and credit and be enforced in every civil or criminal court of the United States, another state, an Indian tribe, or a United States territory pursuant to 18 U.S.C. sec. 2265;
- (b) The issuing court had jurisdiction over the parties and subject matter; and
- (c) The defendant was given reasonable notice and opportunity to be heard.
- (9) A criminal action charged pursuant to this section may be tried either in the county where the offense is committed or in the county in which the court that issued the protection order is located, if such court is within this state.

COLO. REV. STAT. ANN. § 18-9-111 (WEST 2023). HARASSMENT--KIANA ARELLANO'S LAW

- (1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:
- (a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or

- (b) In a public place directs obscene language or makes an obscene gesture to or at another person; or
- (c) Follows a person in or about a public place; or
- (d) Repealed by Laws 1990, H.B.90-1118, § 11.
- (e) Directly or indirectly initiates communication with a person or directs language toward another person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system, or other interactive electronic medium that is obscene; or
- (f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or
- (g) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or
- (h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(1.5) As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(2) (a) A person who violates subsection (1)(a) or (1)(c) of this section or violates any provision of subsection (1) of this section with the intent to intimidate or harass another person, in whole or in part, because of that person's actual or perceived race; color; religion; ancestry; national origin; physical or mental disability, as defined in section 18-9-121 (5)(a); or sexual orientation, as defined in section 18-9-121 (5)(b), commits a class 1 misdemeanor.

(b) A person who violates subsection (1)(e), (1)(f), (1)(g), or (1)(h) of this section commits a class 2 misdemeanor.

(c) A person who violates subsection (1)(b) of this section commits a petty offense.

(3) Any act prohibited by paragraph (e) of subsection (1) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

(4) Repealed by Laws 2010, Ch. 88, § 2, eff. Aug. 11, 2010.

(5) Repealed by Laws 2010, Ch. 88, § 2, eff. Aug. 11, 2010.

(6) Repealed by Laws 2010, Ch. 88, § 2, eff. Aug. 11, 2010.

(7) Paragraph (e) of subsection (1) of this section shall be known and may be cited as “Kiana Arellano's Law”.

(8) This section is not intended to infringe upon any right guaranteed to any person by the first amendment to the United States constitution or to prevent the expression of any religious, political, or philosophical views.

Relevant Case Law

People v. Herron, 251 P.3d 1190 (Colo. App. 2010)

Defendant was convicted of multiple counts of stalking and appealed, arguing in part that the convictions violated the Double Jeopardy clause of the federal and state constitutions. The Court of Appeals held that the defendant’s claim for Double Jeopardy was correct and that a defendant could not be sentenced to two separate charges of stalking stemming from the same course of conduct. The court explained that there cannot be a charge for each “incident” of stalking, since stalking is defined as the course of conduct taken together.

People v. Chase, 411 P.3d 740 (Colo. App. 2013)

Defendant was convicted of three counts of stalking. Defendant appealed, arguing in part that evidence was insufficient to prove he made a credible threat. At trial, evidence was presented that defendant had sent emails to victims referring to his past conviction for arson, stated in all capital letters that the victims should not “fuck” with him, that they better put him away for life or there would be “hell to pay,” that the defendant had “nothing to lose,” and that he would “headbutt” or “kick” someone. Two of the emails made specific references to the named victims. Considering the explicit and implicit threats in the emails, and the testimony of the victims that they feared for the safety and the safety of their families, the court found that evidence was “more than sufficient” for the jury to find that reasonable person would be in fear for their safety. Furthermore, defendant argued that he did not make repeated communications to the victims because the victims opened and read the emails all in one sitting. The Court of Appeals rejected this argument, pointing to the fact that the emails represented 6 separate and individual communications made to the victims of a period of two days. The defendant could not be resolved of criminal liability simply because the victims did not retrieve the emails the moment they were delivered.

People v. Brown, 342 P.3d 564 (Colo. App. 2014)

Defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient to convict him. He contended that evidence did not established that he placed the victims “under surveillance” within the meaning of Colo. Rev. Stat. § 18-3-602(1)(c). The court pointed to the

meaning of “surveillance” in Webster's dictionary, which defines the term as “close watch kept over one or more persons” or “continuous observation of a person or area.” The Court of Appeals stated that a defendant need not be physically present to conduct surveillance; they may do so by means of an electronic device that records information for later use. The Court of Appeals found that defendant's use of video cameras, which were configured to observe and record activity in a bedroom and living room, constituted surveillance. The defendant further argued that his conduct did not constitute surveillance because he did have access to the recorded information when he was out of the country, pointing to *People v. Sullivan*, 53 P.3d 1181 (Colo. App. 2002), which held that “surveillance” includes electronic surveillance that records a person's whereabouts as that person moves from one location to another and allows the stalker to access that information either *simultaneously or shortly thereafter*” (emphasis added). However, the Court of Appeals here said that *Sullivan* did *not* hold that a defendant *must* access recorded information with a certain time frame to establish surveillance.

***People v. Folsom*, 431 P.3d 652 (Colo. App. 2017)**

Defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient to support his conviction. Evidence was presented at trial that the defendant appeared outside of victim's window, and that victim had seen him 6 months earlier doing the same thing. The defendant argued that that the first incident was an accident, and that he did not “knowingly” approach or contact the victim. The Court of Appeals, viewing the evidence in the light most favorable to the prosecution, held that a reasonable jury could conclude that the defendant “knowingly” followed, approached, or contacted the victim on two occasions. Second, the defendant argued that the first incident would not cause a reasonable person to suffer serious emotional distress. The court clarified that it is not each individual act of stalking that must cause a reasonable person to suffer emotional distress, but the combined acts of the defendant. The evidence, which presented that the defendant was twice in the victim's yard — a place where he had no legal right to be — could lead a reasonable juror to find a reasonable person would suffer serious emotional distress. Finally, the defendant argued that the prosecution did not establish that the victim suffered actual serious emotional distress. At trial, the victim testified that after the first incident, she did not feel safe in her home, she lost sleep for several months, and she started seeing a therapist. The Court of Appeals found that a reasonable juror could find that the victim actually experienced serious emotional distress.

***People v. Wagner*, 434 P.3d 731 (Colo. App. 2018)**

Defendant was convicted of stalking and appealed, arguing evidence was insufficient to convict him. First, he argued that the evidence did not prove beyond a reasonable doubt that his conduct would cause a reasonable person to suffer serious emotional distress or that the victim actually suffered serious emotional distress. At trial, evidence was presented that the victim and the defendant separated and that for several months thereafter, defendant repeatedly texted, called, and followed the victim and her boyfriend; he also made several calls to her workplace. Additionally, defendant told the victim that if he could not have her then no one could and implied that she “had to come back to him or else.” On one phone conversation, victim believed she heard defendant “pull the slide back on a gun.” As a result of the defendant’s behavior, the victim testified that she did not feel safe or secure, was “always worried” that the defendant “was either going to hurt himself, [her], or

[her boyfriend],” started to carry a concealed firearm, altered her route to work and her schedule, and lost sleep because she was “pretty emotional.” In addition, the victim's boyfriend testified that he purchased a security system for his home and also started to carry a concealed gun. The Court of Appeals found that the evidence was sufficient to allow the jury to find the objective and subjective serious emotional distress elements had been established. Second, defendant argued that evidence was insufficient to establish that he had made credible threats. The Court of Appeals considered the fact that the defendant said, “If I can't have you, then no one can,” the victim's testimony that she had heard the defendant pull the slide of a gun back on the phone, and the defendant telling the victim that he knew where her family lived as sufficient evidence to support a credible threat.

People v. Burgandine, 484 P.3d 739 (Colo. App. 2020)

Defendant was convicted of harassment and credible threat stalking after relentlessly texting and calling his ex-girlfriend for seven hours, making threats against her and others. Defendant challenged conviction, arguing in part that the term "contacts" in the stalking statute does not include phone calls and text messages. However, the court disagreed and affirmed his conviction, stating that the plain and ordinary meaning of "contacts" includes general communications. The court also rejected the argument that "contacts" should be interpreted to require physical proximity, as it would create ambiguity and due process concerns. The court emphasized that the statute does not define "contacts" and that the broad definition, which encompasses communication, is consistent with other courts' interpretations.

People v. Moreno, 506 P.3d 849 (Colo. 2022)

Defendant was charged with harassment after repeatedly emailing his ex-wife with disparaging and vulgar comments. The charge was dismissed on grounds that defendant's statements constitute protected speech, finding that the phrase “intended to harass” in the statute was unconstitutional. The prosecution appealed and the appellate court affirmed the district court's order of dismissal, agreeing that the provision in question was substantially overbroad and unconstitutional. The Colorado Supreme Court applied the overbreadth doctrine and held that the phrase “intended to harass” in the statute encroaches on constitutionally protected speech. However, the court preserved the remainder of the statute, invalidating only that specific phrase.

Stalking, Harassment, & Related Offenses: Connecticut

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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CONNECTICUT

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>“Course of conduct” means two or more acts, including, but not limited to, acts in which a person directly, indirectly or through a third party, by any action, method, device or means, including, but not limited to, electronic or social media, (A) follows, lies in wait for, monitors, observes, surveils, threatens, harasses, communicates about or with or sends unwanted gifts to, a person, or (B) interferes with a person's property. Conn. Gen. Stat. § 53a-181d(a)(1).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>“Proof of verbal threats or harassing gestures is not essential to prove a violation of stalking. The stalking statute was enacted to address the situation where the criminal does not physically take an act against the person or does not verbally make a direct an[d] immediate threat of harm, but merely stalks the victim.... The statute can be violated without a defendant's uttering a syllable, writing a word, or making a gesture.” <i>State v. Arthurs</i>, 997 A.2d 568 (Conn. App. Ct. 2010).</p> <p>Constitutionally protected speech cannot be the exclusive evidentiary basis for a stalking or harassment charge. <i>See State v. Billings</i>, 287 A.3d 146 (Conn. App. 2022) (holding both Conn. Gen. Stat. Ann. § 53a-181d and Conn. Gen. Stat. Ann. § 53a-183 unconstitutional as applied).</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>The required intent depends on the stalking provision.</p> <p>Stalking in the Second Degree under Conn. Gen. Stat. § 53a-181d(b)(1) requires knowingly engaging in a course of conduct.</p>

Stalking in the Second Degree under Conn. Gen. Stat. § 53a-181d(b)(2) requires engaging in course of conduct with intent to harass, terrorize, or alarm.

Stalking in the Second Degree under Conn. Gen. Stat. § 53a-181d(b)(3) requires disclosing personally identifiable information without consent of victim with intent to harass, terrorize, or alarm.

Stalking in the Third Degree under Conn. Gen. Stat. Ann. § 53a-181e requires recklessly causing another person to reasonably fear physical safety or suffer emotional distress by willfully following victim or lying in wait. *See also State v. Russell*, 922 A.3d 191 (Conn. App. Ct. 2007) (“... the following must have a predatory thrust to it. The statute does not encompass following that is aimless, unintentional, accidental or undertaken for a lawful purpose.”).

Do offender actions toward persons *other than* the victim help establish course of conduct?

Yes. All that is required is that the offender's conduct be “directed at a specific person.” *See* Conn. Gen. Stat. §§ 53a-181d, 53-a-181e. Fear for the safety of third persons and animals/pets of victim help establish the fear element for stalking in the second degree. *See* Conn. Gen. Stat. § 53a-181d.

Furthermore, victim's fear of death or serious bodily injury to an immediate family member or intimate partner helps establish fear element under electronic stalking. *See* Conn. Gen. Stat. § 53a-181(f). An “immediate family member” means (A) a spouse, parent, brother or sister or a child of the person or person to whom the person stands in loco parentis, or (B) any person living in the household and related to the person by blood or marriage. *Id.* An “intimate partner” means a (A) former spouse, (B) person who has a child in common with the person regardless of whether they are or have been married or are living or have lived together

	at any time, or (C) person in, or who has recently been in, a dating relationship with the person. <i>Id.</i>
What type of victim fear is required? (for safety, of bodily injury, etc.)?	<p>The type of fear required depends on the statutory provision.</p> <p>Conn. Gen. Stat. § 53a-181d(b)(1) requires reasonable fear for physical safety or physical safety of a third person, emotional distress, or fear injury to or the death of victim's animal.</p> <p>Conn. Gen. Stat. § 53a-181d(b)(2) requires reasonable fear that victim's employment, business, or career is threatened.</p> <p>Conn. Gen. Stat. § 53a-181d(b)(3) requires reasonable fear for victim's physical safety, physical safety of a third person, or emotional distress.</p> <p>Conn. Gen. Stat. § 53a-181(e) requires reasonable fear for victim's physical safety or victim suffers emotional distress.</p>
Does fear include emotional distress?	Yes. "Emotional distress" means significant mental or psychological suffering or distress that may or may not require medical or other professional treatment or counseling. Conn. Gen. Stat. § 53a-181d(a)(2).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	<p>Stalking in the second degree requires a reasonable fear only. <i>See Kayla M. v. Greene</i>, 136 A.3d 1 (Conn. App. Ct. 2016) ("...[A]s amended, § 53a-181d does not require a showing of subjective fear, it only requires that the defendant's conduct was such that a reasonable person would fear for his or her physical safety."). The subjectively fearful requirement was removed from the statute in 2012.</p> <p>Stalking in the third degree requires a finding of both reasonable fear and subjective fear. <i>See</i></p>

	plain reading of Conn. Gen. Stat. § 53a-181(e) (“...such person recklessly causes another person to reasonably (1) fear for his or her physical safety, or (2) suffer emotional distress...”).
If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)	<p>What constitutes reasonable fear is highly fact-dependent.</p> <p>See, e.g., <i>State v. Arthurs</i>, 997 A.3d 568 (Conn. App. Ct. 2010) (holding that fear was reasonable where defendant yelled, pounded on victim's doors, threatened to break things, and ultimately broke down the victim's bedroom door; reasonable fear did not require physical assault or injury). See also <i>Kayla M. v. Greene</i>, 136 A.3d 1 (Conn. App. Ct. 2016) (finding a reasonable fear where defendant sent victim harassing emails, came to her place of employment, attempted to discover where she lived, inquired into her personal life, physically and verbally accosted her, and told her that she was on “very thin ice.”).</p>
Must the victim tell the defendant to stop in order to constitute stalking?	Only for stalking that threatens the victim's business, employment, or career under Gen. Stat. § 53a-181d(b)(2) (“...provided the actor was previously and clearly informed to cease such conduct...”).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Yes under the definition of course of conduct. Conn. Gen. Stat. § 53a-181d(a)(1)
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	<p>Regular stalking statute explicitly includes stalking by electronic and social media and through “any device.” See definition of course of conduct, Conn. Gen. Stat. § 53a-181d(a)(1).</p> <p>Other statutes criminalize similar conduct such as electronic stalking and eavesdropping. Conn. Gen. Stat. §§ 53a-181f, 53a-189.</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?)	The law is silent regarding whether the victim/defendant must reside in the jurisdiction.

<p>Any unique provisions, elements, or requirements?</p>	<p>Yes. Stalking is aggravated to a felony if the conduct was intentionally directed because of victim's actual or perceived race, religion, ethnicity, disability, sex, sexual orientation or gender identity/expression. Conn. Gen. Stat. § 53a-181c.</p>
<p>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)</p>	<p>Stalking in the First Degree is a Class D felony. Conn. Gen. Stat. § 53a-181c.</p> <p>Stalking in the Second Degree is a Class A Misdemeanor. Conn. Gen. Stat. § 53a-181d.</p> <p>Stalking in the Third Degree is Class B Misdemeanor. Conn. Gen. Stat. § 53a-181e.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is elevated from the second degree to the first degree if:</p> <ul style="list-style-type: none"> - Defendant has previous conviction for stalking in the second degree; - Conduct violates court order; - Victim is under 16; - Conduct intentionally directed because of victim's actual or perceived race, religion, ethnicity, disability, sex, sexual orientation or gender identity/expression <p>See Conn. Gen. Stat. § 53a-181c.</p>

Statutes

CONN. GEN. STAT. ANN. § 53A-61AA (WEST 2023). THREATENING IN THE FIRST DEGREE: CLASS D OR CLASS C FELONY

(a) A person is guilty of threatening in the first degree when such person

(1) (A) threatens to commit any crime involving the use of a hazardous substance with the intent to terrorize another person, to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience, or

(B) threatens to commit such crime in reckless disregard of the risk of causing such terror, evacuation or inconvenience;

(2) (A) threatens to commit any crime of violence with the intent to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience, or

(B) threatens to commit such crime in reckless disregard of the risk of causing such evacuation or inconvenience;

(3) commits threatening in the second degree as provided in section 53a-62, and in the commission of such offense such person uses or is armed with and threatens the use of or displays or represents by such person's words or conduct that such person possesses a pistol, revolver, shotgun, rifle, machine gun or other firearm; or

(4) violates subdivision (1) or (2) of this subsection with the intent to cause an evacuation of a building or the grounds of a

(A) house of religious worship,

(B) religiously-affiliated community center,

(C) public or nonpublic preschool, school or institution of higher education, or

(D) day care center, as defined in section 19a-87g,

during operational, preschool, school or instructional hours or when a building or the grounds of such house of worship, community center, preschool, school, institution or day care center are being used for the provision of religious or community services, or house of worship, community center, preschool, school, institution or day care center-sponsored activities. No person shall be found guilty of threatening in the first degree under subdivision (3) of this subsection and threatening in the second degree upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.

(b) For the purposes of this section, "hazardous substance" means any physical, chemical, biological or radiological substance or matter which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health and "religiously-affiliated community center" means real property used for the provision of recreational, social or educational services that is owned or leased by a nonprofit organization that holds such property out as being affiliated with an organized religion.

(c) Threatening in the first degree is a class D felony, except that a violation of subdivision (4) of subsection (a) of this section is a class C felony.

**CONN. GEN. STAT. ANN. § 53A-62 (WEST 2023). THREATENING IN THE SECOND DEGREE:
CLASS A MISDEMEANOR OR CLASS D FELONY**

(a) A person is guilty of threatening in the second degree when:

- (1) By physical threat, such person intentionally places or attempts to place another person in fear of imminent serious physical injury,
- (2) (A) such person threatens to commit any crime of violence with the intent to terrorize another person, or

(B) such person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror, or
- (3) violates subdivision (1) or (2) of this subsection and the person threatened is in a building or on the grounds of a
 - (A) house of religious worship,
 - (B) religiously-affiliated community center,
 - (C) public or nonpublic preschool, school or institution of higher education, or
 - (D) day care center, as defined in section 19a-87g,

during operational, preschool, school or instructional hours or when a building or the grounds of such house of worship, community center, preschool, school, institution or day care center are being used for the provision of religious or community services, or house of worship, community center, preschool, school, institution or day care center-sponsored activities.

- (b) For the purposes of this section, “religiously-affiliated community center” has the same meaning as provided in section 53a-61aa.
- (c) Threatening in the second degree is a class A misdemeanor, except that a violation of subdivision (3) of subsection (a) of this section is a class D felony.

**CONN. GEN. STAT. ANN. § 53A-181c (WEST 2023). STALKING IN THE FIRST DEGREE: CLASS D
FELONY**

- (a) A person is guilty of stalking in the first degree when such person commits stalking in the second degree as provided in section 53a-181d and
 - (1) such person has previously been convicted of a violation of section 53a-181d,

- (2) such conduct violates a court order in effect at the time of the offense,
- (3) such person is twenty-two years of age or older and the other person is under sixteen years of age, or
- (4) such person intentionally directs such conduct at the other person, in whole or in part, because of the actual or perceived race, religion, ethnicity, disability, sex, sexual orientation or gender identity or expression of such other person.

(b) Stalking in the first degree is a class D felony.

CONN. GEN. STAT. ANN. § 53A-181D (WEST 2023). STALKING IN THE SECOND DEGREE: CLASS A MISDEMEANOR

(a) For the purposes of this section:

- (1) “Course of conduct” means two or more acts, including, but not limited to, acts in which a person directly, indirectly or through a third party, by any action, method, device or means, including, but not limited to, electronic or social media,
 - (A) follows, lies in wait for, monitors, observes, surveils, threatens, harasses, communicates about or with or sends unwanted gifts to, a person, or
 - (B) interferes with a person's property;
- (2) “Emotional distress” means significant mental or psychological suffering or distress that may or may not require medical or other professional treatment or counseling; and
- (3) “Personally identifying information” means:
 - (A) Any information that can be used to distinguish or trace an individual's identity, such as name, prior legal name, alias, mother's maiden name, Social Security number, date or place of birth, address, telephone number or biometric data;
 - (B) Any information that is linked or linkable to an individual, such as medical, financial, education, consumer or employment information, data or records; or
 - (C) Any other sensitive private information that is linked or linkable to a specific identifiable individual, such as gender identity, sexual orientation or any sexually intimate visual depiction.

(b) A person is guilty of stalking in the second degree when:

- (1) Such person knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person to
 - (A) fear for such specific person's physical safety or the physical safety of a third person;
 - (B) suffer emotional distress; or
 - (C) fear injury to or the death of an animal owned by or in possession and control of such specific person;
 - (2) Such person with intent to harass, terrorize or alarm, and for no legitimate purpose, engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person to fear that such person's employment, business or career is threatened, where
 - (A) such conduct consists of the actor telephoning to, appearing at or initiating communication or contact to such other person's place of employment or business, including electronically, through video-teleconferencing or by digital media, provided the actor was previously and clearly informed to cease such conduct, and
 - (B) such conduct does not consist of constitutionally protected activity; or
 - (3) Such person, for no legitimate purpose and with intent to harass, terrorize or alarm, by means of electronic communication, including, but not limited to, electronic or social media, discloses a specific person's personally identifiable information without consent of the person, knowing, that under the circumstances, such disclosure would cause a reasonable person to:
 - (A) Fear for such person's physical safety or the physical safety of a third person; or
 - (B) Suffer emotional distress.
- (c) For the purposes of this section, a violation may be deemed to have been committed either at the place where the communication originated or at the place where it was received.
- (d) Stalking in the second degree is a class A misdemeanor.

CONN. GEN. STAT. ANN. § 53A-181E (WEST 2023). STALKING IN THE THIRD DEGREE: CLASS B MISDEMEANOR

- (a) A person is guilty of stalking in the third degree when such person recklessly causes another person to reasonably

- (1) fear for his or her physical safety, or
- (2) suffer emotional distress, as defined in section 53a-181d, by willfully and repeatedly following or lying in wait for such other person.

(b) Stalking in the third degree is a class B misdemeanor.

CONN. GEN. STAT. ANN. § 53A-181F (WEST 2023). ELECTRONIC STALKING: CLASS D FELONY

(a) A person is guilty of electronic stalking when such person, with the intent to kill, injure, harass or intimidate, uses any interactive computer service or electronic communication service, electronic communication system or electronic monitoring system to place another person under surveillance or otherwise to engage in a course of conduct that:

(1) Places such other person in reasonable fear of the death of or serious bodily injury to

- (A) such person,
- (B) an immediate family member of such person, or
- (C) an intimate partner of such person; or

(2) causes, attempts to cause or would be reasonably expected to cause substantial emotional distress to a person described in subparagraph (A), (B) or (C) of subdivision (1) of this subsection.

(b) For purposes of subsection (a) of this section,

(1) “immediate family member” means

- (A) a spouse, parent, brother or sister or a child of the person or person to whom the person stands in loco parentis, or
- (B) any person living in the household and related to the person by blood or marriage, and

(2) “intimate partner” means a

- (A) former spouse,
- (B) person who has a child in common with the person regardless of whether they are or have been married or are living or have lived together at any time, or

(C) person in, or who has recently been in, a dating relationship with the person.

(c) Electronic stalking is a class D felony.

**CONN. GEN. STAT. ANN. § 53A-182B (WEST 2023). HARASSMENT IN THE FIRST DEGREE:
CLASS D FELONY**

(a) A person is guilty of harassment in the first degree when, with the intent to harass, annoy, alarm or terrorize another person, he threatens to kill or physically injure that person or any other person, and communicates such threat by telephone, or by telegraph, mail, computer network, as defined in section 53a-250, or any other form of written communication, in a manner likely to cause annoyance or alarm and has been convicted of a capital felony under the provisions of section 53a-54b in effect prior to April 25, 2012, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a-122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For the purposes of this section, “convicted” means having a judgment of conviction entered by a court of competent jurisdiction.

(b) For the purposes of this section, such offense may be deemed to have been committed either at the place where the communication originated or at the place where it was received.

(c) The court may order any person convicted under this section to be examined by one or more psychiatrists.

(d) Harassment in the first degree is a class D felony.

**CONN. GEN. STAT. ANN. § 53A-183 (WEST 2023). HARASSMENT IN THE SECOND DEGREE:
CLASS C MISDEMEANOR**

(a) A person is guilty of harassment in the second degree when with intent to harass, terrorize or alarm another person, and for no legitimate purpose, such person:

(1) Communicates with a person by telegraph or mail, electronically transmitting a facsimile through connection with a telephone network, electronic mail or text message or any other electronically sent message, whether by digital media account, messaging program or application, or otherwise by computer, computer service or computer network, as defined in section 53a-250, or any other form of communication, in a manner likely to cause terror, intimidation or alarm;

(2) makes a telephone call or engages in any other form of communication, whether or not a conversation ensues, in a manner likely to cause terror, intimidation or alarm; or

(3) communicates or shares a photograph, video or words or engages in any other form of communication to a digital, electronic, online or other meeting space, in a manner likely to cause terror, intimidation or alarm.

(b) For the purposes of this section, such offense may be deemed to have been committed either at the place where the communication originated or at the place where it was received.

(c) The court may order any person convicted under this section to be examined by one or more psychiatrists.

(d) Harassment in the second degree is a class C misdemeanor.

CONN. GEN. STAT. ANN. § 53A-189 (WEST 2023). EAVESDROPPING: CLASS D FELONY

(a) A person is guilty of eavesdropping when he unlawfully engages in wiretapping or mechanical overhearing of a conversation.

(b) Eavesdropping is a class D felony.

CONN. GEN. STAT. ANN. § 53A-222 (WEST 2023). VIOLATION OF CONDITIONS OF RELEASE IN THE FIRST DEGREE: CLASS D OR C FELONY

(a) A person is guilty of violation of conditions of release in the first degree when, while charged with the commission of a felony, such person is released pursuant to subsection (b) of section 54-63c, subsection (c) of section 54-63d or subsection (c) of section 54-64a, and intentionally violates one or more of the imposed conditions of release.

(b) Violation of conditions of release in the first degree is a class D felony, except that any violation of conditions of release that involve (1) imposing any restraint upon the person or liberty of a person in violation of the conditions of release, or (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking a person in violation of the conditions of release is a class C felony.

CONN. GEN. STAT. ANN. § 53A-222A (WEST 2023). VIOLATION OF CONDITIONS OF RELEASE IN THE SECOND DEGREE: CLASS A MISDEMEANOR OR CLASS D FELONY

(a) Violation of conditions of release in the second degree is a class A misdemeanor, except that any violation of conditions of release that involve (1) imposing any restraint upon the person or liberty of a person in violation of the conditions of release, or (2) threatening, harassing,

assaulting, molesting, sexually assaulting or attacking a person in violation of the conditions of release is a class D felony.

- (b) Violation of conditions of release in the second degree is a class A misdemeanor, except that any violation of conditions of release that involve (1) imposing any restraint upon the person or liberty of a person in violation of the conditions of release, or (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking a person in violation of the conditions of release is a class D felony.

CONN. GEN. STAT. ANN. § 53A-223B (WEST 2023). CRIMINAL VIOLATION OF A RESTRAINING ORDER: CLASS D OR CLASS C FELONY

(a) A person is guilty of criminal violation of a restraining order when

(1) (A) a restraining order has been issued against such person pursuant to section 46b-15, or

(B) a foreign order of protection, as defined in section 46b-15a, has been issued against such person in a case involving the use, attempted use or threatened use of physical force against another, and

(2) such person, having knowledge of the terms of the order,

(A) does not stay away from a person or place in violation of the order,

(B) contacts a person in violation of the order,

(C) imposes any restraint upon the person or liberty of a person in violation of the order, or

(D) threatens, harasses, assaults, molests, sexually assaults or attacks a person in violation of the order.

(b) No person who is listed as a protected person in such restraining order or foreign order of protection may be criminally liable for

(1) soliciting, requesting, commanding, importuning or intentionally aiding in the violation of the restraining order or foreign order of protection pursuant to subsection (a) of section 53a-8, or

(2) conspiracy to violate such restraining order or foreign order of protection pursuant to section 53a-48.

(c) No person who is listed as a respondent in a restraining order issued pursuant to section 46b-15 or a foreign order of protection issued pursuant to section 46b-15a and against whom there is an order of no contact with the protected party or parties may be criminally liable for a violation of

such order if such person causes a document filed in a family relations matter, as defined in section 46b-1, to be served on the protected party or parties in accordance with the law by mail or through a third party who is authorized by statute to serve process.

(d) (1) Except as provided in subdivision (2) of this subsection, criminal violation of a restraining order is a class D felony.

(2) Criminal violation of a restraining order is a class C felony if the offense is a violation of subparagraph (C) or (D) of subdivision (2) of subsection (a) of this section.

CONN. GEN. STAT. ANN. § 53A-223C (WEST 2023). CRIMINAL VIOLATION OF A CIVIL PROTECTION ORDER: CLASS D FELONY

(a) A person is guilty of criminal violation of a restraining order when

(1) (A) a restraining order has been issued against such person pursuant to section 46b-15, or (B) a foreign order of protection, as defined in section 46b-15a, has been issued against such person in a case involving the use, attempted use or threatened use of physical force against another, and

(2) such person, having knowledge of the terms of the order,

(A) does not stay away from a person or place in violation of the order,

(B) contacts a person in violation of the order,

(C) imposes any restraint upon the person or liberty of a person in violation of the order, or

(D) threatens, harasses, assaults, molests, sexually assaults or attacks a person in violation of the order.

(b) No person who is listed as a protected person in such restraining order or foreign order of protection may be criminally liable for

(1) soliciting, requesting, commanding, importuning or intentionally aiding in the violation of the restraining order or foreign order of protection pursuant to subsection (a) of section 53a-8, or

(2) conspiracy to violate such restraining order or foreign order of protection pursuant to section 53a-48.

(c) No person who is listed as a respondent in a restraining order issued pursuant to section 46b-15 or a foreign order of protection issued pursuant to section 46b-15a and against whom there is an order of no contact with the protected party or parties may be criminally liable for a violation of

such order if such person causes a document filed in a family relations matter, as defined in section 46b-1, to be served on the protected party or parties in accordance with the law by mail or through a third party who is authorized by statute to serve process.

(d) (1) Except as provided in subdivision (2) of this subsection, criminal violation of a restraining order is a class D felony.

(2) Criminal violation of a restraining order is a class C felony if the offense is a violation of subparagraph (C) or (D) of subdivision (2) of subsection (a) of this section.

CONN. GEN. STAT. ANN. § 53A-223 (WEST 2023). CRIMINAL VIOLATION OF A PROTECTIVE ORDER: CLASS D OR CLASS C FELONY

(a) A person is guilty of criminal violation of a protective order when an order issued pursuant to subsection (e) of section 46b-38c, subsection (f) of section 53a-28, or section 54-1k or 54-82r has been issued against such person, and such person violates such order.

(b) No person who is listed as a protected person in such protective order may be criminally liable for

(1) soliciting, requesting, commanding, importuning or intentionally aiding in the violation of the protective order pursuant to subsection (a) of section 53a-8, or

(2) conspiracy to violate such protective order pursuant to section 53a-48.

(c) Criminal violation of a protective order is a class D felony, except that any violation of a protective order that involves (1) imposing any restraint upon the person or liberty of a person in violation of the protective order, or (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking a person in violation of the protective order is a class C felony.

CONN. GEN. STAT. ANN. § 53A-223A (WEST 2023). CRIMINAL VIOLATION OF A STANDING PROTECTIVE ORDER: CLASS D OR CLASS C FELONY

(a) A person is guilty of criminal violation of a standing criminal protective order when an order issued pursuant to subsection (a) of section 53a-40e has been issued against such person, and such person violates such order.

(b) No person who is listed as a protected person in such standing criminal protective order may be criminally liable for

(1) soliciting, requesting, commanding, importuning or intentionally aiding in the violation of the standing criminal protective order pursuant to subsection (a) of section 53a-8, or

(2) conspiracy to violate such standing criminal protective order pursuant to section 53a-48.

(c) Criminal violation of a standing criminal protective order is a class D felony, except that any violation that involves (1) imposing any restraint upon the person or liberty of a person in violation of the standing criminal protective order, or (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking a person in violation of the standing criminal protective order is a class C felony.

Relevant Case Law

State v. Bosacrino, 861 A.2d 579 (Conn. App. Ct. 2004)

Defendant was convicted of stalking for “repeatedly following” the victim. The defendant appealed, arguing evidence was insufficient that he “repeatedly followed” the victim. At trial, the State presented evidence from two career fairs. Regarding the first career fair, the victim testified that she never saw the defendant that day but that she saw his resume, which is the only evidence that the defendant attended the fair. The Court of Appeals held that the existence of the resume alone was insufficient to prove that the defendant maintained sufficient visual or physical proximity to the victim, uninterrupted, over a substantial enough period of time to constitute “following” at this first fair. The trial court's judgment was reversed.

State v. Russell, 922 A.2d 191 (Conn. App. Ct. 2007)

Defendant was convicted of stalking in the third degree and appealed, arguing evidence was insufficient to support the conviction in connection with an incident at a campground. Specifically, he argued that the state failed to prove that he willfully followed the victim at the campground. He also argued that evidence did not demonstrate he was sufficiently in the victim's presence or that he was in her presence for a substantial enough period of time so as to constitute “following,” noting that he never made eye contact with the victim. Evidence was presented at trial that the victim had a protective order against the defendant. In October 2003, the victim was in the bathroom at a campsite, where she was camping with a Girl Scout troop, when defendant approached campsite and talked to the adult Girl Scout troop leaders. The defendant testified that he was merely an avid camper, that he was at the same campsite by coincidence, and that he never saw the victim. The victim testified that she saw the defendant as she was exiting the bathroom and estimated they were about 20-25 feet apart. Others testified that the defendant seems to be “scanning” the area as he talked to the adult troopers. The Court of Appeals held that the jury properly inferred that the defendant acted willfully — given the defendant's proven history of showing up invited to places where the victim was and his persistent efforts to be near her, the jury reasonably could have inferred that was not a mere coincidence. Furthermore, the Court of Appeals found that evidence was sufficient that he was sufficiently proximate to the victim in time (10 minutes) and in distance (25 feet) to constitute following.

***State v. Arthurs*, 997 A.2d 568 (Conn. App. Ct. 2010)**

Defendant was convicted of stalking in the first degree and appealed, claiming in part that evidence was insufficient to support the conviction. The defendant argued that there was not sufficient evidence that he intended to cause the victim to fear for her physical safety because no evidence was presented of any direct physical contact, threats, or harassment. The Court of Appeals disagreed, reasoning that “proof of verbal threats or harassing gestures is not essential to prove a violation of stalking. The stalking statute was enacted to address the situation where the criminal does not physically take an act against the person or does not verbally make a direct an[d] immediate threat of harm, but merely stalks the victim ... The statute can be violated without a defendant's uttering a syllable, writing a word, or making a gesture.” In this case, evidence presented at trial of the victim's domestic dispute with the defendant, the defendant's disregard of the protective order issued against him, and the defendant's “creepy behavior” following the victim, staring at her, and calling out to her at public events was sufficient evidence for the court to conclude that the defendant intended to cause the victim to fear for her physical safety. Defendant also argued that the victim's fear was unreasonable. However, victim repeatedly testified that she felt unsafe, and defendant's actions during the first incident, in which he yelled, pounded on doors, threatened to break things, and ultimately broke down the bedroom door was sufficient for the court to conclude that the victim's fear was reasonable.

***State v. Lepeska*, 149 A.3d 213 (Conn. App. Ct. 2016)**

Defendant was convicted of second-degree stalking and appealed, arguing evidence was insufficient to prove that victim reasonably feared for her safety. The Court of Appeals found there was sufficient evidence to prove that the victim reasonably feared for her safety: there was evidence that defendant called victim dozens of times a day, including during the night, and sent her numerous messages over a social networking website; that defendant engaged in this conduct even though he knew that a no contact order was in place; that the victim told him she did not wish to speak with him; and defendant repeatedly called victim's friends and family in an attempt to talk to her. The victim also testified that when she was in the physical presence of the defendant, she felt “terrified for her life.”

***Kayla M. v. Greene*, 136 A.3d 1 (Conn. App. Ct. 2016)**

Defendant appealed a court order granting civil protection orders based on stalking, claiming in part that evidence of stalking was insufficient. Specifically, defendant claimed he did not “knowingly” engage in a course of conduct that would cause the plaintiff to fear him because he never actually knew the plaintiff feared him. He also claimed that his actions did not constitute a “course of conduct” because they were not predatory in nature, and that the victim did not subjectively fear for her safety because she continued to speak with him after he requested nude photographs. The court stated that the defendant need not know that the plaintiff was actually fearful; the plaintiff was only required to prove that there were reasonable grounds to believe the husband was aware that his conduct would cause a reasonable person to fear for their safety. In this case, the Court of Appeals found that the requests for the nude pictures, combined with sending the plaintiff harassing emails, coming to her place of employment, attempting to discover where the plaintiff lived, inquiring into plaintiff's personal life, physically and verbally accosting the plaintiff, and telling her that she was on “very thin ice” was sufficient for the court to find a reasonable fear, and thus that the defendant

acted “knowingly.” The Court of Appeals also said that the course of conduct need not be predatory in nature, as the definition of “course of conduct” is broad.

Stacy B. V. Robert S., 140 A.3d 1004 (Conn. App. Ct. 2016)

A court issued a protective order barring the defendant from stalking a victim and he appealed, arguing that evidence of stalking was insufficient. Specifically, he argued that the court lacked evidence that the plaintiff had been in fear for his safety or the safety of a third person. At trial, evidence was presented that the defendant had complained to school board members of the district which the plaintiff's son attends school that the plaintiff was a danger to children. There was other evidence of the defendant's “alarming and irrational conduct,” in which he was making derogatory remarks about the plaintiff to various agencies. The victim testified that he feared he was being “hunted” by the defendant and started taking precautions, including obtaining a PO box, registering his wife's car in her premarital name, and hiring an Internet company to delete any derogatory information about him that was electronically posted.

State v. Billings, 287 A.3d 146 (Conn. App. 2022)

Defendant appealed conviction for violating a restraining order, stalking, and harassment, arguing in part that his speech was protected by the First Amendment because he was prosecuted on the content of his communication, not on its conduct. The case involved a relationship between the defendant and the victim. They met at a party and began communicating through social media platforms. The victim’s decision to end the relationship angered the defendant. The defendant posted private details and photographs on social media, which caused the victim to obtain a restraining order against the defendant after his actions became threatening. The defendant was later charged based on screenshots of a Facebook conversation where he made threatening statements. The defendant's convictions were primarily based on this evidence. The appellate court held and the state supreme court agreed that, absent the protected speech, there was insufficient evidence to support his convictions.

Stalking, Harassment, & Related Offenses: Delaware

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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DELAWARE

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>Court of conduct includes 3 or more separate incidents, including, but not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about another, or interferes with, jeopardizes, damages, or disrupts another's daily activities, property, employment, business, career, education, or medical care. Del. Code tit. 11, § 1312(e)(1).</p> <p>Course of conduct can include predicate acts, regardless of whether those acts resulted in conviction. Del. Code tit. 11, § 1312(e)(1).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	No "threat" required, but see definition of course of conduct and fear requirements for other requirements. Del. Code tit. 11, § 1312(e)(1).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Knowingly engaging in a course of conduct. Del. Code tit. 11, § 1312(a).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, as reasonable fear encompasses fear of physical injury to another person. Del. Code tit. 11, § 1312(a)(1).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Victim must reasonably fear physical injury to himself or herself or that of another person; or suffer other significant mental anguish or distress that may, but does not necessarily, require medical or other professional treatment or counseling. Del. Code tit. 11, § 1312.
Does fear include emotional distress?	Yes, see above. Del. Code tit. 11, § 1312.

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. 11 Del. Code § 1312.</p> <p>A “reasonable person” means a reasonable person in the victim’s circumstances. Del. Code tit. 11, § 1312(e)(2).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>There is are no published cases that describes what constitutes reasonable fear.</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No. Further, it is not a defense that the defendant did not receive actual notice that the conduct was unwanted. Del. Code tit. 11, § 1312(h).</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>Yes. The definition of course of conduct — “...acts in which the person directly, indirectly, or through third parties...” Del. Code § tit. 11 1312(e)(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>Although not explicit, technology-facilitated stalking is conceivably covered under the regular stalking statute because the definition of course of conduct is very broad, and includes actions utilized with a “device.” See Del. Code tit. 11, § 1312(e)(1).</p> <p>Other statutes criminalize similar conduct such as unauthorized use of a computer and violation of privacy through electronic surveillance or installing a GPS tracker. Del. Code tit. 11, § 932; Del. Code Ann. tit. 11, § 1335.</p>
<p>Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)</p>	<p>There is no resident requirement. Further, a person may be convicted in Delaware if the “conduct or the result which is an element of the offense occurs within Delaware.” Del. Code tit. 11, § 204 (a)(1).</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>A course of conduct requires three or more separate incidents, whereas other jurisdictions typically only require two. See Del. Code tit. 11, § 1312(e)(1).</p>

<p>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)</p>	<p>Stalking under Del. Code tit. 11, § 1312(d) is a Class C felony. Stalking under Del. Code tit. 11, § 1312(c) is a Class F Felony. Stalking under Del. Code tit. 11, § 1312(a) is a Class G Felony.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is elevated to a Class F felony if:</p> <ul style="list-style-type: none"> - The offender is 21+ and the victim is under 14; - The offender violated a court order prohibiting contact with the victim; - The victim is 62+; - Offender threatens death or serious physical injury to victim or another person; or - Offender physically injures victim. <p>Del. Code tit. 11, § 1312(c).</p> <p>Stalking is elevated to a Class C felony if:</p> <ul style="list-style-type: none"> - Offender possesses deadly weapon during the acts; or - Offender causes serious physical injury to victim. <p>Del. Code tit. 11, § 1312(d).</p>

Statutes

DEL. CODE ANN. TIT. 11, § 602 (WEST 2023). MENACING; UNCLASSIFIED MISDEMEANOR

(a) A person is guilty of menacing when by some movement of body or any instrument the person intentionally places another person in fear of imminent physical injury.

Menacing is an unclassified misdemeanor.

(b) A person is guilty of aggravated menacing when by displaying what appears to be a deadly weapon that person intentionally places another person in fear of imminent physical injury. Aggravated menacing is a class E felony.

DEL. CODE ANN. TIT. 11, § 621 (WEST 2023). TERRORISTIC THREATENING

(a) A person is guilty of terroristic threatening when that person commits any of the following:

(1) The person threatens to commit any crime likely to result in death or in serious injury to person or property;

(2) The person makes a false statement or statements:

a. Knowing that the statement or statements are likely to cause evacuation of a building, place of assembly, or facility of public transportation;

b. Knowing that the statement or statements are likely to cause serious inconvenience; or

c. In reckless disregard of the risk of causing terror or serious inconvenience; or

(3) The person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

(b) Any violation of paragraph (a)(1) of this section shall be a class A misdemeanor except where the victim is a person 62 years of age or older, in which case any violation of paragraph (a)(1) of this section shall be a class G felony. Any violation of paragraph (a)(2)a. of this section shall be a class E felony. Any violation of paragraph (a)(2)b. or c. of this section shall be a class G felony unless the place at which the risk of serious inconvenience or terror is created is a place that has the purpose, in whole or in part, of acting as a daycare facility, nursery or preschool, kindergarten, elementary, secondary or vocational-technical school, or any long-term care facility in which elderly persons are housed, in which case it shall be a class F felony. Any violation of paragraph (a)(3) of this section shall be a class F felony. Notwithstanding any provision of this subsection to the contrary, a first offense of paragraph (a)(2) of this section by a person 17 years old or younger shall be a class A misdemeanor.

(c) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of paragraph (a)(2) of this section shall:

(1) Pay a fine of not less than \$1,000 nor more than \$2,500, which fine cannot be suspended; and

(2) Be sentenced to perform a minimum of 100 hours of community service.

(d) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of paragraph (a)(3) of this section shall pay a fine of not less than \$2,000, which fine cannot be suspended.

DEL. CODE ANN. TIT 11, § 9611 (WEST 2023). DEFINITIONS

When used in this subchapter, the following words and phrases shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

- (1) “Actual address” shall mean a residential address, school address or work address of an individual.
- (2) “Image” includes, but is not limited to, any photograph, video, sketch, or computer-generated image that provides a means to visually identify the person depicted.
- (3) “Internet” has the meaning used in § 931 of this title.
- (4) “Law-enforcement agency” means the police department of any political subdivision of this State, the Delaware State Police, the Capitol Police, and the Delaware Department of Justice.
- (5) “Post or display publicly” means to communicate, transmit, or otherwise make available to any other person.
- (6) “Program” means the Address Confidentiality Program of the Department of Justice.
- (7) “Program participant” means any person certified by the Department of Justice as eligible to participate in the address confidentiality program established by this subchapter.
- (8) “Protected witnesses” means any person to whom the Department of Justice is providing witness protection services pursuant to this chapter.
- (9) “Substitute address” means the official address or confidential address designated by the Attorney General.
- (10) “Victim of domestic violence” means a person who is a victim of domestic violence as that term is defined by § 1041 of Title 10, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.
- (11) “Victim of human trafficking” means a victim of an offense set forth in § 787 of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof, or any other foreign jurisdiction. This definition is to include victims of both “labor” and “sex” trafficking.
- (12) “Victim of sexual assault” means a victim of an offense set forth in §§ 768 through 780, and 787 of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(13)“Victim of stalking” means a victim of an offense set forth in §§ 1312 and 1312A [transferred to § 1312] of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

DEL. CODE ANN. TIT. 11, § 1271A (WEST 2023). CRIMINAL CONTEMPT OF A DOMESTIC VIOLENCE PROTECTIVE ORDER OR LETHAL VIOLENCE PROTECTIVE ORDER; CLASS A MISDEMEANOR; CLASS F FELONY

- (a) (1) A person is guilty of criminal contempt of a domestic violence protective order when the person knowingly violates or fails to obey any provision of a protective order issued by: the Family Court; a court of any state, territory, or Indian nation in the United States, as long as such violation or failure to obey occurred in Delaware; or a court of Canada, as long as such violation or failure to obey occurred in Delaware.
- (2) A person is guilty of criminal contempt of a lethal violence protective order or sexual violence protective order when the person knowingly violates or fails to obey any provision of a protective order issued by the Justice of the Peace Court or Superior Court, as long as such violation or failure to obey occurred in Delaware.
- (b) Criminal contempt of a domestic violence protective order, lethal violence protective order, or sexual violence protective order is a class A misdemeanor, unless any of the elements set forth in subsection (c) of this section are met, in which case the offense shall be a class F felony.
- (c) A person is guilty of felony criminal contempt of a domestic violence protective order, a lethal violence protective order, or a sexual violence protective order if:
- (1) Such contempt resulted in physical injury;
- (2) Such contempt involved the use or threatened use of a deadly weapon or firearm.
- (d) A person found guilty of criminal contempt of a domestic violence protective order, lethal violence protective order, or sexual violence protective order shall receive a minimum sentence of 15 days incarceration if:
- (1) Such contempt resulted in physical injury; or
- (2) Such contempt involved the use or threatened use of a deadly weapon or firearm; or
- (3) The defendant was convicted of criminal contempt of a domestic violence protective order lethal violence protective order, or sexual violence protective order under this section on 2 or more prior occasions.

- (e) The minimum sentence shall not be subject to suspension and no person subject to the minimum sentence shall be eligible for probation, parole, furlough or suspended custody during said sentence.
- (f) The Superior Court has exclusive jurisdiction over offenses under paragraph (a)(2) of this section.

DEL. CODE ANN. TIT. 11, § 1312 (WEST 2023). STALKING; CLASS G FELONY, CLASS F FELONY, CLASS C FELONY

- (a) A person is guilty of stalking when the person knowingly engages in a course of conduct directed at a specific person and that conduct would cause a reasonable person to:
 - (1) Fear physical injury to himself or herself or that of another person; or
 - (2) Suffer other significant mental anguish or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
- (b) A violation of subsection (a) of this section is a class G felony.
- (c) Stalking is a class F felony if a person is guilty of stalking and 1 or more of the following exists:
 - (1) The person is age 21 or older and the victim is under the age of 14; or
 - (2) The person violated any order prohibiting contact with the victim; or
 - (3) The victim is age 62 years of age or older; or
 - (4) The course of conduct includes a threat of death or threat of serious physical injury to the victim, or to another person; or
 - (5) The person causes physical injury to the victim.
- (d) Stalking is a class C felony if the person is guilty of stalking and 1 or more of the following exists:
 - (1) The person possesses a deadly weapon during any act; or
 - (2) The person causes serious physical injury to the victim.
- (e) Definitions. --The following terms shall have the following meaning as used in this section:
 - (1) “Course of conduct” means 3 or more separate incidents, including, but not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about

another, or interferes with, jeopardizes, damages, or disrupts another's daily activities, property, employment, business, career, education, or medical care. A conviction is not required for any predicate act relied upon to establish a course of conduct. A conviction for any predicate act relied upon to establish a course of conduct does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(2) "A reasonable person" means a reasonable person in the victim's circumstances.

- (f) Notwithstanding any contrary provision of § 4205 of this title, any person who commits the crime of stalking by engaging in a course of conduct which includes any act or acts which have previously been prohibited by a then-existing court order or sentence shall receive a minimum sentence of 6 months incarceration at Level V. The first 6 months of said period of incarceration shall not be subject to suspension.
- (g) Notwithstanding any contrary provision of § 4205 of this title, any person who is convicted of stalking within 5 years of a prior conviction of stalking shall receive a minimum sentence of 1 year incarceration at Level V. The first year of said period of incarceration shall not be subject to suspension.
- (h) In any prosecution under this law, it shall not be a defense that the perpetrator was not given actual notice that the course of conduct was unwanted; or that the perpetrator did not intend to cause the victim fear or other emotional distress.
- (i) In any prosecution under this section, it is an affirmative defense that the person charged was engaged in lawful picketing.
- (j) This section shall not apply to conduct which occurs in furtherance of legitimate activities of law-enforcement, private investigators, security officers or private detectives as those activities are defined in Chapter 13 of Title 24.

DEL. CODE ANN. TIT. 11 § 1311 (WEST 2023). HARASSMENT; CLASS A MISDEMEANOR

- (a) A person is guilty of harassment when, with intent to harass, annoy or alarm another person:
 - (1) That person insults, taunts or challenges another person or engages in any other course of alarming or distressing conduct which serves no legitimate purpose and is in a manner which the person knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress;
 - (2) Communicates with a person by telephone, telegraph, mail or any other form of written or electronic communication in a manner which the person knows is likely to cause annoyance

or alarm including, but not limited to, intrastate telephone calls initiated by vendors for the purpose of selling goods or services;

- (3) Knowingly permits any telephone under that person's control to be used for a purpose prohibited by this section;
- (4) In the course of a telephone call that person uses obscene language or language suggesting that the recipient of the call engage with that person or another person in sexual relations of any sort, knowing that the person is thereby likely to cause annoyance or alarm to the recipient of the call; or
- (5) Makes repeated or anonymous telephone calls to another person whether or not conversation ensues, knowing that person is thereby likely to cause annoyance or alarm.

(b) Harassment is a class A misdemeanor.

DEL. CODE ANN. TIT. 11, § 1335 (WEST 2023). VIOLATION OF PRIVACY; CLASS A MISDEMEANOR; CLASS G FELONY

- (a) A person is guilty of violation of privacy when, except as authorized by law, the person:
 - (1) Trespasses on property intending to subject anyone to eavesdropping or other surveillance in a private place; or
 - (2) Installs in any private place, without consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place; or
 - (3) Installs or uses outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or
 - (4) Intercepts without the consent of all parties thereto a message by telephone, telegraph, letter or other means of communicating privately, including private conversation; or
 - (5) Divulges without the consent of the sender and the receiver the existence or contents of any message by telephone, telegraph, letter or other means of communicating privately if the accused knows that the message was unlawfully intercepted or if the accused learned of the message in the course of employment with an agency engaged in transmitting it.
 - (6) Tape records, photographs, films, videotapes or otherwise reproduces the image of another person who is getting dressed or undressed or has that person's genitals, buttocks or her

breasts exposed, without consent, in any place where persons normally disrobe including but not limited to a fitting room, dressing room, locker room or bathroom, where there is a reasonable expectation of privacy. This paragraph shall not apply to any acts done by a parent or guardian inside of that person's dwelling, or upon that person's real property, when a subject of victim of such acts is intended to be any child of such parent or guardian who has not yet reached that child's eighteenth birthday and whose primary residence is in or upon the dwelling or real property of the parent or guardian, unless the acts done by the parent or guardian are intended to produce sexual gratification for any person in which case this paragraph shall apply; or

- (7) Secretly or surreptitiously videotapes, films, photographs or otherwise records another person under or through that person's clothing for the purpose of viewing the body of or the undergarments worn by that other person; or
- (8) Knowingly installs an electronic or mechanical location tracking device in or on a motor vehicle without the consent of the registered owner, lessor or lessee of said vehicle. This paragraph shall not apply to the lawful use of an electronic tracking device by a law-enforcement officer, nor shall it apply to a parent or legal guardian who installs such a device for the purpose of tracking the location of a minor child thereof; or
- (9) Knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a visual depiction of a person who is nude, or who is engaging in sexual conduct, when the person knows or should have known that the reproduction, distribution, exhibition, publication, transmission, or other dissemination was without the consent of the person depicted and that the visual depiction was created or provided to the person under circumstances in which the person depicted has a reasonable expectation of privacy.
 - a. For the purposes of the introductory paragraph of this paragraph (a)(9), paragraphs (a)(9)b., and (a)(9)d. of this section:

[...]
 - 7. "Visual depiction" shall have the meaning as used in § 1100 of this title.
 - b. A person who has, within the context of a private or confidential relationship, consented to the capture or possession of a visual depiction of the person when nude or when engaging in sexual conduct retains a reasonable expectation of privacy with regard to the reproduction, distribution, exhibition, publication, transmission, or other dissemination of the visual depiction beyond that relationship.
 - c. For the purposes of this paragraph (a)(9), each of the following shall be an aggravating factor and shall be alleged in the charging information or indictment and constitute an element of the offense:
 - 1. The actor knowingly obtains such visual depictions without the consent of the person depicted.

- A. A violation of this paragraph (a)(9)c.1. occurs when a person commits a theft as provided for in § 841, § 842, § 843, or § 844 of this title or obtains such visual depictions by committing unauthorized access to a computer system as provided for in § 932 of this title or by unauthorized access to electronic mail or an electronic mail service provider as defined in § 931 of this title.
 - B. A violation of this paragraph (a)(9)c.1. consistent with § 932 of this title is subject to the venue provision in § 940 of this title.
2. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions for profit.
 3. The actor knowingly maintains an Internet website, online service, online application, or mobile application for the purpose of reproducing, distributing, exhibiting, publishing, transmitting, or otherwise disseminating such visual depictions.
 4. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions with the intent to harass, annoy, or alarm the person depicted and such conduct would cause a reasonable person to suffer significant mental anguish or distress.
 5. The actor pairs such visual depiction with personally identifiable information of the person depicted.
- d. For purposes of this paragraph (a)(9), the fact the actor committed this offense within 5 years of a prior conviction for a violation of this paragraph (a)(9) shall be an aggravating factor for sentencing purposes only and, therefore, this fact is not to be alleged in the charging information or indictment and does not constitute an element of the offense.
 - e. In addition to when the consent of the person depicted is given, the introductory paragraph of this paragraph (a)(9) and paragraph (a)(9)b. of this section do not apply to any of the following:
 1. When the visual depiction is of an individual less than 18 years of age and does not violate § 1108, § 1109, or § 1111 of this title, or any similar provision of this title, and the reproduction, distribution, exhibition, publication, transmission, or other dissemination is not for commercial purposes.

[...]

(c) Any violation of paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8), or (a)(9) of this section shall be a class A misdemeanor. Any violation of paragraph (a)(6), (a)(7), (a)(9)c., or (a)(9)d. of this section shall be a class G felony.

Relevant Case Law

***Snowden v. State*, 677 A.2d 33 (Del. 1996)**

Defendant was convicted of stalking and appealed. On appeal, the defendant argued: 1) evidence of the prior conviction against him was erroneously admitted; 2) he could not be convicted because his behavior consisted of the mere exercise of a constitutionally protected right to travel on public roads; and 3) evidence was insufficient to support his conviction. At trial, evidence was presented that defendant and victim were coworkers and that defendant was arrested for stalking the victim in 1993 after repeatedly following her and calling her at home. Defendant pled guilty and was subject to a no-contact order. Two years later, after the expiration of the no contact order, defendant followed the victim home from her new job in his vehicle on 7 separate occasions. The Supreme Court held that the defendant's behavior was not constitutionally protected, because restricting the following of another on public roads is designed to achieve the significant government objective of preventing emotional harm to individuals caused through fear and loss of privacy, as well as the more general societal interest in fostering a sense of security. The Court also held that evidence was sufficient to sustain his conviction for stalking, and that evidence of the defendant's prior stalking conviction was highly probative on the issue of whether defendant's subsequent stalking actions were accidental.

Stalking, Harassment, & Related Offenses: District of Columbia

Current as of June 2023

The information provided here does not constitute legal advice or advocacy and is being furnished strictly for informational purposes.

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DISTRICT OF COLUMBIA

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>Directly or indirectly, or through one or more third persons, in person or by any means, on 2 or more occasions:</p> <ul style="list-style-type: none">- Follow, monitor, place under surveillance, threaten, or communicate to or about another individual;- Interfere with, damage, take, or unlawfully enter an individual's real or personal property or threaten or attempt to do so; or- Use another individual's personal identifying information. <p>D.C. Code § 22-3132(8).</p> <p>Where a single act is of a continuing nature, each 24-hour period constitutes a separate occasion. D.C. Code § 22-3133(c).</p> <p>The conduct on each of the occasions need not be the same as it is on the others. D.C. Code § 22-3133(d).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required for stalking.
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>Intent depends on the statutory provision.</p> <p>Under D.C. Code § 22-3133(a)(1), the defendant must purposefully engage in a course of conduct with the intent to cause that individual fear.</p> <p>Under D.C. Code § 22-3133(a)(2) the defendant must purposefully engage in a course of conduct that the person knows would cause that individual to suffer fear/emotional distress.</p> <p>Under D.C. Code § 22-3133(a)(3) the defendant must purposefully engage in a course of conduct that the person should have known would cause a reasonable person to feel fear.</p>

<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes. While actions need to be directed at a “specific individual” which is defined as the victim of stalking, D.C. Code § 22-3132(8), the “fear” element encompasses fear for the safety of another person, see D.C. Code § 22-3133(a)(1)(A), (a)(2)(A), (a)(3)(A).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear for victim's safety or safety of another person; feel seriously alarmed, disturbed, or frightened; or suffer emotional distress. D.C. Code § 22-3133.</p> <p>“Fear for safety” means “fear for safety” as “fear of significant injury or a comparable harm.” <i>Coleman v. United States</i>, 202 A.3d 1127 (D.C. 2019).</p> <p>“Emotional distress should reach a level that would possibly lead to seeking professional treatment, even if the victim doesn't actually seek professional treatment...’ something markedly greater than the level of uneasiness, nervousness, unhappiness or the like which is commonly experienced in day to day living.” <i>Coleman v. United States</i>, 202 A.3d 1127 (D.C. 2019).</p> <p>“Seriously alarmed, disturbed, or frightened,” must amount to “mental harm comparable to fear for one's safety or significant emotional distress”; serious annoyance is insufficient. <i>Coleman v. United States</i>, 202 A.3d 1127 (D.C. 2019).</p>
<p>Does fear include emotional distress?</p>	<p>Yes. “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling. D.C. Code § 22-3132(4).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. D.C. Code § 22-3133(a)(1)(A), (a)(2)(A), (a)(3)(A).</p>

<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is fact-dependent.</p> <p><i>Coleman v. United States</i>, 202 A.3d 1127 (D.C. 2019) (finding a reasonable fear where defendant followed victim at recreation center, attempted to speak to her, and when she rebuffed his advances, sat on bleachers and watched her walk around the track; in context of two prior staring incidents, defendant should have known his behavior would be seriously alarming to a reasonable person in the victim's position).</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>i.e., getting a third person to stalk the victim</i>)</p>	<p>Yes. The definition of “course of conduct” encompasses acting “through one or more third persons.” See D.C. Code § 22-3132(8).</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 explicitly covered by the regular stalking statute</p> <p>The definition of “course of conduct” includes actions taken “by any means.” D.C. Code § 22-3132(8). “Any means” includes the use of a telephone, mail, delivery service, e-mail, website, or other method of communication or any device. D.C. Code § 22-3132(2). “Any device” means s electronic, mechanical, digital or any other equipment, including: a camera, spycam, computer, spyware, microphone, audio or video recorder, global positioning system, electronic monitoring system, listening device, night-vision goggles, binoculars, telescope, or spyglass. D.C. Code § 22-3132(1).</p>
<p>Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)</p>	<p>No. The stalking statute merely requires that the conduct on at least one occasion was initiated in the District of Columbia or had an effect on the victim in the District of Columbia; or in the case of communication, if the communication is made or received in District of Columbia. If the victim <i>does</i> live in the</p>

	<p>District of Columbia, the District of Columbia will also have jurisdiction over the offense if the victim can merely electronically access the communication in the District of Columbia (even if it wasn't sent or received in this jurisdiction). See D.C. Code § 22-3135.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>Yes. Causing more than \$ 2,500 in financial injury is an aggravating factor that increases punishment for stalking. See D.C. Code § 22-3134(b)(4).</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 not graded as a misdemeanor or a felony but punishment increases when certain aggravating factors are present. D.C. Code § 22-3134.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>The maximum penalty increases to 5 years imprisonment if the offender commits stalking and:</p> <ul style="list-style-type: none"> - At the time was subject to a court, parole, or supervised release order prohibiting contact with the victim; - Had one prior conviction in any jurisdiction for stalking any person within the previous 10 years; - At the time, was at least 4 years older than the victim and victim was less than 18 years of age; or - Caused more than \$ 2,500 in financial injury. <p>The maximum penalty increases to 10 years imprisonment if the offender has 2 or more prior convictions in any jurisdiction for stalking any person, at least one of which was for a jury demandable offense. See D.C. Code § 22-3134.</p>

Statutes

D.C. CODE ANN. § 16-1062 (WEST 2023). PETITION FOR ANTI-STALKING ORDER; REPRESENTATION

- (a) A person 16 years of age or older may petition the court for an anti-stalking order against another person who has allegedly stalked the petitioner, with at least one occasion of the course of conduct occurring within the 90 days prior to the date of petitioning.
- (b) A minor who is less than 16 years of age may not petition the court for an anti-stalking order on their own behalf.
- (c) (1) The parent, legal guardian, or legal custodian of a minor may file a petition for an anti-stalking order on the minor's behalf.

(2) A person 18 years of age or older to whom the minor is related by blood, adoption, legal custody, marriage, or domestic partnership may, at the request of a minor 13 years of age or older, petition for an anti-stalking order on the minor's behalf:
- (d) (1) The Office of Attorney General may:
 - (A) If the petitioner is unable to petition on the petitioner's own behalf, intervene in a case and represent the interests of the District of Columbia at the request of the petitioner, a person petitioning on the petitioner's behalf, or a government agency; or
 - (B) At the request of the petitioner or a person petitioning on the petitioner's behalf, provide individual legal representation to the petitioner in proceedings under this chapter.
- (2) If the Office of the Attorney General intervenes in a case under paragraph (1)(A) of this subsection, the intervention shall continue until:
 - (A) The court denies the petition for an anti-stalking order;
 - (B) The Office of the Attorney General withdraws from the intervention.
- (e) The court may appoint attorneys to represent a party if the party:
 - (1) Is a minor;
 - (2) Is not represented by an attorney; and
 - (3) The appointment would not unreasonably delay a determination on the issuance or denial of a temporary anti-stalking order or anti-stalking order.

- (f) When computing a time period specified in this chapter or in an order issued under this chapter that is stated in days or a longer unit of time:
- (1) Exclude the day of the event that triggers the time period;
 - (2) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and
 - (3) Include the last day of the time period, but if the last day of the time period specified falls on a Saturday, Sunday, a legal holiday, or a day on which weather or other conditions cause the court to be closed, the time period specified shall continue to run until the end of the next day that is not a Saturday, Sunday, legal holiday, or a day on which weather or other conditions cause the court to be closed.

D.C. CODE ANN. § 16-1063 (WEST 2023). PETITION; TEMPORARY ANTI-STALKING ORDER

- (a) Upon receipt of a petition filed pursuant to § 16-1062, the court shall:
- (1) Order that a hearing be held to determine whether to issue an anti-stalking order against the respondent; and
 - (2) Where appropriate, consolidate the case with other matters before the court involving the same parties.
- (b) When petitioning for an anti-stalking order, a petitioner or a person petitioning on the petitioner's behalf may also request that a temporary anti-stalking order be issued without notice to the respondent.
- (c) If the petitioner or the person petitioning on the petitioner's behalf requests that the court issue a temporary anti-stalking order pursuant to subsection (b) of this section, the court shall grant or deny the request after a hearing held on the same day that the request was made, unless the request is filed too late in the day to permit effective review, in which case the court shall grant or deny the request after a hearing held the next day the court is open.
- (d) The court may issue a temporary anti-stalking order if the petitioner or the person petitioning on the petitioner's behalf establishes that the safety or welfare of the petitioner, the petitioner's household member, or an animal the petitioner owns, possesses, or has control of, is immediately endangered by the respondent.
- (e) (1) A temporary anti-stalking order shall remain in effect for an initial period not to exceed 14 days.
- (2) The court may extend a temporary anti-stalking order as necessary to complete service and the hearing on the petition:

- (A) In 14-day increments;
 - (B) In increments up to 28 days for good cause; or
 - (C) For a longer time period with the consent of both parties.
- (f) The court may modify or terminate a temporary anti-stalking order.
- (g) If a respondent fails to appear for a hearing on a petition for an anti-stalking order after having been served with notice of the hearing, a petition, and a temporary anti-stalking order in accordance with the Rules of the Superior Court of the District of Columbia, and the court issues an anti-stalking order in accordance with § 16-1063(d), the temporary anti-stalking order shall remain in effect until the respondent is served with the anti-stalking order or the anti-stalking order expires, whichever occurs first.
- (h) A temporary anti-stalking order may include any of the relief set forth in § 16-1064(c).
- (i) A temporary anti-stalking order issued pursuant to this section shall include a notice explaining that:
- (1) If the day on which the temporary anti-stalking order is set to expire falls on a Saturday, Sunday, a day observed as a holiday by the court, or a day on which weather or other conditions cause the court to be closed, the temporary anti-stalking order shall remain in effect until the end of the next day on which the court is open; and
 - (2) If the respondent fails to appear for a hearing on a petition for an anti-stalking order, after having been served, and a final anti-stalking order is entered, the temporary anti-stalking order shall remain in effect until the respondent is served with the anti-stalking order or the anti-stalking order expires, whichever occurs first.

D.C. CODE ANN. § 22-3131 (WEST 2023). LEGISLATIVE INTENT

- (a) The Council finds that stalking is a serious problem in this city and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that can have a long-lasting impact on the victim's quality of life, and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time. The Council recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the Council enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has even more serious or lethal consequences.

(b) The Council enacts this stalking statute to permit the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The Council recognizes that stalking includes a pattern of following or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

D.C. CODE ANN. § 22-3132 (WEST 2023). DEFINITIONS

For the purposes of this chapter, the term:

- (1) “Any device” means electronic, mechanical, digital or any other equipment, including: a camera, spycam, computer, spyware, microphone, audio or video recorder, global positioning system, electronic monitoring system, listening device, night-vision goggles, binoculars, telescope, or spyglass.
- (2) “Any means” includes the use of a telephone, mail, delivery service, e-mail, website, or other method of communication or any device.
- (3) “Communicating” means using oral or written language, photographs, pictures, signs, symbols, gestures, or other acts or objects that are intended to convey a message.
- (4) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling;
- (5) “Financial injury” means the monetary costs, debts, or obligations incurred as a result of the stalking by the specific individual, member of the specific individual's household, a person whose safety is threatened by the stalking, or a person who is financially responsible for the specific individual and includes:
 - (A) The costs of replacing or repairing any property that was taken or damaged;
 - (B) The costs of clearing the specific individual's name or his or her credit, criminal, or any other official record;
 - (C) Medical bills;
 - (D) Relocation expenses;
 - (E) Lost employment or wages; and
 - (F) Attorney's fees.
- (6) “Personal identifying information” shall have the same meaning as provided in § 22-3227.01(3).

- (7) “Specific individual” or “individual” means the victim or alleged victim of stalking.
- (8) “To engage in a course of conduct” means directly or indirectly, or through one or more third persons, in person or by any means, on 2 or more occasions, to:
 - (A) Follow, monitor, place under surveillance, threaten, or communicate to or about another individual;
 - (B) Interfere with, damage, take, or unlawfully enter an individual's real or personal property or threaten or attempt to do so; or
 - (C) Use another individual's personal identifying information.

D.C. CODE ANN. § 22-3133 (WEST 2023). STALKING

- (a) It is unlawful for a person to purposefully engage in a course of conduct directed at a specific individual:
 - (1) With the intent to cause that individual to:
 - (A) Fear for his or her safety or the safety of another person;
 - (B) Feel seriously alarmed, disturbed, or frightened; or
 - (C) Suffer emotional distress;
 - (2) That the person knows would cause that individual reasonably to:
 - (A) Fear for his or her safety or the safety of another person;
 - (B) Feel seriously alarmed, disturbed, or frightened; or
 - (C) Suffer emotional distress; or
 - (3) That the person should have known would cause a reasonable person in the individual's circumstances to:
 - (A) Fear for his or her safety or the safety of another person;
 - (B) Feel seriously alarmed, disturbed, or frightened; or
 - (C) Suffer emotional distress.

- (b) This section does not apply to constitutionally protected activity.
- (c) Where a single act is of a continuing nature, each 24-hour period constitutes a separate occasion.
- (d) The conduct on each of the occasions need not be the same as it is on the others.

D.C. CODE ANN. § 22-3134 (WEST 2023). PENALTIES

- (a) Except as provided in subsections (b) and (c) of this section, a person who violates § 22-3133 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 12 months, or both.
- (b) A person who violates § 22-3133 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 5 years, or both, if the person:
 - (1) At the time, was subject to a court, parole, or supervised release order prohibiting contact with the specific individual;
 - (2) Has one prior conviction in any jurisdiction of stalking any person within the previous 10 years;
 - (3) At the time, was at least 4 years older than the specific individual and the specific individual was less than 18 years of age; or
 - (4) Caused more than \$ 2,500 in financial injury.
- (c) A person who violates § 22-3133 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 10 years, or both, if the person has 2 or more prior convictions in any jurisdiction for stalking any person, at least one of which was for a jury demandable offense.
- (d) A person shall not be sentenced consecutively for stalking and identify theft based on the same act or course of conduct.

Relevant Case Law

***Whyllie v. United States*, 98 A.3d 156 (D.C. 2014)**

Defendant was convicted of multiple counts of stalking and appealed, arguing that her harassing phone calls, which occurred over an 8-month period, constituted a single course of conduct punishable by only a single sentence for one count of stalking. The Superior Court held that the

collective 2,000 phone calls made pre- and post-entry of the restraining order were not part of a single course of conduct—the calls pre-entry of the restraining order were “separate and distinct” from the calls made after the restraining order.

***Coleman v. United States*, 202 A.3d 1127 (D.C. 2019)**

Defendant was convicted of attempted stalking and appealed, arguing that the government failed to prove that he “should have known” that his conduct would have “caused a reasonable person in the victim's circumstances to fear for her safety, feel seriously alarmed, or suffer emotional distress.” The Superior Court agreed that the Government failed to prove that the defendant had the requisite mens rea on at least two separate occasions to support the attempted stalking charge. The court nonetheless considered the sufficiency of the evidence. The court clarified that “should have known” for purposes of the stalking statute is an “objective mental state” based on a reasonable person standard. The Superior Court also interpreted “fear for safety” as “fear of significant injury or a comparable harm.” Furthermore, the court clarified that the definition of “emotional distress” indicates that the type of distress that the victim must experience is high, reaching a level that would possibly lead to seeking professional treatment, even if the victim doesn't actually seek professional treatment. Examples of conduct that would cause “emotional distress” are making repeated telephone calls to a victim at a workplace, possibly endangering her job, engaging in conduct that destroys the victim’s credit history, and placing the victim under constant surveillance. Finally, the Superior Court, in interpreting the prong of “seriously alarmed, disturbed, or frightened,” stated that “serious annoyance” is insufficient, and that it must amount to “mental harm comparable to fear for one's safety or significant emotional distress.” Overall, all three forms of mental harm “must rise significantly above that which is commonly experienced in day to day living.”

***Mashaud v. Boone*, No. 16-FM-0383, 2023 WL 3875308 (D.C. June 8, 2023)**

Boone obtained a civil protection order, or CPO, against Mashaud after Mashaud sent emails to co-workers, messages to Boone’s friends online, and started a blog describing the affair that Boone engaged in with Mashaud’s wife. A CPO must be based on underlying criminal conduct, and Boone asserted that the criminal conduct was stalking. Mashaud appealed the ruling, asserting that the criminalization of his behavior violated his right to free speech. The appellate court determined that the stalking statute was unconstitutionally overbroad but could be saved with the narrowing construction by applying the provision of the statute “does not apply to constitutionally protected activity.” As such, to prove that the stalking statute applies, it must be shown that the speech considered is outside the scope of constitutionally protected activity (threats, obscenity, defamation, fraud, incitement, and speech integral to criminal conduct). The court found that Masaud’s speech fell into the category of constitutionally protected speech.

Stalking, Harassment, & Related Offenses: Federal

Current as of June 2023

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FEDERAL

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose. 18 U.S.C.A. § 2266 (2).
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>Threat is not required but stalking can be committed by intimidating. 18 U.S.C.A. § 2261A (1)(2).</p> <p>While threat is not required, case law defines threats as “true threats” that are not merely “idle or careless talk.” <i>United States v. Hagar</i>, 822 F. App'x 361 (6th Cir. 2020) (defendant had specifically threatened to shoot people in his emails and social media messages to his victims, and defendant’s possession of firearms and ammunition constituted direct evidence that defendant's threats were true threats, that he intended to carry out threats, that he was able to carry out threats, and that threats were not merely idle or careless talk).</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must intend to kill, injure, harass, or intimidate. 18 U.S.C.A. § 2261A (1)(2).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	<p>Yes, if the conduct is towards an immediate family member or intimate person. 18 U.S.C.A. § 2261A (1)(A)(ii)(iii), 2(A).</p> <p><i>See, e.g., United States v. Osinger</i>, 753 F.3d 939 (9th Cir. 2014) (“Osinger was indicted for engaging in a course of harassing and intimidating conduct in violation of 18 U.S.C. §§ 2261A(2)(A) and 2261(b)(5). The indictment alleged that Osinger sent several threatening and sexually explicit text messages, emails, and photographs of V.B., to V.B., as well as to her co-workers and friends [...] Osinger’s threats, creation of a false Facebook page with sexually explicit photographs of V.B., and emails to</p>

	<p>V.B.'s co-workers and friends containing explicit photographs evinced Osinger's 'intent to ... cause substantial emotional distress ...'); <i>United States v. Conlan</i>, 786 F.3d 380 (5th Cir. 2015) (There was sufficient evidence that defendant acted with requisite intent to support his conviction for interstate stalking, where increasingly ominous tone and content of his messages revealed defendant's desire to subject his former girlfriend to unwanted sexual acts, for her to die, and for violent confrontation with her husband and police, and instead of desisting when told to do so by victim, his family, and police, defendant escalated his behavior by contacting ex-girlfriend's colleagues, church leaders, and father, culminating in interstate trip to her house armed with handgun and riot stick); <i>United States v. Bartley</i>, 711 F. App'x 127 (4th Cir. 2017) (The acts that constitute the "course of conduct" can include acts directed at third parties, as long as the jury is instructed that the defendant intended such acts to harass or intimidate the victim and did place that same victim in reasonable fear of death or serious bodily injury, or cause substantial emotional distress, to that same victim or the other statutorily-prescribed persons or beings).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear of death or bodily injury against oneself, an immediate family member, a spouse or intimate partner, or one's pet/service animal/emotional support animal/horse or emotional distress to oneself, an immediate family member, a spouse, or an intimate partner. 18 U.S.C.A. § 2261A (1)(A)-(B), 2(A)-(B).</p>
<p>Does fear include emotional distress?</p>	<p>Yes. 18 U.S.C.A. § 2261A (1)(B), 2(B).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. 18 U.S.C.A. § 2261A (1)(A)-(B), 2(A)-(B).</p>

If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)

What constitutes reasonable fear is case specific.

United States v. Fullmer, 584 F.3d 132 (3d Cir. 2009) (“Government produced sufficient evidence of the president’s intent to place the victims in reasonable fear of serious bodily injury or death, as required by the interstate stalking statute, where there was evidence that the organization invoked one victim’s injuries to instill fear in others targeted by the organization’s campaign, that the organization’s activists constantly used ultimatums when they targeted individuals, threatening ‘or else’ if companies affiliated with the research company failed to sever their ties with the research company, and the organization’s website boasted that ‘anonymous activists’ had arranged for an undertaker to collect a target’s body.”).

United States v. Ackell, 907 F.3d 67 (1st Cir. 2018) (defendant warned the victim that if she stopped sending him photos, he would disseminate photos of her that he had saved among her friends, classmates, and family. When victim tried to end relationship, defendant resumed contacting her).

United States v. Shrader, 716 F. Supp. 2d 464 (S.D.W. Va. 2010) (the requirement that the fear of death or serious bodily injury be reasonable insures that such a fear in a victim is not without merit, and the statute’s requirement that the emotional distress of a victim be substantial similarly ensures that the emotional distress of a victim meets a minimum quantum. Therefore, requiring medical records for proof of substantial emotional distress is an unnecessary requirement given that the text of the statute already sets a standard ‘substantial’ —for the emotional distress of a victim.”).

Must the victim tell the defendant to stop in order to constitute stalking?	No, the statutory law is silent.
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Yes, as interpreted by case law. <i>See United States v. Gonzalez</i> , 905 F.3d 165 (3d Cir. 2018) (defendant’s stalking conviction upheld where he instructed his family members to mail letters that accused the victim of sexual abuse to numerous media outlets, to the children’s school and teachers, and to victim’s family members, neighbors, employer, church, and other members of her community. The defendant also solicited his friends to drive past the victim’s home and report on what they observed, convinced a real estate agent in Delaware to conduct surveillance of victim’s house and to provide them with information about the victim’s residence and about various persons who were part of victim’s life and who were coming and going from her home).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered by the regular stalking statute, which is also referred to as the cyberstalking statute 18 U.S.C.A. § 2261A (2); <i>See also United States v. Cook</i> , 472 F. Supp. 3d 326, 331 (N.D. Miss. 2020) (18 U.S.C. § 2261A, commonly referred to as the cyberstalking statute, was enacted in 1996 after the legislature realized that the Violent Crime Control and Law Enforcement Act of 1994, which aimed to protect current/former spouses and intimate partners from their stalkers, was so narrowly drafted that it did not address cases in which the victim was unrelated to the stalker).
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?)	No, the statutory law is silent.
Any unique provisions, elements, or requirements?	Yes. If charged under section (1), the offense must be committed while offender travels interstate or engages in foreign commerce, is present within the special maritime and

	territorial jurisdiction of the United States, or enters or leaves Indian country. 18 U.S.C.A. § 2261A (1).
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)	Crimes are not graded but penalties increase under certain circumstances. 18 U.S.C.A. § 2261A, 2261 (b)(1)-(3), (6);2261B, 2265A(a).
What aggravating circumstances elevate the gradation of a stalking offense?	<p>Penalties for stalking increase under the following circumstances:</p> <ul style="list-style-type: none"> - If the victim dies, the defendant can be sentenced to life imprisonment or any term of years; - If the victim suffers permanent disfigurement or life-threatening bodily injury the defendant can be sentenced to a maximum of 20 years imprisonment; - If the victim suffers serious bodily injury or the defendant used a danger weapon the defendant can be sentenced to a maximum of 10 years imprisonment; - If there was a restraining order or protective order in place, the defendant can be imprisoned for at minimum a year <p>18 U.S.C.A. § 2261 (b)(1)-(3), (6).</p> <p>If the victim is under 18 years old, then, the maximum imprisonment for the offense is 5 years greater than the maximum term of imprisonment otherwise provided for that offense in section 2261. 18 U.S.C.A. § 2261B.</p> <p>If the defendant has a prior conviction for stalking or domestic violence, then the maximum imprisonment is twice the term otherwise provided. 18 U.S.C.A. § 2265A.</p>

Statutes

18 U.S.C.A. § 875 (WEST 2023). INTERSTATE COMMUNICATIONS

- (a)** Whoever transmits in interstate or foreign commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.
- (b)** Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years, or both.
- (c)** Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.
- (d)** Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C.A. § 876 (WEST 2023). MAILING THREATENING COMMUNICATIONS

- (a)** Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.
- (b)** Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.
- (c)** Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an

official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.

(d) Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.

18 U.S.C.A. § 877 (WEST 2023). MAILING THREATENING COMMUNICATIONS FROM FOREIGN COUNTRY

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purpose of having such communication delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid, any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C.A. § 2261 (WEST 2023). INTERSTATE DOMESTIC VIOLENCE

(a) Offenses.--

(1) Travel or conduct of offender.--A person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim.--A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) Penalties.--A person who violates this section or section 2261A shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life-threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

18 U.S.C.A. § 2261A (WEST 2023). STALKING

*section (2)(B) held unconstitutional as applied in *United States v. Cook*, 472 F. Supp. 3d 326, 340 (N.D. Miss. 2020)

Whoever--

(1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that--

(A) places that person in reasonable fear of the death of, or serious bodily injury to--

(i) that person;

(ii) an immediate family member (as defined in section 115) of that person;

(iii) a spouse or intimate partner of that person; or

(iv) the pet, service animal, emotional support animal, or horse of that person; or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or

(2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that--

(A) places that person in reasonable fear of the death of or serious bodily injury to a person, a pet, a service animal, an emotional support animal, or a horse described in clause (i), (ii), (iii), or (iv) of paragraph (1)(A); or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A),

shall be punished as provided in section 2261(b) or section 2261B, as the case may be.

18 U.S.C.A. § 2261B (WEST 2023). ENHANCED PENALTY FOR STALKERS OF CHILDREN

(a) In general.--Except as provided in subsection (b), if the victim of an offense under section 2261A is under the age of 18 years, the maximum imprisonment for the offense is 5 years greater than the maximum term of imprisonment otherwise provided for that offense in section 2261.

(b) Limitation.--Subsection (a) shall not apply to a person who violates section 2261A if--

(1) the person is subject to a sentence under section 2261(b)(5); and

(2) (A) the person is under the age of 18 at the time the offense occurred; or

(B) the victim of the offense is not less than 15 nor more than 17 years of age and not more than 3 years younger than the person who committed the offense at the time the offense occurred.

18 U.S.C.A. § 2262 (WEST 2023). INTERSTATE VIOLATION OF PROTECTION ORDER

(a) Offenses.--

(1) Travel or conduct of offender.--A person who travels in interstate or foreign commerce, or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal, emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim.--A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal, emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties.-- A person who violates this section-- shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life-threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

- (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
- (5) for not more than 5 years, in any other case, including any case in which the offense is committed against a pet, service animal, emotional support animal, or horse,
- or both fined and imprisoned.

18 U.S.C.A. § 2265 (WEST 2023). FULL FAITH AND CREDIT GIVEN TO PROTECTION ORDERS

- (a) Full Faith and Credit.**--Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.
- (b) Protection order.**--A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—
- (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
- (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- (c) Cross or counter petition.**--A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—
- (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
- (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.
- (d) Notification and registration.**—

(1) Notification.--A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement.--Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) Limits on Internet publication of registration information.--A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order, or injunction² in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes. The prohibition under this paragraph applies to all protection orders for the protection of a person residing within a State, territorial, or Tribal jurisdiction, whether or not the protection order was issued by that State, territory, or Tribe.

(e) Tribal court jurisdiction.--For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

18 U.S.C.A. § 2265A (WEST 2023). REPEAT OFFENDERS

(a) Maximum term of imprisonment.--The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

(b) Definition.--For purposes of this section--

(1) the term “prior domestic violence or stalking offense” means a conviction for an offense--

(A) under section 2261, 2261A, or 2262 of this chapter; or

(B) under State or tribal law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within

the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and

(2) the term “State” means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

18 U.S.C.A. § 2266 (WEST 2023). DEFINITIONS

In this chapter:

(1) **Bodily injury.**--The term “bodily injury” means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(2) **Course of conduct.**--The term “course of conduct” means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) **Enter or leave Indian country.**--The term “enter or leave Indian country” includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) **Indian country.**--The term “Indian country” has the meaning stated in section 1151 of this title.

(5) **Protection order.**--The term “protection order” includes--

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

(6) **Serious bodily injury.**--The term “serious bodily injury” has the meaning stated in section 2119(2).

(7) **Spouse or intimate partner.**--The term “spouse or intimate partner” includes--

(A) for purposes of--

(i) sections other than 2261A--

- (I)** a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or
- (II)** a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(ii) section 2261A--

- (I)** a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or
- (II)** a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(8) State.--The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) Travel in interstate or foreign commerce.--The term "travel in interstate or foreign commerce" does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

(10) Dating partner.--The term "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of—

(A) the length of the relationship; and

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

(11) Pet.--The term “pet” means a domesticated animal, such as a dog, cat, bird, rodent, fish, turtle, or other animal that is kept for pleasure rather than for commercial purposes.

(12) Emotional support animal.--The term “emotional support animal” means an animal that is covered by the exclusion specified in section 5.303 of title 24, Code of Federal Regulations (or a successor regulation), and that is not a service animal.

(13) Service animal.--The term “service animal” has the meaning given the term in section 36.104 of title 28, Code of Federal Regulations (or a successor regulation).

Relevant Case Law

United States v. Conlan, 786 F.3d 380 (5th Cir. 2015)

Defendant was convicted of stalking his ex-girlfriend and appealed arguing, *inter alia*, that there was insufficient evidence to support his conviction. After reaching out to his ex-girlfriend on Facebook, the defendant began an escalating, year-long bombardment of emails, texts, social media messages, phone calls, and face-to-face contacts with the victim, her family, work colleagues, and church members. Many of the messages were threatening and sexually graphic. On appeal, the defendant argued that the state failed to prove that he acted “with the intent to kill, injure, harass, intimidate, or place under surveillance with the intent to kill, injure, harass, or intimidate” the victim. The Court of Appeals affirmed the conviction, holding that the increasingly ominous tone and content of the defendant’s messages provided sufficient evidence for a rational jury to conclude beyond a reasonable doubt that the defendant acted with the requisite intent.

United States v. Ackell, 907 F.3d 67 (1st Cir. 2018)

Defendant was convicted of stalking and appealed, arguing, *inter alia*, that there was insufficient evidence to prove that the victim suffered substantial emotional distress. The Court noted that the statute only requires that the defendant’s course of conduct “would be reasonably expected to cause substantial emotional distress.” The Court of Appeals affirmed the conviction, finding that the State proved a reasonable person would suffer substantial emotional distress when the defendant, a man over the age of 40, engaged in an online dominant/submissive relationship with a teenage victim, threatened the victim to comply with his orders, blackmailed the victim with explicit photos, and told the victim she would never be free. Further, the victim testified that she considered committing suicide as a means of escaping from her relationship with defendant.

United States v. Cook, 472 F. Supp. 3d 326 (N.D. Miss. 2020)

The defendant was charged with federal stalking based on online posts and filed a Motion to Dismiss the indictment, arguing that stalking statute as applied is a content-based restriction on speech regarding public concern. After being acquitted of sale of a controlled substance, the defendant made disparaging remarks on the internet about various players in his controlled substance sale prosecution. The defendant’s stalking indictment was based on a Facebook post where the

defendant threatened a Mississippi Bureau of Narcotics Agent by revealing his address and the names of his family members and threatened to “take him out.” The Court of Appeals found 18 U.S.C. § 2261A(2)(B) unconstitutional as applied to the defendant’s case and therefore granted his Motion to Dismiss the indictment. The Court held that the government never alleged that the defendant ever directly contacted any of the subjects of his Facebook posts. Rather, the defendant was being prosecuted solely on the content of his public posts – not the act of posting.

Stalking, Harassment, & Related Offenses: Florida

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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FLORIDA

Summary

What constitutes a "course of conduct" / pattern of behavior?	A pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. Does not include constitutionally protected activity such as picketing or other organized protests. Fla. Stat. 784.048(1)(b).
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>A "credible" threat is required for stalking under Fla. Stat. Ann. 784.048(3)(but not other stalking provisions).</p> <p>Threats can be verbal, nonverbal, or a combination of the two and can be expressed or implied by a pattern of conduct. Threats include threats delivered by electronic communication</p> <p>Threat must be made with the "apparent ability" to carry out the threat to cause harm to victim, victim's family members, or individuals closely associated with the victim, but <i>not</i> necessary to prove that the offender had the intent to actually carry out the threat. Further, Incarceration of offender making the threat is not a bar to prosecution. Fla. Stat. 784.048(1)(c).</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Willfully and maliciously. See Fla. Stat. 784.048.
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes. "Credible threat" for purposes of stalking encompasses threats to the safety of the victim's family member or close associate. Fla. Stat. 784.048(1)(c).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	<p>Type of fear required depends on the statutory provision.</p> <p>Misdemeanor stalking under Fla. Stat. 784.048(2), and felony stalking under Fla. Stat.</p>

	<p>784.048(4), (5), (7) do not require any fear if the offender follows the victim, but requires actual “substantial emotional distress” if the offender harasses or cyberstalks the victim. See definition of harassment, Fla. Stat. 784.048(1)(a); definition of cyberstalking, Fla. Stat. 784.048(1)(d).</p> <p>Felony stalking under Fla. Stat. 784.048(3) requires actual “substantial emotional distress” if the offender harasses or cyberstalks the victim (see definitions of cyberstalking, cyberstalking/harassment), AND requires victim to reasonably fear for their safety, the safety of a family member, or the safety of a close associate.</p>
<p>Does fear include emotional distress?</p>	<p>Yes, under the definition of harassment under Fla. Stat. 784.048(1)(a), and the definition of cyberstalking under Fla. Stat. 784.048(1).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. See <i>Pallas v. State</i>, 636 So. 2d 1358, 1361 (Fla. Dist. Ct. App. 1994), approved, 654 So. 2d 127 (Fla. 1995) (“In our view the statute creates no such subjective standard, but in fact creates a ‘reasonable person’ standard. The stalking statute bears a family resemblance to the assault statutes. See § 784.011(1), Fla. Stat. (1993) (“An ‘assault’ is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.”); id. § 784.021 (aggravated assault).³ Under the assault statutes, it is settled that a “well-founded fear” is measured by a reasonable person standard, not a subjective standard.”)); See also <i>State v. Jones</i>, 678 So. 2d 1336 (Fla. Dist. Ct. App. 1996) (“Aggravated stalking proscribes willful, malicious and repeated acts of harassment which are directed at specific person, which serve no legitimate purpose and which would cause substantial emotional</p>

	<p>distress in reasonable person.”); <i>See also Scott v. Blum</i>, 191 So. 3d 502 (Fla. Dist. Ct. App. 2016)(Whether a communication causes substantial emotional distress, in context of definition of cyberstalking, should be narrowly construed and is governed by the reasonable person standard).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>Libersat v. State</i>, 305 So. 3d 766 (Fla. Dist. Ct. App. 2020) (Defendant's actions were such that they would have caused a reasonable person to suffer substantial emotional distress, as required to sustain conviction for aggravated stalking after injunction for protection against domestic violence had been entered against defendant, where defendant was already on probation for stalking victim in recent past, defendant continued pursuing victim in violation of protective injunction and probation, including repeatedly driving by areas he was excluded from being near, victim placed child she shared with defendant in different school after she learned defendant had contacted child's babysitter, and defendant repeatedly searched for victim on social media using fake identities and sent pictures of victim to third parties).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No.</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>Yes, explicitly under the cyberstalking section which includes a course of conduct “to cause to be communicated, directly or indirectly...”. Fla. Stat. § 784.048.</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 included in the regular stalking statute. Definition of “credible threat” includes threats sent through electronic communication. Fla. Stat. 784.048(1)(b). The statute also explicitly mentions cyberstalking Fla. Stat. Ann. 784.048(1)(d)</p> <p>Other statutes criminalize similar conduct such as obscene or harassing telephone calls. Fla. Stat. 365.16.</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>There is no residency requirement. A person can be charged with stalking in Florida if the offense is committed wholly or partly within the state. Fla. Stat. Ann. § 910.005.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>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)</p>	<p>Aggravated Stalking under Fla. Stat. 784.048(3), (4), (5), & (7) is a Felony in the Third Degree .</p> <p>Stalking under Fla. Stat. 784.048(2) is a Misdemeanor in the First Degree.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>The following elevate stalking from a misdemeanor to a felony in the third degree:</p> <ul style="list-style-type: none"> - A credible threat; - Offender's conduct violates protection order against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or any other court-imposed prohibition of conduct toward the subject person or that person's property, but see <i>Dilver v. State</i>, 352 So. 3d 398 (Fla. Dist. Ct. App. 2022) (finding that proof of issuance and existence of injunction against stalking was legally insufficient to establish charge of aggravated stalking); - Victim is under 16; - Offender commits act after being sentenced for sexual battery, lewd and lascivious acts

	against or in the presence of victims under 16, or computer pornography with victims under 16 + and is prohibited from contacting the victim based on no contact order. Fla. Stat. 784.048(3), (4), (5), (7).
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Statutes

FLA. STAT. ANN. 365.16 (WEST 2023). OBSCENE OR HARASSING TELEPHONE CALLS

(1) Whoever:

- (a) Makes a telephone call to a location at which the person receiving the call has a reasonable expectation of privacy; during such call makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, vulgar, or indecent; and by such call or such language intends to offend, annoy, abuse, threaten, or harass any person at the called number;
- (b) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to annoy, abuse, threaten, or harass any person at the called number;
- (c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
- (d) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number,

is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

- (2) Whoever knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
- (3) Each telephone directory hereafter published for distribution to the members of the general public shall contain a notice which explains this law; such notice shall be printed in type which is no smaller than the smallest type on the same page and shall be preceded by the word "warning." The provisions of this section shall not apply to directories solely for business advertising purposes, commonly known as classified directories.
- (4) Each telephone company in this state shall cooperate with the law enforcement agencies of this state in using its facilities and personnel to detect and prevent violations of this section.

(5) Nothing contained in this section shall apply to telephone calls made in good faith in the ordinary course of business or commerce.

FLA. STAT. ANN. 784.048 (WEST 2023). STALKING; DEFINITIONS; PENALTIES

(1) As used in this section, the term:

(a) “Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

(c) “Credible threat” means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section.

(d) “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(2) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who, after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- (5) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a child under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (6) A law enforcement officer may arrest, without a warrant, any person that he or she has probable cause to believe has violated this section.
- (7) A person who, after having been sentenced for a violation of s. 794.011, s. 800.04, or s. 847.0135(5) and prohibited from contacting the victim of the offense under s. 921.244, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (8) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, s. 800.04, or s. 847.0135(5).
- (9) (a) The sentencing court shall consider, as a part of any sentence, issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any such order be based upon the seriousness of the facts before the court, the probability of future violations by the perpetrator, and the safety of the victim and his or her family members or individuals closely associated with the victim.

(b) The order may be issued by the court even if the defendant is sentenced to a state prison or a county jail or even if the imposition of the sentence is suspended and the defendant is placed on probation.

FLA. STAT. ANN. § 784.0485 (WEST 2023). STALKING; INJUNCTION; POWERS AND DUTIES OF COURT AND CLERK; PETITION; NOTICE AND HEARING; TEMPORARY INJUNCTION; ISSUANCE OF INJUNCTION; STATEWIDE VERIFICATION SYSTEM; ENFORCEMENT

- (1) There is created a cause of action for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking under this section, the offense of stalking shall include the offense of cyberstalking.
 - (a) A person who is the victim of stalking or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child has standing in the circuit court to file a sworn petition for an injunction for protection against stalking.
 - (b) The cause of action for an injunction for protection may be sought regardless of whether any other cause of action is currently pending between the parties. However, the pendency of any such cause of action shall be alleged in the petition.

- (c) The cause of action for an injunction may be sought by any affected person.
 - (d) The cause of action for an injunction does not require either party to be represented by an attorney.
 - (e) The court may not issue mutual orders of protection; however, the court is not precluded from issuing separate injunctions for protection against stalking if each party has complied with this section. Compliance with this section may not be waived.
 - (f) Notwithstanding chapter 47, a petition for an injunction for protection against stalking may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the stalking occurred. There is no minimum requirement of residency to petition for an injunction for protection.
- (2) (a) Notwithstanding any other law, the clerk of court may not assess a filing fee to file a petition for protection against stalking. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against stalking issued by the court, at the rate of \$40 per petition. The request for reimbursement shall be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee may not exceed \$20.
- (b) A bond is not required by the court for the entry of an injunction.
 - (c)
 1. The clerk of the court shall assist petitioners in seeking both injunctions for protection against stalking and enforcement of a violation thereof as specified in this section.
 2. All offices of the clerk of the court shall provide simplified petition forms for the injunction and any modifications to and the enforcement thereof, including instructions for completion.
 3. The clerk of the court shall ensure the petitioner's privacy to the extent practicable while completing the forms for an injunction for protection against stalking.
 4. The clerk of the court shall provide a petitioner with a minimum of two certified copies of the order of injunction, one of which is serviceable and will inform the petitioner of the process for service and enforcement.
 5. The clerk of the court and appropriate staff in each county shall receive training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks and Comptrollers.

6. The clerk of the court in each county shall make available informational brochures on stalking when such a brochure is provided by the local certified domestic violence center or certified rape crisis center.
 7. The clerk of the court in each county shall distribute a statewide uniform informational brochure to petitioners at the time of filing for an injunction for protection against stalking when such brochures become available. The brochure must include information about the effect of giving the court false information.
- (3) (a) The sworn petition shall allege the existence of such stalking and shall include the specific facts and circumstances for which relief is sought.
- [...]
- (4) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. The respondent shall be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, before the hearing.
- (5) (a) If it appears to the court that stalking exists, the court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the court deems proper, including an injunction restraining the respondent from committing any act of stalking.
- (b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, evidence other than verified pleadings or affidavits may not be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.
- (c) Any such ex parte temporary injunction is effective for a fixed period not to exceed 15 days. A full hearing, as provided in this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which shall include a continuance to obtain service of process. An injunction shall be extended if necessary to remain in full force and effect during any period of continuance.
- (6) (a) Upon notice and hearing, when it appears to the court that the petitioner is the victim of stalking, the court may grant such relief as the court deems proper, including an injunction:
1. Restraining the respondent from committing any act of stalking.

2. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent.
 3. Referring a petitioner to appropriate services. The court may provide the petitioner with a list of certified domestic violence centers, certified rape crisis centers, and other appropriate referrals in the circuit which the petitioner may contact.
 4. Ordering such other relief as the court deems necessary for the protection of a victim of stalking, including injunctions or directives to law enforcement agencies, as provided in this section.
- (b) The terms of an injunction restraining the respondent under subparagraph (a)1. or ordering other relief for the protection of the victim under subparagraph (a)4. shall remain in effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. Specific allegations are not required. Such relief may be granted in addition to other civil or criminal remedies.
- (c) A temporary or final judgment on injunction for protection against stalking entered pursuant to this section shall, on its face, indicate:
1. That the injunction is valid and enforceable in all counties of this state.
 2. That law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction.
 3. That the court has jurisdiction over the parties and matter under the laws of this state and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process.
 4. The date that the respondent was served with the temporary or final order, if obtainable.
- (d) The fact that a separate order of protection is granted to each opposing party is not legally sufficient to deny any remedy to either party or to prove that the parties are equally at fault or equally endangered.
- (e) A final judgment on an injunction for protection against stalking entered pursuant to this section must, on its face, provide that it is a violation of s. 790.233 and a misdemeanor of the first degree for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.

[...]

FLA. STAT. ANN. § 784.0487 (WEST 2023). VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST STALKING OR CYBERSTALKING

- (1) If the injunction for protection against stalking or cyberstalking has been violated and the respondent has not been arrested, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The clerk shall assist the petitioner in preparing an affidavit in support of reporting the violation or directing the petitioner to the office operated by the court that has been designated by the chief judge of that circuit as the central intake point for violations of injunctions for protection where the petitioner can receive assistance in the preparation of the affidavit in support of the violation.
- (2) The affidavit shall be immediately forwarded by the office assisting the petitioner to the state attorney of that circuit and to such judge as the chief judge determines to be the recipient of affidavits of violations of an injunction. If the affidavit alleges that a crime has been committed, the office assisting the petitioner shall also forward a copy of the petitioner's affidavit to the appropriate law enforcement agency for investigation. No later than 20 days after receiving the initial report, the local law enforcement agency shall complete its investigation and forward a report to the state attorney. The policy adopted by the state attorney in each circuit under s. 741.2901(2) shall include a policy regarding intake of alleged violations of injunctions for protection against stalking or cyberstalking under this section. The intake shall be supervised by a state attorney who has been designated and assigned to handle stalking or cyberstalking cases. The state attorney shall determine within 30 working days whether his or her office will file criminal charges or prepare a motion for an order to show cause as to why the respondent should not be held in criminal contempt, or prepare both as alternative findings, or file notice that the case remains under investigation or is pending subject to some other action.
- (3) If the court has knowledge that the petitioner or another person is in immediate danger if the court does not act before the decision of the state attorney to proceed, the court shall immediately issue an order of appointment of the state attorney to file a motion for an order to show cause as to why the respondent should not be held in contempt. If the court does not issue an order of appointment of the state attorney, it shall immediately notify the state attorney that the court is proceeding to enforce the violation through criminal contempt.
- (4) (a) A person who willfully violates an injunction for protection against stalking or cyberstalking issued pursuant to s. 784.0485, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, by:
 1. Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family members or individuals closely associated with the petitioner;
 2. Committing an act of stalking against the petitioner;

3. Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
4. Telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
5. Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
6. Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
7. Refusing to surrender firearms or ammunition if ordered to do so by the court,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, except as provided in paragraph (b).

- (b) A person who has two or more prior convictions for violation of an injunction or foreign protection order, and who subsequently commits a violation of any injunction or foreign protection order against the same victim, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.
- (5) A person who suffers an injury or loss as a result of a violation of an injunction for protection against stalking or cyberstalking may be awarded economic damages for that injury or loss by the court issuing the injunction. Damages include costs and attorney fees for enforcement of the injunction.

FLA. STAT. ANN. § 836.10 (WEST 2023). WRITTEN OR ELECTRONIC THREATS TO KILL, DO BODILY INJURY, OR CONDUCT A MASS SHOOTING OR AN ACT OF TERRORISM; PUNISHMENT; EXEMPTION FROM LIABILITY

- (1) As used in this section, the term “electronic record” means any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call.
- (2) It is unlawful for any person to send, post, or transmit, or procure the sending, posting, or transmission of, a writing or other record, including an electronic record, in any manner in which it may be viewed by another person, when in such writing or record the person makes a threat to:
- (a) Kill or to do bodily harm to another person; or

(b) Conduct a mass shooting or an act of terrorism.

A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not impose liability on a provider of an interactive computer service, communications services as defined in s. 202.11, a commercial mobile service, or an information service, including, but not limited to, an Internet service provider or a hosting service provider, if it provides the transmission, storage, or caching of electronic communications or messages of others or provides another related telecommunications service, commercial mobile radio service, or information service for use by another person who violates this section. This exemption from liability is consistent with and in addition to any liability exemption provided under 47 U.S.C. s. 230.

FLA. STAT. ANN. 921.244 (WEST 2023). ORDER OF NO CONTACT; PENALTIES

- (1) At the time of sentencing an offender convicted of a violation of s. 794.011, s. 800.04, s. 847.0135(5), or any offense in s. 775.084(1)(b)1.a.-o., the court shall order that the offender be prohibited from having any contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence imposed. The court may reconsider the order upon the request of the victim if the request is made at any time after the victim has attained 18 years of age. In considering the request, the court shall conduct an evidentiary hearing to determine whether a change of circumstances has occurred which warrants a change in the court order prohibiting contact and whether it is in the best interest of the victim that the court order be modified or rescinded.
- (2) Any offender who violates a court order issued under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (3) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, s. 800.04, s. 847.0135(5), or any offense in s. 775.084(1)(b)1.a.-o.

Relevant Case Law

***Seitz v. State*, 867 So. 2d 421 (Fla. Dist. Ct. App. 2004)**

The defendant was convicted of stalking, violating an injunction, and other crimes, and was placed on probation. A special condition of the probation was that the defendant comply with the orders if the injunction. The State filed an affidavit of violation of probation which alleged that the defendant engaged in stalking his victim by harassment by publicly publishing and disseminating pharmaceutical records of the victim to various persons, that the action served no legitimate purpose, and caused the victim to suffer emotional distress. The trial court revoked the defendant's

probation and sentenced him to four years in jail. The defendant appealed and argued, *inter alia*, that because he did not have any direct or indirect contact with the victim, the trial court abused its discretion by finding him guilty of stalking. The Appellate Court disagreed and held that the stalking statute does not require the State to prove that the defendant had contact with the victim, whether direct or indirect; hence, evidence that defendant harassed the victim by publishing and disseminating the victim's pharmaceutical records was sufficient to support conviction for stalking.

***Seese v. State*, 955 So. 2d 1145 (Fla. Dist. Ct. App. 2007)**

The defendant was convicted of aggravated stalking and appealed, arguing that it his calling the victim from jail multiple times in violation of an injunction was not harassment or malicious stalking, but rather a man with a broken heart attempting to amend his relationship. The Appellate Court held that there was sufficient evidence that the defendant acted maliciously and that the jury instructions properly encompassed the definition of "malicious." The Appellate Court reiterated that the defendant's actions were intentional and without legal purpose (malicious) as shown by the "repetition and persistence, the very excess of his many calls, the rejection of her pleas on the recorded conversations to leave her alone, all this amounted to the absence of any possible reason justifying his long pattern of conduct. The nature of his many calls proclaimed not desperation but spite, a desire to see her suffer, an addiction to acts of ill will."

***Libersat v. State*, 305 So. 3d 766 (Fla. Dist. Ct. App. 2020)**

Defendant was convicted of aggravated stalking and appealed the denial of his motion for judgment of acquittal. The defendant argued that there was insufficient evidence to prove that he harassed the victim because he never contacted her and that the victim did not suffer substantial emotional distress because she did not know about his actions until she was told about them months later. The Appellate Court rejected the first argument, relying on the holding in *Seese v. State*, 955 So. 2d 1145 (Fla. Dist. Ct. App. 2007) that contact was not necessary to prove stalking. Further, the Appellate Court held that the "emotional distress" does not need to be contemporaneous with the defendant's conduct. In its holding, the Court reiterated that a reasonable person in the victim's position would feel substantial emotional distress upon learning that the defendant had driven past her house late at night in violation of the injunction, driven past her place of employment several times in violation of the injunction, driven past her father's house, driven past her child's school, repeatedly searched for her on Facebook using fake identities and sent pictures captured from her Facebook account to third parties, and asked a third party to drive by her house and take pictures.

***Dilver v. State*, 352 So.3d 398 (Fla. Dist. Ct. App. 2022)**

Defendant appealed from judgement and sentences for aggravated stalking and violating an injunction for protection against repeated violence. As evidence of aggravating circumstances, the victim testified regarding and the State entered into evidence an injunction for protection against stalking violence under s. 784.0485. Defendant contended and the court agreed that an injunction for protection against stalking under s. 784.0485 is not the same as an injunction for repeat violence or dating violence under s. 784.046 or an injunction for domestic violence under s. 741.30. Thus, the court found that the State failed to prove the issuance of the appropriate injunctions for the charged offenses. The State conceded the error and acknowledged that the judgments and convictions for the two counts of violating the injunction must be vacated. However, the State

argued that there was sufficient evidence to support a conviction for the lesser offense of stalking, and the court agreed. The court determined that stalking was a necessarily lesser-included offense of aggravated stalking, and the jury's guilty verdict on aggravated stalking established the elements of stalking. Therefore, the court directed the trial court to enter a judgment of guilt for stalking and hold a new sentencing hearing for that offense.

Stalking, Harassment, & Related Offenses: Georgia

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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GEORGIA

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct is not explicitly defined by statute but is interpreted by case law. See <i>Austin v. State</i> , 782 S.E.2d 308 (Ga. Ct. App. 2016) (The term "course of conduct" in the stalking statute dictates that a pattern of behavior must be shown, but such a pattern may include the prior history between the parties); <i>Benton v. State</i> , 256 Ga. App. 620, 568 S.E.2d 770 (Ga. Ct. App. 2002) (Evidence of prior difficulties between defendant and daughter was admissible to establish abusive course of conduct).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required. "This Code section shall not be construed to require that an overt threat of death or bodily injury has been made." Ga. Code § 16-5-90; See also <i>Johnson v. State</i> , 449 S.E.2d 94 (Ga. 1994) (Misdemeanor and aggravated stalking statutes were not unconstitutional, even though statutes did not specifically require that proscribed conduct constitute "overt threat.").
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Offender must intend to intimidate to harass the victim. Ga. Code § 16-5-90 (a)(1).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, if conducted towards immediate family members. Ga. Code § 16-5-90 (a)(1).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Emotional distress caused by fear for the person's safety or the safety of a member of his or her immediate family. Ga. Code § 16-5-90 (a)(1).
Does fear include emotional distress?	Yes. Ga. Code § 16-5-90 (a)(1).

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. Ga. Code § 16-5-90 (a)(1).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes a reasonable fear is case specific.</p> <p><i>Murphy v. O'Keefe</i>, 822 S.E.2d 839 (Ga. Ct. App. 2019) (Evidence was insufficient to establish customer's actions constituted a pattern of harassing and intimidating behavior that placed waitress in reasonable fear for her safety, as required to obtain a stalking protective order against customer; witness testified that customer's actions made her “uncomfortable,” not that she feared for her safety, waitress never told customer to stay away from her, and even though police were called there was no evidence that police ordered customer to stay away from waitress.)</p> <p><i>Jenkins v. Jenkins</i>, 822 S.E.2d 404 (Ga. Ct. App. 2018) (Sufficient evidence established that father stalked his daughter, that he posed a danger to her, and that she was in reasonable fear for her or her family's safety, and thus 12-month protective order against father was appropriate, where daughter had seen father engage in domestic violence, including against her son, and father communicated with threatening text messages).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, but if stalking is based on “contacts,” then the contacts must be “without the consent of the other person.” Ga. Code § 16-5-90 (a)(1).</p> <p>The victim does not need to tell the defendant to stop in order for the contact to be non-consensual. <i>See Holmes v. State</i>, 661 S.E.2d 603 (2008) (upholding conviction for aggravated stalking based on nonconsensual contact and violating protection order where the defendant continued to contact the victim even though the victim had 2 protection orders</p>

	<p>and a no-contact order in place against the defendant).</p> <p>However, telling the defendant to stop can be proof that the contact was non-consensual. See <i>Placanica v. State</i>, 693 S.E.2d 571 (Ga. Ct. App. 2010) (Evidence was sufficient to establish that defendant contacted victim without her consent, thus supporting conviction for stalking; evidence showed that, after victim “screamed” at defendant to “leave her alone,” defendant persisted in making unwanted contact with victim by showing up at her gym, sending her “tons of text messages,” and seeking her out on the internet using a false name, among other things).</p>
<p>Is stalking by proxy included? (i.e., getting a third person to stalk the victim)</p>	<p>Yes, via case law. <i>Oliver v. State</i>, 753 S.E.2d 468 (Ga. Ct. App. 2014) (In determining whether the evidence in a prosecution for aggravated stalking shows a pattern of harassing and intimidating behavior, the jury can consider any number of factors, including, but not limited to, the prior history between the parties, the defendant's surreptitious conduct, as well as her overtly confrontational acts, and any attempts by the defendant to contact, communicate with, or control the victim indirectly, as through third parties).</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 statute under the definition of “contact” which includes “any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device; and the place or places that contact by telephone, mail, broadcast, computer, computer network, or any other electronic device is deemed to occur shall be the place or places where such communication is received.” Ga. Code § 16-5-90 (a)(1).</p>

	Other statutes criminalize similar conduct such as harassing communications and unlawful eavesdropping/surveillance. Ga. Code Ann. §§ 16-11-39, 16-11-62.
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?)	There is no residency requirement. A person can be charged with stalking if the “crime is committed either wholly or partly within the state.” Ga. Code § 17-2-1 (b)(1).
Any unique provisions, elements, or requirements?	Yes. The victim may be stalked in the victim’s home or anywhere “other than the residence of the defendant.” Ga. Code § 16-5-90 (a)(1). However, place where stalking can occur excludes the defendant's residence from the definition of “place or places” <i>only</i> when it is occupied by the victim. <i>Bruno v. Light</i> , 811 S.E.2d 500, 503 (Ga. Ct. App. 2018).
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)	Stalking is a misdemeanor under Ga. Code § 16-5-90 (b) and a felony under Ga. Code § 16-5-90 (c). Aggravated stalking is felony. Ga. Code § 16-5-91 (b).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking becomes a felony upon the second or subsequent conviction for stalking. Ga. Code § 16-5-90 (c). Stalking becomes aggravated stalking if the offender violates a court order, bond, probation, parole, or pretrial release. Ga. Code § 16-5-91(a).

Statutes

GA. CODE ANN. § 16-5-90 (WEST 2023). STALKING

- (a) (1) A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person. For the purpose of this article, the terms “computer” and “computer network” shall have the same meanings as set

out in Code Section 16-9-92; the term “contact” shall mean any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device; and the place or places that contact by telephone, mail, broadcast, computer, computer network, or any other electronic device is deemed to occur shall be the place or places where such communication is received. For the purpose of this article, the term “place or places” shall include any public or private property occupied by the victim other than the residence of the defendant. For the purposes of this article, the term “harassing and intimidating” means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. This Code section shall not be construed to require that an overt threat of death or bodily injury has been made.

(2) A person commits the offense of stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, standing order issued under Code Section 19-1-1, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the harassment or intimidation of another person, broadcasts or publishes, including electronic publication, the picture, name, address, or phone number of a person for whose benefit the bond, order, or condition was made and without such person's consent in such a manner that causes other persons to harass or intimidate such person and the person making the broadcast or publication knew or had reason to believe that such broadcast or publication would cause such person to be harassed or intimidated by others.

(b) Except as provided in subsection (c) of this Code section, a person who commits the offense of stalking is guilty of a misdemeanor.

(c) Upon the second conviction, and all subsequent convictions, for stalking, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than ten years.

(d) Before sentencing a defendant for any conviction of stalking under this Code section or aggravated stalking under Code Section 16-5-91, the sentencing judge may require psychological evaluation of the offender and shall consider the entire criminal record of the offender. At the time of sentencing, the judge is authorized to issue a permanent restraining order against the offender to protect the person stalked and the members of such person's immediate family, and the judge is authorized to require psychological treatment of the offender as a part of the sentence, or as a condition for suspension or stay of sentence, or for probation.

GA. CODE ANN. § 16-5-91 (WEST 2023). AGGRAVATED STALKING

- (a) A person commits the offense of aggravated stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, good behavior bond, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the behavior described in this subsection, follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.
- (b) Any person convicted of a violation of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years and by a fine of not more than \$10,000.00. The provisions of subsection (d) of Code Section 16-5-90 apply to sentencing for conviction of aggravated stalking.

GA. CODE ANN. § 16-5-92 (WEST 2023). EXCEPTIONS

The provisions of Code Sections 16-5-90 and 16-5-91 shall not apply to persons engaged in activities protected by the Constitution of the United States or of this state or to persons or employees of such persons lawfully engaged in bona fide business activity or lawfully engaged in the practice of a profession.

GA. CODE ANN. § 16-5-94 (WEST 2023). RESTRAINING ORDERS, PROTECTIVE ORDERS, AND APPROVAL OF CONSENT ORDERS TO PREVENT RECURRENCE OF STALKING

- (a) A person who is not a minor who alleges stalking by another person may seek a restraining order by filing a petition alleging conduct constituting stalking as defined in Code Section 16-5-90. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.
- (b) Jurisdiction for such a petition shall be the same as for family violence petitions as set out in Code Section 19-13-2.
- (c) (1) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that stalking by the respondent has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from stalking.
- (2) If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner, and the clerk shall forthwith issue a summons and deliver it for service to the respondent within 24 hours of the court's issuance of such order.
- (A) *Note: underlined section has been enacted but not codified.

- (d) The court may grant a protective order or approve a consent agreement to bring about a cessation of conduct constituting stalking. Orders or agreements may:
- (1) Direct a party to refrain from such conduct;
 - (2) Order a party to refrain from harassing or interfering with the other;
 - (3) Award costs and attorney's fees to either party; and
 - (4) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking.
- (e) The provisions of subsections (c), (d), and (e) of Code Section 19-13-3, subsections (b), (c), and (d) of Code Section 19-13-4, and Code Section 19-13-5, relating to family violence petitions, shall apply to petitions filed pursuant to this Code section, except that the clerk of court may provide forms for petitions and pleadings to persons alleging conduct constituting stalking and to any other person designated by the superior court pursuant to this Code section as authorized to advise persons alleging conduct constituting stalking on filling out and filing such petitions and pleadings.

GA. CODE ANN. § 16-5-93 (WEST 2023). VICTIMS ENTITLED TO NOTICE OF RELEASE FROM CUSTODY OF PERSON ARRESTED FOR AND CHARGED WITH STALKING OR AGGRAVATED STALKING

- (a) The victim of stalking or aggravated stalking shall be entitled to notice of the release from custody of the person arrested for and charged with the offense of stalking or aggravated stalking and to notice of any hearing on the issue of bail for such person. No such notice shall be required unless the victim provides a landline telephone number other than a pocket pager or electronic communication device number to which such notice can be directed.
- (b) The law enforcement agency, prosecutor, or court directly involved with the victim at the outset of a criminal prosecution for the offense of stalking or aggravated stalking shall advise the victim of his or her right to notice and of the requirement of the victim's providing a landline telephone number other than a pocket pager or electronic communication device number to which the notice of custodial release or bail hearing can be directed. Such victim shall transmit the telephone number described in this subsection to the court and custodian of the person charged with stalking or aggravated stalking.
- (c) Upon receipt of the telephone number, the custodian of the person charged with stalking or aggravated stalking shall take reasonable and necessary steps under the circumstances to notify the victim of the person's release from custody. Such notice shall, at a minimum, include:

- (1) Prior to the person's release, placing a telephone call to the number provided by the victim and giving notice to the victim or any person answering the telephone who appears to be sui juris or by leaving an appropriate message on a telephone answering machine; and
 - (2) Following the person's release, if the custodian is unable to notify the victim by the method provided in paragraph (1) of this subsection, telephoning the number provided by the victim no less than two times in no less than 15 minute intervals within one hour of custodial release and giving notice to the victim or to any person answering the telephone who appears to be sui juris or by leaving an appropriate message on a telephone answering machine.
- (d) Upon receipt of the telephone number, the court conducting a hearing on the issue of bail shall take reasonable and necessary steps under the circumstances to notify the victim of any scheduled hearing on the issue of bail. Such notice shall, at a minimum, include placing a telephone call to the number provided by the victim prior to any scheduled hearing on the issue of bail.
 - (e) Notwithstanding any other provision of this Code section, a scheduled bail hearing or the release of the person charged with stalking or aggravated stalking shall not be delayed solely for the purpose of effectuating notice pursuant to this Code section for a period of more than 30 minutes.
 - (f) Upon the person's release or escape from custody after conviction and service of all or a portion of a sentence, notification to the victim shall be provided by the State Board of Pardons and Paroles as set forth in Code Sections 42-9-46 and 42-9-47.
 - (g) This Code section shall not apply to a custodian who is transferring a person charged with stalking or aggravated stalking to another custodian in this state.
 - (h) As used in this Code section, the term "custodian" means a warden, sheriff, jailer, deputy sheriff, police officer, officer or employee of the Department of Juvenile Justice, or any other law enforcement officer having actual custody of an inmate.
 - (i) A custodian or his or her employing agency shall not be liable in damages for a failure to provide the notice required by this Code section, but the custodian shall be subject to appropriate disciplinary action including termination for such failure.

GA. CODE ANN. § 16-5-95 (WEST 2023). VIOLATION OF FAMILY VIOLENCE ORDER

- (a) As used in this Code section, the term:
 - (1) "Civil family violence order" means any temporary protective order or permanent protective order issued pursuant to Article 1 of Chapter 13 of Title 19.

(2) “Criminal family violence order” means:

- (A) Any order of pretrial release issued as a result of an arrest for an act of family violence; or
- (B) Any order for probation issued as a result of a conviction or plea of guilty, nolo contendere, or first offender to an act of family violence.

(3) “Family violence” shall have the same meaning as set forth in Code Section 19-13-1.

(b) A person commits the offense of violating a civil family violence order or criminal family violence order when such person knowingly and in a nonviolent manner violates the terms of such order issued against that person, which:

- (1) Excludes, evicts, or excludes and evicts the person from a residence or household;
- (2) Directs the person to stay away from a residence, workplace, or school;
- (3) Restrains the person from approaching within a specified distance of another person; or
- (4) Restricts the person from having any contact, direct or indirect, by telephone, pager, facsimile, e-mail, or any other means of communication with another person, except as specified in such order.

(c) Any person convicted of a violation of subsection (b) of this Code section shall be guilty of a misdemeanor.

(d) Nothing contained in this Code section shall prohibit a prosecution for the offense of stalking or aggravated stalking that arose out of the same course of conduct; provided, however, that, for purposes of sentencing, a violation of this Code section shall be merged with a violation of any provision of Code Section 16-5-90 or 16-5-91 that arose out of the same course of conduct.

GA. CODE ANN. § 16-11-39.1 (WEST 2023). HARASSING COMMUNICATIONS

(a) A person commits the offense of harassing communications if such person:

- (1) Contacts another person repeatedly via telecommunication, e-mail, text messaging, or any other form of electronic communication for the purpose of harassing, molesting, threatening, or intimidating such person or the family of such person;
- (2) Threatens bodily harm via telecommunication, e-mail, text messaging, or any other form of electronic communication;
- (3) Telephones another person and intentionally fails to hang up or disengage the connection; or

- (4) Knowingly permits any device used for telecommunication, e-mail, text messaging, or any other form of electronic communication under such person's control to be used for any purpose prohibited by this subsection.
- (b) Any person who commits the offense of harassing communications shall be guilty of a misdemeanor.
- (c) The offense of harassing communications shall be considered to have been committed in the county where:
 - (1) The defendant was located when he or she placed the telephone call or transmitted, sent, or posted an electronic communication; or
 - (2) The telephone call or electronic communication was received.
- (d) Any violation of this Code section shall constitute a separate offense and shall not merge with any other crimes set forth in this title.
- (e) This Code section shall not apply to constitutionally protected speech.

GA. CODE ANN. § 16-11-62 (WEST 2023). UNLAWFUL EAVESDROPPING OR SURVEILLANCE

It shall be unlawful for:

- (1) Any person in a clandestine manner intentionally to overhear, transmit, or record or attempt to overhear, transmit, or record the private conversation of another which shall originate in any private place;
- (2) Any person, through the use of any device, without the consent of all persons observed, to observe, photograph, or record the activities of another which occur in any private place and out of public view; provided, however, that it shall not be unlawful:
 - (A) To use any device to observe, photograph, or record the activities of persons incarcerated in any jail, correctional institution, or other facility in which persons who are charged with or who have been convicted of the commission of a crime are incarcerated, provided that such equipment shall not be used while the prisoner is discussing his or her case with his or her attorney;
 - (B) For an owner or occupier of real property to use for security purposes, crime prevention, or crime detection any device to observe, photograph, or record the activities of persons who are on the property or an approach thereto in areas where there is no reasonable expectation of privacy;

- (C) To use for security purposes, crime prevention, or crime detection any device to observe, photograph, or record the activities of persons who are within the curtilage of the residence of the person using such device. A photograph, videotape, or record made in accordance with this subparagraph, or a copy thereof, may be disclosed by such resident to the district attorney or a law enforcement officer and shall be admissible in a judicial proceeding, without the consent of any person observed, photographed, or recorded; or
- (D) For a law enforcement officer or his or her agent to use a device in the lawful performance of his or her official duties to observe, photograph, videotape, or record the activities of persons that occur in the presence of such officer or his or her agent;
- (3) Any person to go on or about the premises of another or any private place, except as otherwise provided by law, for the purpose of invading the privacy of others by eavesdropping upon their conversations or secretly observing their activities;
- (4) Any person intentionally and secretly to intercept by the use of any device, instrument, or apparatus the contents of a message sent by telephone, telegraph, letter, or by any other means of private communication;
- (5) Any person to divulge to any unauthorized person or authority the content or substance of any private message intercepted lawfully in the manner provided for in Code Section 16-11-65;
- (6) Any person to sell, give, or distribute, without legal authority, to any person or entity any photograph, videotape, or record, or copies thereof, of the activities of another which occur in any private place and out of public view without the consent of all persons observed;
- (7) Any person, through the use of any device, without the consent of all patients observed, to knowingly photograph or record the activities of patients which occur in a facility that is operated by a county board of health created pursuant to Code Section 31-3-1, except that such acts shall not be unlawful as provided in subparagraphs (2)(A) through (2)(D) of this Code section;
- (8) Any person to intentionally and in a clandestine manner place, or direct someone else to place, a global positioning system monitoring device, or any other electronic monitoring device, on a motor vehicle owned or leased by another person without the consent of such person when such person has a protective order pursuant to Code Section 17-17-16, 19-13-4, or 19-13A-4, or a protective order from another jurisdiction, against the person who places, or directs another to place, the global positioning system monitoring device or other electronic device. Nothing in this paragraph shall be construed to limit electronic monitoring as provided in Code Sections 31-7-12, 31-7-12.1, and 31-6-2; or
- (9) Any person to commit any other acts of a nature similar to those set out in paragraphs (1) through (8) of this Code section which invade the privacy of another.

Relevant Case Law

***Krepps v. State*, 687 S.E.2d 608 (Ga. Ct. App. 2009)**

Defendant was convicted of stalking and appealed, arguing that there was insufficient evidence to support his conviction due to a lack of proof that his conduct would cause a reasonable fear. The defendant repeatedly called the victim and would play music on the calls. When the victim called the number back, the defendant stated “he wanted to be his friend.” The defendant had previously been convicted of harassing the victim and violating probation by contacting the victim. The Court of Appeals affirmed the conviction and held that, while the defendant did not directly threaten the victim, the repeated phone calls caused the victim to become concerned for the victim and the victim’s family’s safety. “A defendant need not engage in unequivocally hostile conduct or make explicit threats in order to be convicted of stalking. Even behavior that is not overtly threatening can provide the requisite degree of intimidation and harassment if it is ongoing, repetitious, and engaged in despite the communicated wishes of the victim.”

***State v. Burke*, 695 S.E.2d 649 (Ga. 2010)**

Defendant was convicted of aggravated stalking by violating a protection order and appealed. Specifically, the defendant allegedly violated the protection order by mailing the victim a poem from jail. The Supreme Court of Georgia reversed the conviction and reiterated that the “harassing and intimidating” conduct must be established by “a pattern of harassing and intimidating behavior.” In this case, it was held that defendant's single violation of mailing a poem to the victim did not establish a “pattern” and therefore was insufficient to prove aggravated stalking .

***Jones v. State*, 713 S.E.2d 895 (Ga. Ct. App. 2011)**

Defendant was convicted of aggravated stalking and other offenses and appealed arguing, *inter alia*, ineffective assistance of counsel for failure to move for a directed verdict. The court analyzed what is considered “surveillance” under the stalking statute and stated that, although the stalking statute does not to define the term “surveillance,” the term was readily understood by people of ordinary intelligence as meaning a close watch kept over someone or something. Therefore, the indictment put the defendant on notice that driving to, parking at, and sitting outside the victim’s residence constituted “surveillance.” Evidence presented at trial established that the defendant repeatedly called and texted the victim, stole her property, hit the victim, threatened the victim, and went to the victim’s residence. Since there was no fatal variance between the indictment and the trial evidence, the Court of Appeals found that defense counsel’s failure to move for a directed verdict on this ground was not deficient.

***Oliver v. State*, 753 S.E.2d 468 (Ga. Ct. App. 2014)**

Defendant was convicted of aggravated stalking and appealed arguing there was insufficient evidence to support her conviction. The victim, the defendant’s mother, obtained a protection order against the defendant due to escalating violence. After the order was issued, the defendant called the victim and advised she was coming over to her home and that she was going to commit suicide. The victim advised the defendant to not come to the house and when the defendant arrived, the victim would not allow the defendant inside her home. The Court of Appeals noted that a single violation of a protective order, by itself, does not amount to aggravated stalking but rather a pattern

of harassing and intimidating behavior is necessary for aggravated stalking. While the “pattern” all occurred on one day, the Court of Appeals found there was sufficient evidence to support the conviction when the defendant repeatedly violated the protective order by (1) calling Goss, (2) appearing at her home, (3) knocking on her door, (4) yelling and screaming at the victim, (5) demanding that the victim allow her inside the residence, and (6) refusing to leave the property despite numerous requests by the victim.

Stalking, Harassment, & Related Offenses: Guam

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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GUAM

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Constitutionally and statutorily protected activity, including, but <i>not</i> limited to, picketing as a result of a labor dispute, is <i>not</i> included in this definition. 9 Guam Code § 19.69 (b).
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>A threat is not required but can be a basis for stalking. If charged with stalking by threat, the threat must be a credible threat “with intent to place that person or a member of his or her immediate family in fear of death or bodily injury.” 9 Guam Code § 19.70 (a).</p> <p>Credible threat means any threat, physical or verbal, overtly or subtly manifested, constituting a threat with the intent and apparent ability to carry out the threat with the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. 9 Guam Code § 19.69(c). Such threatening advance must be against the life of, or a threat to cause bodily injury to, the person threatened or to a member of his or her immediate family. <i>Id.</i></p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	If the stalking is based on a threat, rather than course of conduct and harassment, then the offender must intend to place the victim or a member of his or her immediate family in fear of death or bodily injury. 9 Guam Code § 19.70 (a).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, if directed at a member of the victim’s immediate family. 9 Guam Code § 19.69 (c).

<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear for safety, death, or bodily injury towards victim or victim’s immediate family. 9 Guam Code §§ 19.69 (c), 19.70 (a).</p>
<p>Does fear include emotional distress?</p>	<p>Yes, if offender stalks by harassing the victim. 9 Guam Code §§ 19.69(a), 19.70(a).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. 9 Guam Code § 19.69 (c); <i>See also Guam v. Redtwelve Tfond</i>, 2021 Guam 13 (Guam 2021) (“as the People appropriately argue, the objective standard within the statute requiring the threatened person be placed in ‘reasonable fear’ provides an objective standard that ‘ensures even-handed enforcement.’”).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear under the stalking statute is not analyzed by case law. However, the courts analyze this standard under the terrorizing statute. <i>See Guam v. Redtwelve Tfond</i>, 2021 Guam 13 (Guam 2021) (“Because ‘reasonable fear’ is an objective standard, any person who had just been threatened with having their neck or belly cut would have been placed in reasonable fear under the circumstances.”).</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>No. There is no published case law that addresses this and the statutory law is silent.</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>The stalking statute includes technology-facilitated stalking under the harassment definition which includes electronic forms of harassment. 9 Guam Code § 19.69(a).</p> <p>A person can be found guilty of stalking if he harasses another person. 9 Guam Code § 19.70(a).</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?)	No. There is no published case law that addresses this and the statutory law is silent.
Any unique provisions, elements, or requirements?	No.
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)	Stalking is advanced stalking (felony in the second degree) under 9 Guam Code § 19.70(e) or simple stalking (felony in the third degree) under 9 Guam Code § 19.70 (d).
What aggravating circumstances elevate the gradation of a stalking offense?	Simple stalking becomes advanced stalking if; <ul style="list-style-type: none"> - There was a temporary restraining order, injunction, or any other court order in place; or - The offender has subsequently been convicted of stalking against the same victim involving harassment or a credible threat of violence within the past 7 years. 9 Guam Code § 19.70 (b)-(c)

Statutes

9 GUAM CODE ANN. § 19.60 (2023). TERRORIZING; DEFINED & PUNISHED.

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

(a) A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, and the natural and probable consequence of such a threat, is to place the person to whom the threat is communicated or the person threatened in reasonable fear that crime will be committed.

(b) Terrorizing is a felony of the third degree.

9 GUAM CODE ANN. § 19.69 (2023). DEFINITIONS

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Unless otherwise indicated, as used in § 19.70:

- (a) *Harasses* or *harassment* means a knowing and willful course of conduct, whether physical, verbal, written, electronic, telephonic, via or by use of a computer, computer network, computer system, telephone network, data network, text message, instant message, or otherwise, directed at a specific person which alarms, annoys, or distresses the person, and which serves no legitimate purpose. Such course of conduct must be of a nature to cause a reasonable person to suffer substantial emotional distress, and must cause substantial emotional distress.
- (b) *Course of conduct* means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Constitutionally and statutorily protected activity, including, but *not* limited to, picketing as a result of a labor dispute, is *not* included in this definition.
- (c) *Credible threat* means any threat, physical or verbal, overtly or subtly manifested, constituting a threat with the intent and apparent ability to carry out the threat with the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. Such threatening advance must be against the life of, or a threat to cause bodily injury to, the person threatened or to a member of his or her immediate family.
- (d) *Computer* means any electronic, magnetic, optical, electrochemical, *or* other high-speed data processing device performing logical, arithmetic, *or* storage functions, and includes all computer equipment connected *or* related to such a device in a computer system *or* computer network, but *shall not* include an automated typewriter or typesetter, a portable hand-held calculator, *or* other similar device.
- (e) *Computer network* means two (2) or more computers or computer systems interconnected by communication lines, including microwave, electronic, or any other form of communication.
- (f) *Computer system* means a set of interconnected computer equipment intended to operate as a cohesive system.

9 GUAM CODE ANN. § 19.70 (2023). STALKING

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

- (a) A person is guilty of simple stalking if he or she willfully, maliciously, and repeatedly, follows or harasses another person or who makes a credible threat with intent to place that person or a member of his or her immediate family in fear of death or bodily injury.
- (b) A person is guilty of advanced stalking if he or she violates Subsection (a) of this Section when there is a temporary restraining order or an injunction or both or any other court order in effect prohibiting the behavior described in that Subsection against the same party.

- (c) A person is guilty of advanced stalking if he or she violates Subsection (a) of this Section a second or subsequent time against the same victim, within seven (7) years of a prior conviction under that Subsection, and involving an harassment or a credible threat of violence, as defined in § 19.69 of this Chapter.
- (d) Simple stalking is a felony of the third degree.
- (e) Advanced stalking is a felony of the second degree.
- (f) This Section *shall not* apply to conduct which occurs during labor picketing.

9 GUAM CODE ANN. § 61.20 (2023). HARASSMENT; DEFINED & PUNISHED.

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

A person commits a petty misdemeanor if, with intent to harass another, he:

- (a) makes, or causes to be made, a communication 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 which alarm or seriously annoy such other person serving no legitimate purpose of the defendant.
- (d) Every person who with intent to annoy, telephones, telefaxes, or communicates by use of any telephone network, data network, text message, instant message, computer, computer network, or computer system with another person and addresses to or about such other person any obscene language is guilty of a misdemeanor.
- (e) Every person who makes a telephone call, telefax transmission, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system with intent to annoy and without disclosing his true identity to the person answering the telephone or receiving the telefax transmission or transmission received from any telephone network, data network, text message, instant message, computer, computer network, or computer system, whether or not conversation or return transmission ensues from making the telephone call or the transmission, is guilty of a misdemeanor.
- (f) Any offense committed by use of a telephone, telefax machine, or any telephone network, data network, text message, instant message, computer, computer network, or computer system as set out in this Section may be deemed to have been committed at either the place at which the telephone calls, telefax transmissions, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system were made or received. In the event that a customer of a telephone service provider, wireless

service provider, or an internet service provider receives harassing telephone calls or transmissions received via or by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system, such customer may ~~file~~ file an injunction complaint under the name of John Doe, although the telephone service provider may release the name, address, and telephone number of the plaintiff to the Superior Court of Guam. The telephone service provider, wireless service provider, or an internet service provider *shall* disconnect all telephone services or computer or wireless services to any subscriber who has violated the provisions of this Section *more than* one (1) time.

- (g) Subsections (d) or (e) of this Section are violated when the person acting with intent to annoy makes a telephone call, telefax transmission, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system requesting a return call or return transmission and performs the acts prohibited under such Subsections upon receiving the return call or transmission.

Relevant Case Law

Guam v. Redtwelve Tfond, 2021 Guam 13 (Guam 2021)

The defendant was convicted of terrorizing and other crimes, and appealed, arguing, *inter alia*, that there was insufficient evidence of the “reasonable fear” element to support his convictions. The Court affirmed the convictions, finding that there was sufficient evidence to prove the offense of terrorizing where the defendant told the victim he was going to cut the victim with a machete and where the defendant had the machete on him. The Supreme Court for the Territory of Guam rejected the defendant’s argument that the victim could not have been placed in reasonable fear when the defendant did not cut or touch the victim with the machete and did not swing the machete. The court stated that because “reasonable fear” is an objective standard, any person who had just been threatened with having their neck or belly cut would have been placed in reasonable fear under the circumstances.

Stalking, Harassment, & Related Offenses: Hawai‘i

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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HAWAI'I

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>Pursuit, surveillance, or nonconsensual contact upon the other person on more than one occasion without legitimate purpose. Haw. Rev. Stat. § 711-1106.5(1)</p> <p>“Nonconsensual contact” defined as any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued. Haw. Rev. Stat. § 711-1106.5(3).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>A threat is not required under the stalking statute and there is no case law to suggest a threat is required.</p> <p>However, the crimes of terroristic threatening in the first and second degrees, under which many crimes of stalking are prosecuted, require a threat to cause bodily injury to another person or serious damage or harm to property, including pets or livestock, or a threat to commit a felony with the intent to terrorize/in reckless disregard of the risk of terrorizing another person or with intent/reckless disregard of the risk of causing evacuation. Haw. Rev. Stat. § 707-715.</p> <p>A “threat” under the terroristic threatening statute can be by words or by conduct. Haw. Rev. Stat. § 707-715.</p> <p>A “threat” under terroristic threatening must be a “true threat” – meaning that prosecution must prove beyond a reasonable doubt that threat was objectively capable of inducing a reasonable fear in the person at whom the threat was directed and who was aware of the circumstances under which the remarks were uttered. <i>State v. Valdivida</i>, 24 P.3d 661 (Haw. 2001). Threats must be “so unambiguous and</p>

	<p>have such immediacy that they convincingly express an intention to be carried out.” <i>State v. Chung</i>, 862 P.2d 1063 (Haw. 1993).</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>The offender must intend to harass, annoy, or alarm another person or must act with reckless disregard of risk that action would harass, annoy, or alarm another. Haw. Rev. Stat. § 711-1106.5(1).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>It is unclear whether actions towards persons other than the victim can help establish a course of conduct for purposes of a charge under the stalking statute.</p> <p>However, actions against another person will likely help establish terroristic threatening crimes, as those statutes encompass threats of serious bodily injury to “another person” or serious damage/harm to property and pets/livestock. Haw. Rev. Stat. § 707-715; See also <i>State v. Klinge</i>, 994 P.2d 509 (Haw. 2000) (holding that a threat against a target can be communicated to a third party).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>The stalking statute, on its face or in any defining case law, does not require fear. However, the jury instructions and case law include a requirement of fear of bodily injury to victim or another person or fear of damage to victim’s property of another person’s property. Hi. R Cr. Jury Instr. 12A.02 (“A person commits the offense of Aggravated Harassment by Stalking if with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, he/she pursues or conducts surveillance upon another person without legitimate purpose and under circumstances which would cause the other person to reasonably believe that the actor intends to cause [bodily injury to the other person or another] [damage to the property of the other person or another].”); <i>State v. Gallagher</i>, 463 P.3d 1119, 1134–35 (Haw. 2020) (harassment by stalking “requires the victim to ‘reasonably</p>

	believe[]’ that the actor intends to cause bodily injury to the victim or damage to their property.”).
Does fear include emotional distress?	No. There is no published case law that addresses this and the statutory law is silent.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. Hi. R Cr. Jury Instr. 12A.02 (“A person commits the offense of Aggravated Harassment by Stalking if with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, he/she pursues or conducts surveillance upon another person without legitimate purpose and under circumstances which would cause the other person to reasonably believe...”).
If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)	<p>There is limited case law on what constitutes reasonable fear.</p> <p>One case held that the defendant’s prior conduct can be introduced to establish that the victim’s fear was reasonable. Further, the court reiterated that for harassment by stalking “requires the victim to ‘reasonably believe[]’ that the actor intends to cause bodily injury to the victim or damage to their property.” <i>State v. Gallagher</i>, 463 P.3d 1119, 1134–35 (Haw. 2020); <i>See also State v. Calaycay</i>, 449 P.3d 1184 (Haw. 2019) (Statute criminalizing statements made “with intent to harass, annoy, or alarm any other person...using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient” was not overbroad as applied to defendant, and thus his conviction for harassment did not violate his free-speech rights under First Amendment and Hawai’i Constitution; under totality of circumstances, evidence sufficiently established causal relationship between defendant's unsolicited, repeated, and sexually explicit statements to victim and disturbance sought to be prevented by statute, namely,</p>

	victim's reasonable belief that defendant intended to cause her bodily injury).
Must the victim tell the defendant to stop in order to constitute stalking?	From a plain reading of the stalking statute, telling the defendant to stop is not required, but it can help establish nonconsensual contact, which is one of three ways defendant can stalk victim. See Haw. Rev. Stat. § 711-1106.5(3) (defining “nonconsensual contact” as either without individual's consent or against individual's express desire that contact be avoided or discontinued).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	It is unclear if stalking by proxy is included. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered by regular stalking statute. Nonconsensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or any form of electronic communication, including electronic mail transmission. Haw. Rev. Stat. § 711-1106.5(3)
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?)	There is no residency requirement and a person can be charged with harassment by stalking if “either the conduct or the result which is an element of the offense occurs within” the state. Haw. Rev. Stat. § 701-106 (1)(a).
Any unique provisions, elements, or requirements?	No.
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)	Aggravated Harassment by Stalking is Class C Felony under Haw. Rev. Stat. § 711-1106.4. Harassment by Stalking is a Misdemeanor under Haw. Rev. Stat. § 711-1106.5.
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking becomes aggravated if the offender was previously convicted for stalking within five years of the instance offense. See Haw. Rev. Stat. § 711-1106.4.

Statutes

HAW. REV. STAT. ANN. §. 586-11 (WEST 2023). VIOLATION OF AN ORDER FOR PROTECTION

(a) Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor. A person convicted under this section shall be ordered by the court to complete an assessment at any available domestic violence program and shall complete a domestic violence intervention or anger management course as determined by the domestic violence program. The court additionally shall sentence a person convicted under this section as follows:

(1) For a first conviction for violation of the order for protection:

(A) That is in the nature of non-domestic abuse, the person may be sentenced to a jail sentence of forty-eight hours and be fined no more than \$150; or

(B) That is in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not less than \$150 nor more than \$500;

(2) For a second conviction for violation of the order for protection:

(A) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of non-domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$250;

(B) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days and be fined not less than \$250 nor more than \$1,000;

(C) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$250; or

(D) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that is in the nature of non-domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$150; and

(3) For any subsequent violation that occurs after a second conviction for violation of the same order for protection, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days and be fined not less than \$250 nor more than \$1,000;

provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence under subparagraphs (1)(A) and (2)(C), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments shall apply to this chapter.

(b) Any fines collected pursuant to subsection (a) shall be deposited into the spouse and child abuse special account established under section 601-3.6.

HAW. REV. STAT. ANN. § 707-715 (WEST 2023). TERRORISTIC THREATENING, DEFINED

A person commits the offense of terroristic threatening if the person threatens, by word or conduct, to cause bodily injury to another person or serious damage or harm to property, including the pets or livestock, of another or to commit a felony:

- (1) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or
- (2) With intent to cause, or in reckless disregard of the risk of causing evacuation of a building, place of assembly, or facility of public transportation.

HAW. REV. STAT. ANN. § 707-716 (WEST 2023). TERRORISTIC THREATENING IN THE FIRST DEGREE

(1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

- (a) By threatening another person on more than one occasion for the same or a similar purpose;
- (b) By threats made in a common scheme against different persons;

- (c) Against a public servant arising out of the performance of the public servant's official duties. For the purposes of this paragraph, "public servant" includes but is not limited to an educational worker. "Educational worker" has the same meaning as defined in section 707-711;
- (d) Against any emergency medical services provider who is engaged in the performance of duty. For purposes of this paragraph, "emergency medical services provider" means emergency medical services personnel, as defined in section 321-222, and physicians, physician's assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital;
- (e) With the use of a dangerous instrument or a simulated firearm. For purposes of this section, "simulated firearm" means any object that:
 - (i) Substantially resembles a firearm;
 - (ii) Can reasonably be perceived to be a firearm; or
 - (iii) Is used or brandished as a firearm; or
- (f) By threatening a person who:
 - (i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or
 - (ii) Is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order.

(2) Terroristic threatening in the first degree is a class C felony.

HAW. REV. STAT. ANN. § 707-717 (WEST 2023). TERRORISTIC THREATENING IN THE SECOND DEGREE

(1) A person commits the offense of terroristic threatening in the second degree if the person commits terroristic threatening other than as provided in section 707-716.

(2) Terroristic threatening in the second degree is a misdemeanor.

HAW. REV. STAT. ANN. § 711-1106.4 (WEST 2023). AGGRAVATED HARASSMENT BY STALKING

- (1) A person commits the offense of aggravated harassment by stalking if that person commits the offense of harassment by stalking as provided in section 711-1106.5 and has been convicted previously of harassment by stalking under section 711-1106.5 within five years of the instant offense.
- (2) Aggravated harassment by stalking is a class C felony.

HAW. REV. STAT. ANN. § 710-107 (WEST 2023). CRIMINAL CONTEMPT OF COURT

- (1) A person commits the offense of criminal contempt of court if ...
[...]
(g) The person knowingly disobeys or resists the process, injunction, or other mandate of a court;
[...]
- (2) Except as provided in subsections (3) and (7), criminal contempt of court is a misdemeanor.
- (3) The court may treat the commission of an offense under subsection (1) as a petty misdemeanor, in which case:
 - (a) If the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and
 - (b) If the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.
- (4) When the contempt under subsection (1) also constitutes another offense, the contemnor may be charged with and convicted of the other offense notwithstanding the fact that the contemnor has been charged with or convicted of the contempt.
- (5) Whenever any person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment. In any proceeding for review of the judgment, sentence, or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment, pronounce the sentence, or order the commitment. A judgment, sentence, or

commitment under subsection (3)(a) shall not be subject to review by appeal, but shall be subject to review in an appropriate proceeding for an extraordinary writ or in a special proceeding for review.

All other judgments, sentences, or commitments for criminal contempt of court shall be subject to review by appeal, in a proceeding for an appropriate extraordinary writ, or in a special proceeding for review.

- (6) Nothing in this section shall be construed to alter the court's power to punish civil contempt. When the contempt consists of the refusal to perform an act which the contemnor has the power to perform, the contemnor may be imprisoned until the contemnor has performed it. In such a case the act shall be specified in the warrant of commitment. In any proceeding for review of the judgment or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment or order the commitment. When a court of competent jurisdiction issues an order compelling a parent to furnish support, including child support, medical support, or other remedial care, for the parent's child, it shall constitute prima facie evidence of a civil contempt of court upon proof that:
- (a) The order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced; and
 - (b) The parent did not comply with the order.

An order of civil contempt of court based on prima facie evidence under this subsection shall clearly state that the failure to comply with the order of civil contempt of court may subject the parent to a penalty that may include imprisonment or, if imprisonment is immediately ordered, the conditions that must be met for release from imprisonment. A party may also prove civil contempt of court by means other than prima facie evidence under this subsection.

- (7) Any violation or disobedience of any injunction or order expressly provided for in part V of chapter 712 is punishable by:
- (a) A fine of not less than \$400 nor more than \$5,000;
 - (b) Imprisonment for not less than one nor more than six months; or
 - (c) Both a fine and imprisonment pursuant to paragraphs (a) and (b).

HAW. REV. STAT. ANN. § 711-1106.5 (WEST 2023). HARASSMENT BY STALKING

- (1) A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of

conduct involving pursuit, surveillance, or nonconsensual contact upon the other person on more than one occasion without legitimate purpose.

- (2) A person convicted under this section may be required to undergo a counseling program as ordered by the court.
- (3) For purposes of this section, “nonconsensual contact” means any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued. Nonconsensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or any form of electronic communication, as defined in section 711-1111(2), including electronic mail transmission.
- (4) Harassment by stalking is a misdemeanor.

HAW. REV. STAT. ANN. § 711-1106 (WEST 2023). HARASSMENT

- (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:
 - (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
 - (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;
 - (c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;
 - (d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;
 - (e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or
 - (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.
- (2) Harassment is a petty misdemeanor.

Relevant Case Law

***State v. Calaycay*, 449 P.3d 1184 (Haw. 2019)**

Defendant was convicted of harassment and appealed, arguing in part that evidence was insufficient. Evidence was presented at trial that defendant was a National Guard cadre supervising victim at a residential program for at-risk youth. On one occasion, defendant pulled her aside, said he wanted to have sex with her, made several sexually explicit comments, and stated that his team “had his back” and that the victim wouldn't get in trouble. Victim testified that the defendant's statements made her feel uncomfortable, unsafe, and scared. Several nights later, defendant called victim away from her bunkers and told her he wanted to see her naked, and victim testified this made her feel unsafe. Defendant never physically touched victim, he spoke softly, did not appear angry, and he did not threaten her. Victim testified that she did not believe defendant was trying to hurt her, but rather that he wanted to try to give her sexual pleasure. The Court concluded that evidence was sufficient to prove that defendant had specific intent to harass, annoy, or alarm victim. The Court conclude that, given the testimony provided at court and the fact that defendant had supervisory authority over the victim, there was substantial evidence that victim reasonably believed that defendant intended to cause her bodily injury for purposes of Haw. Rev. Stat. Ann. § 711-1106(f).

Stalking, Harassment, & Related Offenses: Idaho

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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IDAHO

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>Repeated acts of nonconsensual contact involving the victim or a family or household member. Idaho Code § 18-7906(2)(a). Does not include constitutionally protected activity. <i>Id.</i></p> <p>Nonconsensual contact includes but is not limited to following the victim, electronically surveilling the victim, contacting the victim in public or in private, appearing at victim's workplace or residence, entering onto or remaining on victim's property, calling the victim, sending mail or electronic communications to the victim, or delivering an object to the victim's property. Idaho Code § 18-7906(c).</p> <p>Courts have found there to be a course of conduct where defendant commits different acts of nonconsensual contact within the same overarching act as defined by Idaho Code § 18-7906. <i>See State v. Eliassen</i>, 348 P.3d 157 (Idaho 2015) (finding there was a "course of conduct" where defendant appeared in her car at victim's home and then followed her to Goodwill on one day in September 2008).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threats are not explicitly required.</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>The offender must act knowingly and maliciously. Idaho Code § 18-7906(1).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes, if conduct is toward a family or household member. <i>See</i> Idaho Code § 18-7906(2)(a).</p> <p>Family or household member means spouse or former spouse; a person with whom the victim has a child in common; a person the victim is cohabitating with, regardless of whether they're married or hold themselves out as married;</p>

	<p>persons related to victim by blood, adoption, or marriage; a person who has a current or past dating relationship with victim; or a person living in same residence as victim. Idaho Code Ann. § 18-7906(2)(b).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Seriously alarm, harassment, or annoyance that would cause a reasonable person would be substantially emotionally distressed under Idaho Code § 18-7906(1)(a) or reasonable fear of death or physical injury to victim or victim's family or household member Idaho Code § 18-7906(1)(b).</p>
<p>Does fear include emotional distress?</p>	<p>Yes. Idaho Code § 18-7906(1)(a).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both subjective and reasonable person standard. Idaho Code Ann. § 18-7906(1)(a); <i>See also State v. Lundquist</i>, No. 43485, 2017 WL 1279796, at *5 (Idaho Ct. App. Apr. 6, 2017) (victim must be subjectively “annoyed, alarmed, or harassed” and such that would cause a reasonable person emotional distress).</p> <p>However, Idaho Code 18-7906(1)(b) requires only a reasonable person standard.</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</p>	<p>There is limited case law on what constitutes reasonable fear.</p> <p><i>See State v. Hoak</i>, 216 P.3d 1291, 1294 (Idaho Ct. App. 2009) (“the evidence of Hoak's prior misconduct toward the victim was highly probative to show that his subsequent stalking behavior would have alarmed the victim and would cause a reasonable person substantial emotional distress. It was also relevant to show that the stalking was done ‘maliciously,’ the mens rea element of Hoak's charge.”);</p> <p><i>State v. Lundquist</i>, No. 43485, 2017 WL 1279796, at *5 (Idaho Ct. App. Apr. 6, 2017) (“Here, the victim testified that after the protection and no contact orders were entered against Lundquist, Lundquist continued to</p>

	contact the victim by phone, text message, and email on multiple different occasions. Given the victim’s testimony to numerous instances of unwanted contact after the issuance of the protection and no contact orders, the jury could reasonably have concluded that a reasonable person in the victim’s position would have experienced substantial emotional distress.”).
Must the victim tell the defendant to stop in order to constitute stalking?	Most likely. Nonconsensual contact, which is in the definition of the required course of conduct, is defined as “any contact with the victim that is initiated or continued without the victim's consent, that is beyond the scope of the consent provided by the victim, or that is in disregard of the victim's expressed desire that the contact be avoided or discontinued.” Idaho Code § 18-7906(c).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	It is unclear if stalking by proxy is included. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered by the regular stalking statute where the definition of nonconsensual contact includes electronic surveillance and communication. Idaho Code § 18-7906(c). Other statutes criminalize similar conduct such as harassment via telephone. Idaho Code §§ 18-6710, 18-6711.
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?)	Likely not. <i>See State v. Hartzell</i> 305 P.3d 551 (Idaho Ct. App. 2013) (upholding charge of first-degree stalking against victim who lived in different state).
Any unique provisions, elements, or requirements?	No.
Gradation of crimes (list out statutes in order of declining gradation and say what type of	Stalking in the First Degree is a felony. Idaho Code § 18-7905.

<p><i>felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor)</i></p>	<p>Stalking in the Second Degree is a Misdemeanor. Idaho Code § 18-706.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking in the Second Degree becomes stalking in the First Degree if the offender:</p> <ul style="list-style-type: none"> - violates temporary restraining order, protection order, no contact order or injunction; - violates condition of probation or parole; - stalks a victim who is under 16; - possessed a deadly weapon during any act constituting course of conduct; - previously been convicted of stalking in Idaho or "substantially conforming" crime in other jurisdiction in the past 7 years; - has previously been convicted of a crime, or of an attempt, solicitation, or conspiracy to commit a crime, involving victim under assault and battery code chapter, children and vulnerable adults code chapter, rape chapter, administering poison with intent to kill, assault with intent to murder, kidnapping, poison, forcible sexual penetration involving foreign object, malicious harassment, or act of terrorism. <p>Idaho Code § 18-7905.</p>

Statutes

IDAHO CODE ANN. § 18-6710 (WEST 2023). USE OF TELEPHONE TO ANNOY, TERRIFY, THREATEN, INTIMIDATE, HARASS OR OFFEND BY LEWD OR PROFANE LANGUAGE, REQUESTS, SUGGESTIONS OR PROPOSALS--THREATS OF PHYSICAL HARM--DISTURBING THE PEACE BY REPEATED CALLS--PENALTIES

(1) Every person who, with intent to annoy, terrify, threaten, intimidate, harass or offend, telephones another and (a) addresses to or about such person any obscene, lewd or profane language, or makes any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; or (b) addresses to such other person any threat to inflict injury or physical harm to the person or property of the person addressed or any member of his family, or any other person; or (c) by repeated anonymous or identified telephone calls whether or not conversation ensues, disturbs

the peace or attempts to disturb the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received, is guilty of a misdemeanor and upon conviction thereof, shall be sentenced to a term of not to exceed one (1) year in the county jail. Upon a second or subsequent conviction, the defendant shall be guilty of a felony and shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

- (2) The use of obscene, lewd or profane language or the making of a threat or obscene proposal, or the making of repeated anonymous telephone calls as set forth in this section may be prima facie evidence of intent to annoy, terrify, threaten, intimidate, harass or offend.
- (3) For the purposes of this section, the term “telephone” shall mean any device which provides transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire or the projection of energy without physical connection.

IDAHO CODE ANN. § 18-6711 (WEST 2023). USE OF TELEPHONE TO TERRIFY, INTIMIDATE, HARASS OR ANNOY BY FALSE STATEMENTS--PENALTIES

- (1) Every person who telephones another and knowingly makes any false statements concerning injury, death, disfigurement, indecent conduct or criminal conduct of the person telephoned or any member of his family, with intent to terrify, intimidate, harass or annoy the called person, is guilty of a misdemeanor. Upon a second or subsequent conviction of the violation of the provisions of this section, the defendant shall be guilty of a felony.
- (2) The making of a false statement as herein set out may be prima facie evidence of intent to terrify, intimidate, harass or annoy.
- (3) For the purposes of this section, the term “telephone” shall mean any device which provides transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire or the projection of energy without physical connection.

IDAHO CODE ANN. § 18-7901 (WEST 2023). PURPOSE

The legislature finds and declares that it is the right of every person regardless of race, color, ancestry, religion or national origin, to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of groups and individuals. It is not the intent of this act to interfere with the exercise of rights protected by the constitution of the United States. The legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The legislature further finds that the advocacy of unlawful acts by groups or individuals against other persons or groups for the purpose of inciting and provoking damage to property and bodily injury or death to persons is not

constitutionally protected, poses a threat to public order and safety, and should be subject to criminal sanctions.

IDAHO CODE ANN. § 18-7902 (WEST 2023). MALICIOUS HARASSMENT DEFINED--PROHIBITED

It shall be unlawful for any person, maliciously and with the specific intent to intimidate or harass another person because of that person's race, color, religion, ancestry, or national origin, to:

- (a) Cause physical injury to another person; or
- (b) Damage, destroy, or deface any real or personal property of another person; or
- (c) Threaten, by word or act, to do the acts prohibited if there is reasonable cause to believe that any of the acts described in subsections (a) and (b) of this section will occur.

For purposes of this section, “deface” shall include, but not be limited to, cross-burnings or the placing of any word or symbol commonly associated with racial, religious or ethnic terrorism on the property of another person without his or her permission.

IDAHO CODE ANN. § 18-7903 (WEST 2023). PENALTIES--CRIMINAL AND CIVIL

- (a) Malicious harassment is punishable by imprisonment in the state prison for a period not to exceed five (5) years or by fine not exceeding five thousand dollars (\$5,000) or by both.
- (b) In addition to the criminal penalty provided in subsection (a) of this section, there is hereby created a civil cause of action for malicious harassment. A person may be liable to the victim of malicious harassment for both special and general damages, including but not limited to damages for emotional distress, reasonable attorney fees and costs, and punitive damages.
- (c) The penalties provided in this section for malicious harassment do not preclude victims from seeking any other remedies, criminal or civil, otherwise available under law.

IDAHO CODE ANN. § 18-7905 (WEST 2023). STALKING IN THE FIRST DEGREE

- (1) A person commits the crime of stalking in the first degree if the person violates section 18-7906, Idaho Code, and:
 - (a) The actions constituting the offense are in violation of a temporary restraining order, protection order, no contact order or injunction, or any combination thereof; or
 - (b) The actions constituting the offense are in violation of a condition of probation or parole; or

- (c) The victim is under the age of sixteen (16) years; or
- (d) At any time during the course of conduct constituting the offense, the defendant possessed a deadly weapon or instrument; or
- (e) The defendant has been previously convicted of a crime under this section or section 18-7906, Idaho Code, or a substantially conforming foreign criminal violation within seven (7) years, notwithstanding the form of the judgment or withheld judgment; or
- (f) The defendant has been previously convicted of a crime, or an attempt, solicitation or conspiracy to commit a crime, involving the same victim as the present offense under any of the following provisions of Idaho Code or a substantially conforming foreign criminal violation within seven (7) years, notwithstanding the form of the judgment or withheld judgment:
 - (i) Chapter 9, title 18;
 - (ii) Chapter 15, title 18;
 - (iii) Chapter 61, title 18;
 - (iv) Section 18-4014 (administering poison with intent to kill);
 - (v) Section 18-4015 (assault with intent to murder);
 - (vi) Section 18-4501 (kidnapping);
 - (vii) Section 18-5501 (poisoning);
 - (viii) Section 18-6604 (forcible sexual penetration by use of foreign object);
 - (ix) Section 18-7902 (malicious harassment); or
 - (x) Section 18-8103 (act of terrorism).

(2) In this section, “course of conduct” and “victim” have the meanings given in section 18-7906(2), Idaho Code.

(3) For the purpose of this section, a “substantially conforming foreign criminal violation” exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of this section or section 18-7906, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

- (4) Stalking in the first degree is a felony punishable by a fine not exceeding ten thousand dollars (\$10,000) or imprisonment in the state prison for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment.

IDAHO CODE ANN. § 18-7906 (WEST 2023). STALKING IN THE SECOND DEGREE

- (1) A person commits the crime of stalking in the second degree if the person knowingly and maliciously:
- (a) Engages in a course of conduct that seriously alarms, annoys or harasses the victim and is such as would cause a reasonable person substantial emotional distress; or
 - (b) Engages in a course of conduct such as would cause a reasonable person to be in fear of death or physical injury, or in fear of the death or physical injury of a family or household member.
- (2) As used in this section:
- (a) “Course of conduct” means repeated acts of nonconsensual contact involving the victim or a family or household member of the victim, provided however, that constitutionally protected activity is not included within the meaning of this definition.
 - (b) “Family or household member” means:
 - (i) A spouse or former spouse of the victim, a person who has a child in common with the victim regardless of whether they have been married, a person with whom the victim is cohabiting whether or not they have married or have held themselves out to be husband or wife, and persons related to the victim by blood, adoption or marriage; or
 - (ii) A person with whom the victim is or has been in a dating relationship, as defined in section 39-6303, Idaho Code; or
 - (iii) A person living in the same residence as the victim.
 - (c) “Nonconsensual contact” means any contact with the victim that is initiated or continued without the victim's consent, that is beyond the scope of the consent provided by the victim, or that is in disregard of the victim's expressed desire that the contact be avoided or discontinued. “Nonconsensual contact” includes, but is not limited to:
 - (i) Following the victim or maintaining surveillance, including by electronic means, on the victim;
 - (ii) Contacting the victim in a public place or on private property;

- (iii) Appearing at the workplace or residence of the victim;
- (iv) Entering onto or remaining on property owned, leased or occupied by the victim;
- (v) Contacting the victim by telephone or causing the victim's telephone to ring repeatedly or continuously regardless of whether a conversation ensues;
- (vi) Sending mail or electronic communications to the victim; or
- (vii) Placing an object on, or delivering an object to, property owned, leased or occupied by the victim.

(d) "Victim" means a person who is the target of a course of conduct.

(3) Stalking in the second degree is punishable by imprisonment in the county jail for not more than one (1) year or by a fine of not more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

IDAHO CODE ANN. § 18-7907 (WEST 2023). ACTION FOR PROTECTION

- (1) There shall exist an action known as a "petition for a protection order" in cases where a person intentionally engages in the following conduct:
- (a) Stalks, in any degree, as described in sections 18-7905 and 18-7906, Idaho Code;
 - (b) Telephones another with the intent to terrify, threaten, or intimidate such other person and addresses to such other person any threat to inflict injury or physical harm to the person addressed or any member of his family and engages in such conduct with any device that provides transmission of messages, signals, facsimiles, video images, or other communication by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection between persons who are physically separated from each other; or
 - (c) Based upon another person's race, color, religion, ancestry, or national origin, intimidates or harasses another person or causes, or threatens to cause, physical injury to another person or damage to any real or personal property of another person.
- (2) A person may seek relief from such conduct for himself, his children or his ward by filing a verified petition for a protection order with the magistrate division of the district court, alleging specific facts that a person for whom protection is sought was the victim of such conduct within the ninety (90) days immediately preceding the filing of the petition and that such conduct is likely to occur in the future. Evidence of such conduct occurring prior to such ninety (90) day

period may be admissible to show that conduct committed within the ninety (90) day period is part of a course or pattern of conduct as described in subsection (1) of this section and may be admissible as otherwise permitted in accordance with court rule and decisional law.

- (3) Upon the filing of a verified petition for a protection order, the court shall hold a hearing within fourteen (14) days to determine whether the relief sought shall be granted unless the court determines that the petition fails to state sufficient facts to warrant relief authorized by this section. If either party is represented by counsel at such hearing, the court shall grant a request for a continuance of the proceedings so that counsel may be obtained by the other party. Such order may require either the petitioner or respondent, or both, to pay for costs, including reasonable attorney's fees.
- (4) Upon a showing by a preponderance of the evidence that a person for whom protection is sought in the petition was the victim of conduct committed by the respondent that constitutes conduct as described in subsection (1) of this section, within ninety (90) days immediately preceding the filing of the petition, and that such conduct is likely to occur in the future to such person, the court may issue a protection order. Such protection order may:
 - (a) Direct the respondent to refrain from conduct described in subsection (1) of this section;
 - (b) Order the respondent to refrain from contacting the petitioner or any other person for whom the petition sought protection; and
 - (c) Grant such other relief and impose such other restrictions as the court deems proper, that may include a requirement that the respondent not knowingly remain within a certain distance of the protected person, which distance restriction may not exceed one thousand five hundred (1,500) feet.
- (5) The petition and the court's protection order shall be served on the respondent in the manner provided in section 39-6310, Idaho Code.
- (6)
 - (a) Notice of a protection order shall be forwarded by the clerk of the court, on or before the next judicial day, to the appropriate law enforcement agency.
 - (b) Upon receipt of such notice, the law enforcement agency shall forthwith enter the order into the Idaho public safety and security information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the Idaho public safety and security information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.
 - (c) Law enforcement agencies shall establish procedures reasonably adequate to assure that an officer approaching or actually at the scene of an incident may be informed of the existence of such protection order.

- (7) Any relief granted by a protection order, other than a judgment for costs, shall be for a fixed period not to exceed one (1) year; provided that a protection order obtained pursuant to this section may, upon motion and upon good cause shown, be renewed, modified, or terminated by further order of the court with notice to all parties and after a hearing or written stipulation filed with the court.
- (8) Whenever a protection order, or an ex parte temporary protection order issued pursuant to this chapter, is granted and the respondent or person to be restrained was served a copy of the order in the manner provided in section 39-6310, Idaho Code, a violation of the provisions of the order shall be a misdemeanor punishable by not to exceed one (1) year in jail and a fine not to exceed five thousand dollars (\$5,000). A peace officer may arrest without a warrant and take into custody a person who the peace officer has probable cause to believe has violated such order.
- (9) A petition shall be filed in the county of the respondent's residence, the petitioner's residence or where the petitioner is temporarily residing.
- (10) A person may file a single verified petition seeking relief pursuant to this chapter and section 39-6304, Idaho Code. Such petition shall separately set forth the matters pertaining to each such provision of law. All procedural and substantive requirements governing petitions for domestic violence protection orders under chapter 63, title 39, Idaho Code, shall apply with respect to the issuance of such domestic violence protection orders.
- (11) As used in this section, "contact" means any actual physical contact; contact or attempted contact, directly or indirectly, by telephone, pager, e-mail, facsimile or other oral, written or electronic means of communication.

IDAHO CODE ANN. § 18-920 (WEST 2023). VIOLATION OF NO CONTACT ORDER

- (1) When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-911, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905, 18-7906 or 39-6312, Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.
- (2) A violation of a no contact order is committed when:
- (a) A person has been charged or convicted under any offense defined in subsection (1) of this section; and
 - (b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and
 - (c) The person charged or convicted has had contact with the stated person in violation of an order.

- (3) A violation of a no contact order is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one (1) year, or both. Any person who pleads guilty to or is found guilty of a violation of this section who previously has pled guilty to or been found guilty of two (2) violations of this section, or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within five (5) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000), or by both fine and imprisonment. No bond shall be set for this violation until the person charged is brought before the court which will set bond. Further, any such violation may result in the increase, revocation or modification of the bond set in the underlying charge for which the no contact order was imposed.
- (4) A peace officer may arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a no contact order issued under this section if the person restrained had notice of the order.
- (5) For purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city or town ordinance of another state, substantially conforming with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

IDAHO CODE ANN. § 39-6312 (WEST 2023). VIOLATION OF ORDER--PENALTIES

- (1) Whenever a protection order is granted and the respondent or person to be restrained had notice of the order, a violation of the provisions of the order or of a provision excluding the person from a residence shall be a misdemeanor punishable by not to exceed one (1) year in jail and a fine not to exceed five thousand dollars (\$5,000), ten dollars (\$10.00) of which shall be deposited to the credit of the domestic violence project account created in section 39-5212, Idaho Code.
- (2) A peace officer may arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order, if the person restrained had notice of the order.
- (3) The person against whom a protection order has been issued by an out-of-state court is presumed to have notice of the order if the victim presents to the officer proof of service of the order.

Relevant Case Law

***State v. Hartzell*, 305 P.3d 551 (Idaho Ct. App. 2013)**

The defendant was charged with first-degree stalking and moved for reduction of charge to second degree stalking. Defendant had previously been subject to an “Order of Protection” in the state of Washington which prohibited defendant from contacting his former drug counselor for a period of one year. The drug counselor, who lived in Washington but worked in Idaho, informed the Idaho State Police that defendant contacted her in Idaho after the Washington order was issued. At a pretrial hearing, defendant argued that the Washington order was not a protection order and that the Washington order was not issued to protect the counselor from domestic violence. The district court determined that the Washington order was not a protection order under Idaho law and reduced the charge from first degree stalking. The State appealed. The Court of Appeals, in interpreting the meaning of “protection order” for purposes of first-degree stalking, held that the term was not limited to the meaning of protection order pursuant to Idaho's Domestic Violence Crime Prevention Act. Thus, the charge was properly enhanced to stalking in the first degree.

***State v. Eliassen*, 348 P.3d 157 (Idaho 2015)**

Defendant was convicted of second-degree stalking and appealed, arguing in part that evidence was insufficient to prove that she engaged in “repeated acts” constituting a “course of conduct” under the statute. The incident involved tailing the victim from her home to a Goodwill store and then tailing the victim after she left the Goodwill store until the victim made her way to the police station. Defendant claimed she only engaged in one act of nonconsensual contact by following the victim to Goodwill, pausing briefly, and continuing to follow the victim out of the Goodwill parking lot, all without breaking off the initial nonconsensual contact. The district court disagreed, stating that a change in the nature of the conduct “creates a sufficient break in the events to demonstrate a course of conduct through repeated acts of nonconsensual contact.” It thus found four instances of prohibited conduct: (1) appearing at the victim's residence, (2) following the victim to Goodwill; (3) conducting surveillance at Goodwill; and (4) following the victim nearly the entire way to the police station. The Idaho Court of Appeals affirmed the conviction, stating that there were at least two instances of nonconsensual contact: (1) appearing at the victim's residence and (2) conducting a U-Turn and following the victim once the victim left her home to drive to Goodwill. On appeal to the Supreme Court, defendant claimed that the natural reading of the stalking statute is that there can only be a new act of nonconsensual contact when there is a break in the original nonconsensual contact, and that a change in the nature of the contact is irrelevant. The Supreme Court of Idaho disagreed, stating that the statute's plain language identifies a non-exclusive list of conduct that constitutes “nonconsensual contact”, and that defendant committed at least two nonconsensual acts: appearing at the victim's residence, and following the victim to the Goodwill store.

Stalking, Harassment, & Related Offenses: Illinois

Current as of June 2023

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ILLINOIS

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct” means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. A course of conduct may include contact via electronic communications. 720 Ill. Comp. Stat. 5/12-7.3(c)(1).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required but stalking can be based on threat of immediate or future bodily harm, sexual assault, confinement or restraint and the threat is directed towards that person or a family member of that person. 720 Ill. Comp. Stat. Ann. 5/12-7.3(a-3)(1), (a-5)(2), (a-7). Transmits a threat means “means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements or conduct.” 720 Ill. Comp. Stat. 5/12-7.3(c)(9).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The required intent depends on which section stalking is prosecuted under. Knowingly engaging in a course of conduct under 720 Ill. Comp. Stat. 5/12-7.3(a). Knowingly and without lawful justification under 720 Ill. Comp. Stat. 5/12-7.3(a-3),(a-5). Knowingly and aware of the effect. 720 Ill. Comp. Stat. 5/12-7.3(a-7).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, if the conduct causes fear for the safety of a third person under 720 Ill. Comp. Stat. 5/12-

	<p>7.3(a)(1) or a family member under 720 Ill. Comp. Stat. 5/12-7.3(a-3), (a-5).</p> <p>Family member “means a parent, grandparent, brother, sister, or child, whether by whole blood, half-blood, or adoption and includes a step-grandparent, step-parent, step-brother, step-sister or step-child. “Family member” also means any other person who regularly resides in the household, or who, within the prior 6 months, regularly resided in the household.” 720 Ill. Comp. Stat. 5/12-7.3(c)(4).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>The type of fear depends on the section of the statute.</p> <p>Fear for one’s safety or the safety of a third person or to suffer other emotional distress under 720 Ill. Comp. Stat. 5/12-7.3(a). A reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint to or of that person or a family member of that person under 720 Ill. Comp. Stat. 5/12-7.3(a-3).</p>
<p>Does fear include emotional distress?</p>	<p>Yes. 720 Ill. Comp. Stat. 5/12-7.3(b).</p> <p>“Emotional distress” means significant mental suffering, anxiety or alarm. 720 Ill. Comp. Stat. 5/12-7.3(c)(3).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. 720 Ill. Comp. Stat. 5/12-7.3(a), (a-3)(2).</p> <p>“Reasonable person” means a person in the victim's situation. 720 Ill. Comp. Stat. 5/12-7.3(c)(8).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>People v. Gauger</i>, 110 N.E.3d 280 (Ill. Ct. App. 2018) (Evidence was sufficient to support defendant's conviction for stalking; defendant created at least one fictitious social media</p>

	<p>account in the name of ex-wife's friend, downloaded pictures of ex-wife and her family, and obtained mail addressed to ex-wife, and defendant knew or should have known that this course of conduct would cause a reasonable person to suffer other emotional distress).</p> <p><i>People v. Taylor</i>, 148 N.E.3d 708, 710, (Ill. Ct. App. 2020) (Defendant knowingly engaged in a course of conduct against the victim by, on two or more occasions, surveilling her, calling her, sending her text messages, and threatening her. The defendant knew or should have known that his course of conduct would cause a reasonable person to fear for her safety and to suffer 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 includes acts directly, indirectly, or through third parties. 720 Ill. Comp. Stat. 5/12-7.3(c)(1); <i>See also</i> 720 Ill. Comp. Stat. 5/12-7.3(d-10) (“A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.”).</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 where a course of conduct may include contact via electronic communications. 720 Ill. Comp. Stat. 5/12-7.3(c)(1). “Electronic communication” means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system and includes transmissions by a computer through the Internet to another computer. 720 Ill. Comp. Stat. 5/12-7.3(c)(2).</p>

	<p>There is also a separate cyberstalking statute. 720 Ill. Comp. Stat. Ann. 5/12-7.5; <i>But see People v. Relerford</i>, 04 N.E.3d 341 (Ill. 2017) (holding that section (a) of the cyberstalking statute facially violated constitutional right of free speech).</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>The law is silent regarding whether the victim/defendant must reside in the jurisdiction.</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 either a Class 3 felony or a Class 4 felony. 720 Ill. Comp. Stat. 5/12-7.3(b).</p> <p>Aggravated stalking a either a Class 2 felony or a Class 3 felony. 720 Ill. Comp. Stat. 5/12-7.4(b).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a Class 3 felony upon second or subsequent conviction. 720 Ill. Comp. Stat. 5/12-7.3(b).</p> <p>Stalking becomes aggravated stalking if the offender:</p> <ul style="list-style-type: none"> - Causes bodily harm to the victim; - Confines or restrains the victim; or - Violates a no contact order or other related court order. <p>720 Ill. Comp. Stat. 5/12-7.4(a)</p> <p>Aggravated stalking becomes a Class 2 felony upon second or subsequent conviction. 720 Ill. Comp. Stat. 5/12-7.4(b).</p>

Statutes

720 ILL. COMP. STAT. ANN. 5/12-7.3 (WEST 2023). STALKING

- (a) A person commits stalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to:
- (1) fear for his or her safety or the safety of a third person; or
 - (2) suffer other emotional distress.
- (a-3) A person commits stalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions follows another person or places the person under surveillance or any combination thereof and:
- (1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement or restraint and the threat is directed towards that person or a family member of that person; or
 - (2) places that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint to or of that person or a family member of that person.
- (a-5) A person commits stalking when he or she has previously been convicted of stalking another person and knowingly and without lawful justification on one occasion:
- (1) follows that same person or places that same person under surveillance; and
 - (2) transmits a threat of immediate or future bodily harm, sexual assault, confinement or restraint to that person or a family member of that person.
- (a-7) A person commits stalking when he or she knowingly makes threats that are a part of a course of conduct and is aware of the threatening nature of his or her speech.
- (b) Sentence. Stalking is a Class 4 felony; a second or subsequent conviction is a Class 3 felony.
- (c) Definitions. For purposes of this Section:
- (1) "Course of conduct" means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. A course of conduct may include contact via electronic communications.

- (2) “Electronic communication” means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. “Electronic communication” includes transmissions by a computer through the Internet to another computer.
- (3) “Emotional distress” means significant mental suffering, anxiety or alarm.
- (4) “Family member” means a parent, grandparent, brother, sister, or child, whether by whole blood, half-blood, or adoption and includes a step-grandparent, step-parent, step-brother, step-sister or step-child. “Family member” also means any other person who regularly resides in the household, or who, within the prior 6 months, regularly resided in the household.
- (5) “Follows another person” means (i) to move in relative proximity to a person as that person moves from place to place or (ii) to remain in relative proximity to a person who is stationary or whose movements are confined to a small area. “Follows another person” does not include a following within the residence of the defendant.
- (6) “Non-consensual contact” means any contact with the victim that is initiated or continued without the victim's consent, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; entering onto or remaining on property owned, leased, or occupied by the victim; or placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.
- (7) “Places a person under surveillance” means: (1) remaining present outside the person's school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; or (2) placing an electronic tracking device on the person or the person's property.
- (8) “Reasonable person” means a person in the victim's situation.
- (9) “Transmits a threat” means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements or conduct.

(d) Exemptions.

- (1) This Section does not apply to any individual or organization (i) monitoring or attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements, or (ii) picketing occurring at the workplace that is otherwise lawful and arises out of a bona fide labor dispute, including any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the making or maintaining of collective bargaining agreements, and the terms to be included in those agreements.

(2) This Section does not apply to an exercise of the right to free speech or assembly that is otherwise lawful.

(3) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

(d-5) The incarceration of a person in a penal institution who commits the course of conduct or transmits a threat is not a bar to prosecution under this Section.

(d-10) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.

720 ILL. COMP. STAT. ANN. 5/12-7.4 (WEST 2023). AGGRAVATED STALKING

(a) A person commits aggravated stalking when he or she commits stalking and:

(1) causes bodily harm to the victim;

(2) confines or restrains the victim; or

(3) violates a temporary restraining order, an order of protection, a stalking no contact order, a civil no contact order, or an injunction prohibiting the behavior described in subsection (b)(1) of Section 214 of the Illinois Domestic Violence Act of 1986.1

(a-1) A person commits aggravated stalking when he or she is required to register under the Sex Offender Registration Act or has been previously required to register under that Act and commits the offense of stalking when the victim of the stalking is also the victim of the offense for which the sex offender is required to register under the Sex Offender Registration Act or a family member of the victim.

(b) Sentence. Aggravated stalking is a Class 3 felony; a second or subsequent conviction is a Class 2 felony.

(c) Exemptions.

(1) This Section does not apply to any individual or organization (i) monitoring or attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory

requirements, or (ii) picketing occurring at the workplace that is otherwise lawful and arises out of a bona fide labor dispute including any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the managing or maintenance of collective bargaining agreements, and the terms to be included in those agreements.

(2) This Section does not apply to an exercise of the right of free speech or assembly that is otherwise lawful.

(3) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

(d) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.

720 ILL. COMP. STAT. ANN. 5/12-7.5 (WEST 2023). CYBERSTALKING

*** Section (a)(1)(2) held unconstitutional *People v. Relford*, 04 N.E.3d 341 (Ill. 2017)***

(a) A person commits cyberstalking when he or she engages in a course of conduct using electronic communication directed at a specific person, and he or she knows or should know that would cause a reasonable person to:

(1) fear for his or her safety or the safety of a third person; or

(2) suffer other emotional distress.

(a-3) A person commits cyberstalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions, harasses another person through the use of electronic communication and:

(1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person; or

(2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; or

(3) at any time knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

(a-4) A person commits cyberstalking when he or she knowingly, surreptitiously, and without lawful justification, installs or otherwise places electronic monitoring software or spyware on an electronic communication device as a means to harass another person and:

(1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person;

(2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; or

(3) at any time knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

For purposes of this Section, an installation or placement is not surreptitious if:

(1) with respect to electronic software, hardware, or computer applications, clear notice regarding the use of the specific type of tracking software or spyware is provided by the installer in advance to the owners and primary users of the electronic software, hardware, or computer application; or

(2) written or electronic consent of all owners and primary users of the electronic software, hardware, or computer application on which the tracking software or spyware will be installed has been sought and obtained through a mechanism that does not seek to obtain any other approvals or acknowledgement from the owners and primary users.

(a-5) A person commits cyberstalking when he or she, knowingly and without lawful justification, creates and maintains an Internet website or webpage which is accessible to one or more third parties for a period of at least 24 hours, and which contains statements harassing another person and:

(1) which communicates a threat of immediate or future bodily harm, sexual assault, confinement, or restraint, where the threat is directed towards that person or a family member of that person, or

(2) which places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint, or

(3) which knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

(b) Sentence. Cyberstalking is a Class 4 felony; a second or subsequent conviction is a Class 3 felony.

(c) For purposes of this Section:

- (1) "Course of conduct" means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. The incarceration in a penal institution of a person who commits the course of conduct is not a bar to prosecution under this Section.
- (2) "Electronic communication" means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. "Electronic communication" includes transmissions through an electronic device including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mail, instant message, text message, or voice mail.
 - (2.1) "Electronic communication device" means an electronic device, including, but not limited to, a wireless telephone, personal digital assistant, or a portable or mobile computer.
 - (2.2) "Electronic monitoring software or spyware" means software or an application that surreptitiously tracks computer activity on a device and records and transmits the information to third parties with the intent to cause injury or harm. For the purposes of this paragraph (2.2), "intent to cause injury or harm" does not include activities carried out in furtherance of the prevention of fraud or crime or of protecting the security of networks, online services, applications, software, other computer programs, users, or electronic communication devices or similar devices.
- (3) "Emotional distress" means significant mental suffering, anxiety or alarm.
- (4) "Harass" means to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, or terrorizes that person.
- (5) "Non-consensual contact" means any contact with the victim that is initiated or continued without the victim's consent, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; entering onto or remaining on property owned, leased, or occupied by the victim; or placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.
- (6) "Reasonable person" means a person in the victim's circumstances, with the victim's knowledge of the defendant and the defendant's prior acts.

(7) “Third party” means any person other than the person violating these provisions and the person or persons towards whom the violator's actions are directed.

(d) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

(e) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.

(f) It is not a violation of this Section to:

(1) provide, protect, maintain, update, or upgrade networks, online services, applications, software, other computer programs, electronic communication devices, or similar devices under the terms of use applicable to those networks, services, applications, software, programs, or devices;

(2) interfere with or prohibit terms or conditions in a contract or license related to networks, online services, applications, software, other computer programs, electronic communication devices, or similar devices; or

(3) create any liability by reason of terms or conditions adopted, or technical measures implemented, to prevent the transmission of unsolicited electronic mail or communications.

720 ILL. COMP. STAT. ANN. 5/26.5-4 (WEST 2023). EVIDENCE INFERENCE

Evidence inference. Evidence that a defendant made additional telephone calls or engaged in additional electronic communications after having been requested by a named complainant or by a family or household member of the complainant to stop may be considered as evidence of an intent to harass unless disproved by evidence to the contrary.

720 ILL. COMP. STAT. ANN. 5/26.5-2 (WEST 2023). HARASSMENT BY TELEPHONE

(a) A person commits harassment by telephone when he or she uses telephone communication for any of the following purposes:

(1) Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent with an intent to offend;

- (2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number;
 - (3) Making or causing the telephone of another repeatedly to ring, with intent to harass any person at the called number;
 - (4) Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number;
 - (5) Making a telephone call or knowingly inducing a person to make a telephone call for the purpose of harassing another person who is under 13 years of age, regardless of whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense; or
 - (6) Knowingly permitting any telephone under one's control to be used for any of the purposes mentioned herein.
- (b) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this Section. The notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING". All telephone companies in this State shall cooperate with law enforcement agencies in using their facilities and personnel to detect and prevent violations of this Article.

720 ILL. COMP. STAT. ANN. 5/26.5-3 (WEST 2023). HARASSMENT THROUGH ELECTRONIC COMMUNICATIONS

- (a) A person commits harassment through electronic communications when he or she uses electronic communication for any of the following purposes:
- (1) Making any comment, request, suggestion or proposal which is obscene with an intent to offend;
 - (2) Interrupting, with the intent to harass, the telephone service or the electronic communication service of any person;
 - (3) Transmitting to any person, with the intent to harass and regardless of whether the communication is read in its entirety or at all, any file, document, or other communication which prevents that person from using his or her telephone service or electronic communications device;
 - (4) Transmitting an electronic communication or knowingly inducing a person to transmit an electronic communication for the purpose of harassing another person who is under 13 years

of age, regardless of whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense;

(5) Threatening injury to the person or to the property of the person to whom an electronic communication is directed or to any of his or her family or household members; or

(6) Knowingly permitting any electronic communications device to be used for any of the purposes mentioned in this subsection (a).

(b) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

725 ILL. COMP. STAT. ANN. 5/112A-14.7 (WEST 2023). STALKING NO CONTACT ORDER; REMEDIES

(a) The court may order any of the remedies listed in this Section. The remedies listed in this Section shall be in addition to other civil or criminal remedies available to petitioner. A stalking no contact order shall order one or more of the following:

(1) prohibit the respondent from threatening to commit or committing stalking;

(2) order the respondent not to have any contact with the petitioner or a third person specifically named by the court;

(3) prohibit the respondent from knowingly coming within, or knowingly remaining within a specified distance of the petitioner or the petitioner's residence, school, daycare, or place of employment, or any specified place frequented by the petitioner; however, the court may order the respondent to stay away from the respondent's own residence, school, or place of employment only if the respondent has been provided actual notice of the opportunity to appear and be heard on the petition;

(4) prohibit the respondent from possessing a Firearm Owners Identification Card, or possessing or buying firearms; and

(5) order other injunctive relief the court determines to be necessary to protect the petitioner or third party specifically named by the court.

(b) When the petitioner and the respondent attend the same public, private, or non-public elementary, middle, or high school, the court when issuing a stalking no contact order and

providing relief shall consider the severity of the act, any continuing physical danger or emotional distress to the petitioner, the educational rights guaranteed to the petitioner and respondent under federal and State law, the availability of a transfer of the respondent to another school, a change of placement or a change of program of the respondent, the expense, difficulty, and educational disruption that would be caused by a transfer of the respondent to another school, and any other relevant facts of the case. The court may order that the respondent not attend the public, private, or non-public elementary, middle, or high school attended by the petitioner, order that the respondent accept a change of placement or program, as determined by the school district or private or non-public school, or place restrictions on the respondent's movements within the school attended by the petitioner. The respondent bears the burden of proving by a preponderance of the evidence that a transfer, change of placement, or change of program of the respondent is not available. The respondent also bears the burden of production with respect to the expense, difficulty, and educational disruption that would be caused by a transfer of the respondent to another school. A transfer, change of placement, or change of program is not unavailable to the respondent solely on the ground that the respondent does not agree with the school district's or private or non-public school's transfer, change of placement, or change of program or solely on the ground that the respondent fails or refuses to consent to or otherwise does not take an action required to effectuate a transfer, change of placement, or change of program. When a court orders a respondent to stay away from the public, private, or non-public school attended by the petitioner and the respondent requests a transfer to another attendance center within the respondent's school district or private or non-public school, the school district or private or non-public school shall have sole discretion to determine the attendance center to which the respondent is transferred. If the court order results in a transfer of the minor respondent to another attendance center, a change in the respondent's placement, or a change of the respondent's program, the parents, guardian, or legal custodian of the respondent is responsible for transportation and other costs associated with the transfer or change.

- (c) The court may order the parents, guardian, or legal custodian of a minor respondent to take certain actions or to refrain from taking certain actions to ensure that the respondent complies with the order. If the court orders a transfer of the respondent to another school, the parents, guardian, or legal custodian of the respondent are responsible for transportation and other costs associated with the change of school by the respondent.
- (d) The court shall not hold a school district or private or non-public school or any of its employees in civil or criminal contempt unless the school district or private or non-public school has been allowed to intervene.
- (e) The court may hold the parents, guardian, or legal custodian of a minor respondent in civil or criminal contempt for a violation of any provision of any order entered under this Article for conduct of the minor respondent in violation of this Article if the parents, guardian, or legal custodian directed, encouraged, or assisted the respondent minor in the conduct.
- (f) Monetary damages are not recoverable as a remedy.

- (g) If the stalking no contact order prohibits the respondent from possessing a Firearm Owner's Identification Card, or possessing or buying firearms; the court shall confiscate the respondent's Firearm Owner's Identification Card and immediately return the card to the Illinois State Police Firearm Owner's Identification Card Office.

725 ILL. COMP. STAT. ANN. 5/112A-23 (WEST 2023). ENFORCEMENT OF PROTECTIVE ORDERS

- (a) When violation is crime. A violation of any protective order, whether issued in a civil, quasi-criminal proceeding, shall be enforced by a criminal court when:
- (1) The respondent commits the crime of violation of a domestic violence order of protection pursuant to Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012,¹ by having knowingly violated:
 - (i) remedies described in paragraphs (1), (2), (3), (14), or (14.5) of subsection (b) of Section 112A-14 of this Code
 - (ii) a remedy, which is substantially similar to the remedies authorized under paragraphs (1), (2), (3), (14), or (14.5) of subsection (b) of Section 214 of the Illinois Domestic Violence Act of 1986, in a valid order of protection, which is authorized under the laws of another state, tribe or United States territory, or
 - (iii) any other remedy when the act constitutes a crime against the protected parties as defined by the Criminal Code of 1961 or the Criminal Code of 2012.

Prosecution for a violation of a domestic violence order of protection shall not bar concurrent prosecution for any other crime, including any crime that may have been committed at the time of the violation of the domestic violence order of protection; or
 - (2) The respondent commits the crime of child abduction pursuant to Section 10-5 of the Criminal Code of 1961 or the Criminal Code of 2012, by having knowingly violated:
 - (i) remedies described in paragraphs (5), (6), or (8) of subsection (b) of Section 112A-14 of this Code, or
 - (ii) a remedy, which is substantially similar to the remedies authorized under paragraphs (1), (5), (6), or (8) of subsection (b) of Section 214 of the Illinois Domestic Violence Act of 1986, in a valid domestic violence order of protection, which is authorized under the laws of another state, tribe or United States territory.
 - (3) The respondent commits the crime of violation of a civil no contact order when the respondent violates Section 12-3.8 of the Criminal Code of 2012. Prosecution for a violation of a civil no contact order shall not bar concurrent prosecution for any other crime, including

any crime that may have been committed at the time of the violation of the civil no contact order.

(4) The respondent commits the crime of violation of a stalking no contact order when the respondent violates Section 12-3.9 of the Criminal Code of 2012. Prosecution for a violation of a stalking no contact order shall not bar concurrent prosecution for any other crime, including any crime that may have been committed at the time of the violation of the stalking no contact order.

(b) When violation is contempt of court. A violation of any valid protective order, whether issued in a civil or criminal proceeding, may be enforced through civil or criminal contempt procedures, as appropriate, by any court with jurisdiction, regardless where the act or acts which violated the protective order were committed, to the extent consistent with the venue provisions of this Article. Nothing in this Article shall preclude any Illinois court from enforcing any valid protective order issued in another state. Illinois courts may enforce protective orders through both criminal prosecution and contempt proceedings, unless the action which is second in time is barred by collateral estoppel or the constitutional prohibition against double jeopardy.

(1) In a contempt proceeding where the petition for a rule to show cause sets forth facts evidencing an immediate danger that the respondent will flee the jurisdiction, conceal a child, or inflict physical abuse on the petitioner or minor children or on dependent adults in petitioner's care, the court may order the attachment of the respondent without prior service of the rule to show cause or the petition for a rule to show cause. Bond shall be set unless specifically denied in writing.

(2) A petition for a rule to show cause for violation of a protective order shall be treated as an expedited proceeding.

(c) Violation of custody, allocation of parental responsibility, or support orders. A violation of remedies described in paragraphs (5), (6), (8), or (9) of subsection (b) of Section 112A-14 of this Code may be enforced by any remedy provided by Section 607.5 of the Illinois Marriage and Dissolution of Marriage Act. The court may enforce any order for support issued under paragraph (12) of subsection (b) of Section 112A-14 of this Code in the manner provided for under Parts V and VII of the Illinois Marriage and Dissolution of Marriage Act.

(d) Actual knowledge. A protective order may be enforced pursuant to this Section if the respondent violates the order after respondent has actual knowledge of its contents as shown through one of the following means:

[...]

(3) By service of a protective order under subsection (f) of Section 112A-17.5 or Section 112A-22 of this Code.

(4) By other means demonstrating actual knowledge of the contents of the order.

- (e) The enforcement of a protective order in civil or criminal court shall not be affected by either of the following:
- (1) The existence of a separate, correlative order entered under Section 112A-15 of this Code.
 - (2) Any finding or order entered in a conjoined criminal proceeding.
- (e-5) If a civil no contact order entered under subsection (6) of Section 112A-20 of the Code of Criminal Procedure of 1963 conflicts with an order issued pursuant to the Juvenile Court Act of 1987 or the Illinois Marriage and Dissolution of Marriage Act, the conflicting order issued under subsection (6) of Section 112A-20 of the Code of Criminal Procedure of 1963 shall be void.
- (f) Circumstances. The court, when determining whether or not a violation of a protective order has occurred, shall not require physical manifestations of abuse on the person of the victim.
- (g) Penalties.
- (1) Except as provided in paragraph (3) of this subsection (g), where the court finds the commission of a crime or contempt of court under subsections (a) or (b) of this Section, the penalty shall be the penalty that generally applies in such criminal or contempt proceedings, and may include one or more of the following: incarceration, payment of restitution, a fine, payment of attorneys' fees and costs, or community service.
 - (2) The court shall hear and take into account evidence of any factors in aggravation or mitigation before deciding an appropriate penalty under paragraph (1) of this subsection (g).
 - (3) To the extent permitted by law, the court is encouraged to:
 - (i) increase the penalty for the knowing violation of any protective order over any penalty previously imposed by any court for respondent's violation of any protective order or penal statute involving petitioner as victim and respondent as defendant;
 - (ii) impose a minimum penalty of 24 hours imprisonment for respondent's first violation of any protective order; and
 - (iii) impose a minimum penalty of 48 hours imprisonment for respondent's second or subsequent violation of a protective order unless the court explicitly finds that an increased penalty or that period of imprisonment would be manifestly unjust.
 - (4) In addition to any other penalties imposed for a violation of a protective order, a criminal court may consider evidence of any violations of a protective order:
 - (i) to modify the conditions of pretrial release on an underlying criminal charge pursuant to Section 110-6 of this Code;

- (ii) to revoke or modify an order of probation, conditional discharge, or supervision, pursuant to Section 5-6-4 of the Unified Code of Corrections;
- (iii) to revoke or modify a sentence of periodic imprisonment, pursuant to Section 5-7-2 of the Unified Code of Corrections.

720 ILL. COMP. STAT. ANN. 5/12-3.4 (WEST 2023). VIOLATION OF AN ORDER OF PROTECTION

(a) A person commits violation of an order of protection if:

- (1) He or she knowingly commits an act which was prohibited by a court or fails to commit an act which was ordered by a court in violation of:
 - (i) a remedy in a valid order of protection authorized under paragraphs (1), (2), (3), (14), or (14.5) of subsection (b) of Section 214 of the Illinois Domestic Violence Act of 1986,¹
 - (ii) a remedy, which is substantially similar to the remedies authorized under paragraphs (1), (2), (3), (14) or (14.5) of subsection (b) of Section 214 of the Illinois Domestic Violence Act of 1986, in a valid order of protection, which is authorized under the laws of another state, tribe or United States territory,
 - (iii) any other remedy when the act constitutes a crime against the protected parties as the term protected parties is defined in Section 112A-4 of the Code of Criminal Procedure of 1963;² and
- (2) Such violation occurs after the offender has been served notice of the contents of the order, pursuant to the Illinois Domestic Violence Act of 1986³ or any substantially similar statute of another state, tribe or United States territory, or otherwise has acquired actual knowledge of the contents of the order.

An order of protection issued by a state, tribal or territorial court related to domestic or family violence shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe or territory. There shall be a presumption of validity where an order is certified and appears authentic on its face. For purposes of this Section, an “order of protection” may have been issued in a criminal or civil proceeding.

- (a-5) Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign order of protection.
- (b) Nothing in this Section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through civil or criminal contempt proceedings.

- (c) The limitations placed on law enforcement liability by Section 305 of the Illinois Domestic Violence Act of 1986 apply to actions taken under this Section.
- (d) Violation of an order of protection is a Class A misdemeanor. Violation of an order of protection is a Class 4 felony if the defendant has any prior conviction under this Code for domestic battery (Section 12-3.2) or violation of an order of protection (Section 12-3.4 or 12-30) or any prior conviction under the law of another jurisdiction for an offense that could be charged in this State as a domestic battery or violation of an order of protection. Violation of an order of protection is a Class 4 felony if the defendant has any prior conviction under this Code for first degree murder (Section 9-1), attempt to commit first degree murder (Section 8-4), aggravated domestic battery (Section 12-3.3), aggravated battery (Section 12-3.05 or 12-4), heinous battery (Section 12-4.1), aggravated battery with a firearm (Section 12-4.2), aggravated battery with a machine gun or a firearm equipped with a silencer (Section 12-4.2-5), aggravated battery of a child (Section 12-4.3), aggravated battery of an unborn child (subsection (a-5) of Section 12-3.1, or Section 12-4.4), aggravated battery of a senior citizen (Section 12-4.6), stalking (Section 12-7.3), aggravated stalking (Section 12-7.4), criminal sexual assault (Section 11-1.20 or 12-13), aggravated criminal sexual assault (Section 11-1.30 or 12-14), kidnapping (Section 10-1), aggravated kidnapping (Section 10-2), predatory criminal sexual assault of a child (Section 11-1.40 or 12-14.1), aggravated criminal sexual abuse (Section 11-1.60 or 12-16), unlawful restraint (Section 10-3), aggravated unlawful restraint (Section 10-3.1), aggravated arson (Section 20-1.1), aggravated discharge of a firearm (Section 24-1.2), or a violation of any former law of this State that is substantially similar to any listed offense, or any prior conviction under the law of another jurisdiction for an offense that could be charged in this State as one of the offenses listed in this Section, when any of these offenses have been committed against a family or household member as defined in Section 112A-3 of the Code of Criminal Procedure of 1963. The court shall impose a minimum penalty of 24 hours imprisonment for defendant's second or subsequent violation of any order of protection; unless the court explicitly finds that an increased penalty or such period of imprisonment would be manifestly unjust. In addition to any other penalties, the court may order the defendant to pay a fine as authorized under Section 5-9-1 of the Unified Code of Corrections⁴ or to make restitution to the victim under Section 5-5-6 of the Unified Code of Corrections.⁵
- (e) (Blank).
- (f) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.

720 ILL. COMP. STAT. ANN. 5/12-3.9 (WEST 2023). VIOLATION OF A STALKING NO CONTACT ORDER

- (a) A person commits violation of a stalking no contact order if:

- (1) he or she knowingly commits an act which was prohibited by a court or fails to commit an act which was ordered by a court in violation of:
- (i) a remedy in a valid stalking no contact order of protection authorized under Section 80 of the Stalking No Contact Order Act or Section 112A-14.7 of the Code of Criminal Procedure of 1963; or
 - (ii) a remedy, which is substantially similar to the remedies authorized under Section 80 of the Stalking No Contact Order Act or Section 112A-14.7 of the Code of Criminal Procedure of 1963, or in a valid stalking no contact order, which is authorized under the laws of another state, tribe, or United States territory; and
- (2) the violation occurs after the offender has been served notice of the contents of the order, under the Stalking No Contact Order Act, Article 112A of the Code of Criminal Procedure of 1963, or any substantially similar statute of another state, tribe, or United States territory, or otherwise has acquired actual knowledge of the contents of the order.

A stalking no contact order issued by a state, tribal, or territorial court shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory. There shall be a presumption of validity when an order is certified and appears authentic on its face.

- (a-3) For purposes of this Section, a “stalking no contact order” may have been issued in a criminal or civil proceeding.
- (a-5) Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign stalking no contact order.
- (b) Prosecution for a violation of a stalking no contact order shall not bar a concurrent prosecution for any other crime, including any crime that may have been committed at the time of the violation of the civil no contact order.
- (c) Nothing in this Section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through civil or criminal contempt proceedings.
- (d) A defendant who directed the actions of a third party to violate this Section, under the principles of accountability set forth in Article 5 of this Code, is guilty of violating this Section as if the same had been personally done by the defendant, without regard to the mental state of the third party acting at the direction of the defendant.
- (e) Sentence. A violation of a stalking no contact order is a Class A misdemeanor for a first violation, and a Class 4 felony for a second or subsequent violation.

Relevant Case Law

***People v. Relford*, 04 N.E.3d 341 (Ill. 2017)**

Defendant was convicted of stalking and cyberstalking under the 2012 versions of the statutes. Defendant appealed and the appellate court vacated the defendant's convictions, holding that statutes under which defendant was convicted are facially unconstitutional as violative of substantive due process. The State filed a petition for leave of appeal arguing that the statutes did not violate due process. The Supreme Court of Illinois analyzed the language of the statutes, specifically section regarding "communicat[ions] to or about." Under the relevant statutory language, communications that are pleasing to the recipient due to their nature or substance are not prohibited, but communications that the speaker "knows or should know" are distressing due to their nature or substance are prohibited. Therefore, the Court notes, it is clear that the challenged statutory provision must be considered a content-based restriction because it cannot be justified without reference to the content of the prohibited communications. Further, communication to or about a person that negligently would cause a reasonable person to suffer emotional distress does not fit into the established jurisprudence on true threats. The Supreme Court of Illinois held that the terms of subsection (a) of the stalking and cyberstalking statutes violate the first amendment because they are overbroad in that they impermissibly infringe on the right to free speech. Accordingly, the phrase "communicates to or about" are stricken from those provisions.

***People v. Gauger*, 110 N.E.3d 280 (Ill. Ct. App. 2018)**

Defendant was convicted of violating a protection order, stalking, and aggravated stalking. Defendant appealed, arguing that he was convicted under an unconstitutional provision of the aggravated-stalking statute. While a protection order was in place, the victim received Facebook message from someone she knew in high school, asking if she had recently sent him a new "friend" request. After looking at the profile the friend told her about, she realized that an old Facebook account of hers had been reactivated. The victim also received Facebook messages from the defendant posing as someone else. The fictitious Facebook activity frightened the victim; she felt worried every time she left her building and would constantly look over her shoulder while driving into town, worried that defendant or someone he knew was "going to pop up." Defendant contends that his Facebook messages to the victim constituted "communicat[ing] to or about" her and that *Relford* struck this portion of the definition from the statute. The Court of Appeals distinguished from *Relford*, and held that the defendant's conviction can be sustained under another, constitutional, portion of the statute, specifically, the "monitoring" section. Therefore, the convictions were affirmed.

***People v. Ashley*, 162 N.E.3d 200 (Ill. 2020)**

Defendant was convicted of stalking and appealed arguing, *inter alia*, that the stalking statute violated state and federal constitutional guarantees of free speech, because it overbroadly criminalizes a substantial amount of protected speech. The defendant acknowledged that the government may restrict the content of speech in certain limited areas, including the recognized exception for true threats. He maintains, however, that the amended stalking statute is unconstitutionally overbroad because the "threatens" provision sweeps in protected speech that expresses an intent to engage in lawful, nonviolent behavior. Regarding free speech, the Supreme

Court of Illinois held that term “threatens” in subsection (c)(1) refers to “true threats” of unlawful violence such as bodily harm, sexual assault, confinement, and restraint, as set forth in subsections (a-3) and (a-5). As such, the term “threatens” falls outside the protection of the First Amendment. Therefore, the conviction was affirmed.

People v. Taylor, 148 N.E.3d 708 (Ill. Ct. App. 2020)

Defendant was convicted of aggravated stalking and appealed arguing that his conviction must be vacated because the underlying stalking statute is facially unconstitutional due to vagueness. The victim broke off her relationship with the defendant, upon which the defendant left the victim’s home and then returned and threatened to kill her. The victim then obtained a protection order against the defendant. After the order was in place, the defendant went to the victim’s home and threatened to kill her again and then stole the victim’s bike. The defendant also sent multiple text messages threatening to kill her, her daughter, and her babysitter. The Court of Appeals held that the statute was not unconstitutionally vague. “A statute is not vague where it clearly applies to the defendant's conduct. Here, the trial evidence showed that defendant repeatedly entered DeShields's backyard and knocked on her back door during the period alleged in the indictment and while subject to orders of protection covering DeShields. Thus, he on at least two occasions knowingly remained present outside a residence other than his own as clearly proscribed by subsection (a) of the stalking statute.” Therefore, the convictions were affirmed.

Stalking, Harassment, & Related Offenses: Indiana

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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INDIANA

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>Repeated or continuing harassment of another person. Ind. Code § 35-45-10-1.</p> <p>The term “repeated” means more than once. <i>S.B. v. Seymour Community Schools</i>, 97 N.E.3d 288 (Ind. Ct. App. 2018). Courts have found “repeated” acts of harassment over short time frames. <i>See, e.g., Johnson v. State</i>, 648 N.E.2d 666 (Ind. Ct. App. 1995) (holding evidence was sufficient that defendant engaged in "repeated" acts of harassment where, over three separation occasions over course of five-hour period on same night, defendant banged on victim's door and window, requested to be let in, and berated victim).</p> <p>Conduct doesn't have to be “repeated” if it is “continuous.” <i>Falls v. State</i>, 131 N.E.3d 1288 (Ind. Ct. App. 2019). The <i>Falls</i> court found evidence of "continuous" harassment where defendant followed victim in his car for two-and one-half hours. <i>Id</i>; <i>But see Mysliwy v. Mysliwy</i>, 953 N.E.2d 1072 (Ind. Ct. App. 2011) (holding that offender's damage to different pieces of victim's property in same night constituted a single occurrence and not continuous harassment).</p> <p>“Harassment” is defined as conduct toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and actually causes the victim to suffer emotional distress. Ind. Code § 35-45-10-2.</p> <p>“Impermissible contact” includes but is not limited to: following or pursuing the victim; communicating with the victim in person, in writing, by telephone, by telegraph, or through</p>
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	<p>electronic means; posting on social media if directed to the victim and refers to the victim directly or indirectly. Ind. Code § 35-45-10-3.</p> <p>Does not include statutorily or constitutionally protected activity. Ind. Code §§ 35-45-10--1; 35-45-10-2. <i>See, e.g., VanHorn v. State</i>, 889 N.E.2d 908 (Ind. Ct. App. 2008) (holding that conduct was not impermissible where defendant repeatedly parked on a city street and watched victims house through binoculars, as his right to remain in a public place was protected by the due process clause).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threat is generally not required. <i>See Maurer v. Cobb-Maurer</i>, 994 N.E.2d 753 (Ind. Ct. App. 2013) (“Although it is often the case that stalking is found where contact between persons includes some form of physical threat, there is no requirement in the anti-stalking statute that the contact at issue be threatening on its face, and stalking may be found where other evidence is sufficient to prove that the contact amounted to harassment.”).</p> <p>However, stalking is elevated to a Level 5 felony if offender makes an explicit or implicit threat with intent to place victim in reasonable fear of sexual battery, serious bodily injury, or death. Ind. Code § 35-45-10-1(b)(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>Knowing or intentional course of conduct. Ind. Code § 35-45-10-1.</p> <p>However, Ind. Code § 35-45-10-1(b)(1) requires knowing or intentional course of conduct and intent to place victim in reasonable fear of sexual battery, serious bodily injury, or death.</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>It is unclear from the statute whether actions towards third parties helps establish course of conduct. The stalking statutes definition of “impermissible contact” only explicitly includes certain actions against “the victim” but the list</p>

	of actions that constitute impermissible contact is non-exclusive. See Ind. Code 35-45-10-3.
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Victim must reasonably feel terrorized, frightened, intimidated, or threatened. Ind. Code § 35-45-10-1.
Does fear include emotional distress?	Yes, stalking requires continued/repeated harassment, which is defined in part by the victim experiencing reasonable emotional distress. Ind. Code § 35-45-10-2.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Both subjective and reasonable person standard. See Ind. Code § 35-45-10-1 definition of stalk (“...that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened.”).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	What constitutes reasonable fear is dependent on factual circumstances. <i>Nicholson v. State</i> , 963 N.E.2d 1096 (Ind. 2012) (finding a reasonable person would feel terrorized, frightened, intimidated, or threatened where defendant made hundreds of sexually explicit phone calls to victim).
Must the victim tell the defendant to stop in order to constitute stalking?	There is no explicit requirement that the victim tell the defendant to stop in order to constitute stalking, but it can help establish elements of stalking, such as intent. <i>See Garza v. State</i> , 736 N.E.2d 323 (Ind. Ct. App. 2000) (considering defendant's repeated conduct despite victim's express statements telling him to stop as evidence sufficient support defendant's intent to harass).
Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)	No. There is no published case law that addresses this and the statutory law is silent.

<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 by regular stalking statute, which encompasses electronic communication and posting on social media. See definition of impermissible contact, Ind. Code Ann. § 35-45-10-3.</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>There is no residency requirement. “If an offense is commenced outside Indiana and completed within Indiana, the offender may be tried in any county where any act in furtherance of the offense occurred.” Ind. Code § 35-32-2-1 (e).</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 Level 4 Felony under Ind. Code § 35-45-10-5(c).</p> <p>Stalking is a Level 5 Felony under Ind. Code § 35-45-10-5(b).</p> <p>Stalking is a Level 6 Felony under Ind. Code § 35-45-10-5(a).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is elevated from a Level 6 to a Level 5 felony if:</p> <ul style="list-style-type: none"> - Conduct includes explicit or implicit threat with intent to place victim in reasonable fear of sexual battery, serious bodily injury, or death; - Conduct violates a protective order to prevent domestic or family violence, a no contact order, or other judicial order discussed in Ind. Code Ann. §35-45-10(b)(2) (or similar order issued in another state or Indian tribe); - Conduct violates an order issued as a condition of pretrial release or pretrial diversion (or similar order issued in another state or Indian tribe); - Conduct violates a no contact order issued as a condition of probation (or similar order issued in another state or Indian tribe);

- Conduct violates a no contact order issued in a paternity action (or similar order issued in another state or Indian tribe);
 - Criminal complaint of stalking involving same victim is pending in a court
- Ind. Code § 35-45-10-5(b).

Stalking is elevated from a Level 6 to a Level 4 felony if:

- Defendant was armed with deadly weapon;
- Defendant has unrelated conviction for stalking offense against same victim

Ind. Code § 35-45-10-5(c).

Statutes

IND. CODE ANN. § 35-45-2-1 (WEST 2023). INTIMIDATION

- (a) Sec. 1. (a) A person who communicates a threat with the intent:
- (1) that another person engage in conduct against the other person's will;
 - (2) that another person be placed in fear of retaliation for a prior lawful act;
 - (3) of:
 - (A) causing:
 - (i) a dwelling, a building, or other structure; or
 - (ii) a vehicle;
 - (iii) to be evacuated; or
 - (B) interfering with the occupancy of:
 - (i) a dwelling, building, or other structure; or
 - (ii) a vehicle; or
 - (4) that another person be placed in fear that the threat will be carried out, if the threat is a threat described in:

(A) subsection (c)(1) through (c)(5); or

(B) subsection (c)(7) through (c)(8);

(5) commits intimidation, a Class A misdemeanor.

(b) However, the offense is a:

(1) Level 6 felony if:

(A) the threat is to commit a forcible felony;

(B) the subject of the threat or the person to whom the threat is communicated is a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat;

(C) the threat is communicated because of the occupation, profession, employment status, or ownership status of a person or the threat relates to or is made in connection with the occupation, profession, employment status, or ownership status of a person;

(D) the person has a prior unrelated conviction for an offense under this section concerning the same victim; or

(E) the threat is communicated using property, including electronic equipment or systems, of a school corporation or other governmental entity; and

(2) Level 5 felony if:

(A) while committing it, the person draws or uses a deadly weapon;

(B) the subject of the threat or the person to whom the threat is communicated:

(i) is a judicial officer or bailiff of any court; or

(ii) is a prosecuting attorney or a deputy prosecuting attorney;

and the threat relates to the person's status as a judicial officer, bailiff, prosecuting attorney, or deputy prosecuting attorney, or is made in connection with the official duties of the judicial officer, bailiff, prosecuting attorney, or deputy prosecuting attorney; or

(C) the threat is:

(i) to commit terrorism; or

(ii) made in furtherance of an act of terrorism.

(c) "Threat" means an expression, by words or action, of an intention to:

- (1) unlawfully injure the person threatened or another person, or damage property;
- (2) unlawfully subject a person to physical confinement or restraint;
- (3) commit a crime;
- (4) unlawfully withhold official action, or cause such withholding;
- (5) unlawfully withhold testimony or information with respect to another person's legal claim or defense, except for a reasonable claim for witness fees or expenses;
- (6) expose the person threatened to hatred, contempt, disgrace, or ridicule;
- (7) falsely harm the credit or business reputation of a person; or
- (8) cause the evacuation of a dwelling, a building, another structure, or a vehicle. For purposes of this subdivision, the term includes an expression that would cause a reasonable person to consider the evacuation of a dwelling, a building, another structure, or a vehicle, even if the dwelling, building, structure, or vehicle is not evacuated.

IND. CODE ANN. § 35-45-10-1 (WEST 2023). "STALK" DEFINED

Sec. 1. As used in this chapter, "stalk" means a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

IND. CODE ANN. § 35-45-10-2 (WEST 2023). "HARASSMENT"

Sec. 2. As used in this chapter, "harassment" means conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities pursuant to labor disputes.

IND. CODE ANN. § 35-45-10-3 (WEST 2023). “IMPERMISSIBLE CONTACT”

Sec. 3. (a) As used in this chapter, “impermissible contact” includes the following:

- (1) Following or pursuing the victim.
- (2) Communicating with the victim.
- (3) Posting on social media, if the post:
 - (A) is directed to the victim; or
 - (B) refers to the victim, directly or indirectly.

(b) The list in subsection (a) is nonexclusive.

IND. CODE ANN. § 35-45-10-4 (WEST 2023). “VICTIM” DEFINED

Sec. 4. As used in this chapter, “victim” means a person who is the object of stalking.

IND. CODE ANN. § 35-45-10-5 (WEST 2023). CRIMINAL STALKING

Sec. 5. (a) A person who stalks another person commits stalking, a Level 6 felony.

(b) The offense is a Level 5 felony if at least one (1) of the following applies:

- (1) A person:
 - (A) stalks a victim; and
 - (B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:
 - (i) sexual battery (as defined in IC 35-42-4-8);
 - (ii) serious bodily injury; or
 - (iii) death.
- (2) A protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:

- (A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal (dissolution of marriage and legal separation).
 - (B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).
 - (C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).
 - (D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal (protective order to prevent abuse).
 - (E) IC 34-26-6 (workplace violence restraining orders).
- (3) The person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion if the person has been given actual notice of the order.
- (4) The person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order.
- (5) The person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order.
- (6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order described in subdivisions (2) through (5) if the person has been given actual notice of the order.
- (7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:
- (A) tribe;
 - (B) band;
 - (C) pueblo;
 - (D) nation; or
 - (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the person has been given actual notice of the order.

(8) A criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.

(c) The offense is a Level 4 felony if:

(1) the act or acts were committed while the person was armed with a deadly weapon; or

(2) the person has an unrelated conviction for an offense under this section against the same victim or victims.

IND. CODE ANN. § 35-45-10-6 (WEST 2023). “REMOTE AERIAL HARASSMENT”

Sec. 6. A person who operates an unmanned aerial vehicle in a manner that is intended to subject another person to harassment commits remote aerial harassment, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section.

Relevant Case Law

***Johnson v. State*, 648 N.E.2d 666 (Ind. Ct. App. 1995)**

Defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient to prove that defendant engaged in “repeated” acts of harassment. At trial, evidence was presented that three separate occasions over course of five-hour period on same night, defendant had banged on victim's door and window, requested to be let in, and berated victim. The Court of Appeals held that such evidence was sufficient to establish that defendant had engaged in “repeated” acts of harassing conduct, as required to support stalking conviction. The Court of Appeals stated that it made no difference that the behavior occurred over a short period of time, and that if the legislature wanted to place parameters on the period of time over which such behavior could occur, they would have done so.

***Garza v. State*, 736 N.E.2d 323 (Ind. Ct. App. 2000)**

Defendant was convicted of stalking and appealed, arguing evidence was insufficient. Evidence was presented at trial that defendant was victim's supervisor at work. Defendant made daily comments complimenting victim on her appearance, which made her feel “uneasy” and “uncomfortable.” On one occasion, defendant leaned in so close to defendant to “show her how to fill out a form” that victim felt his breath on her hair, and victim told defendant he was crowding her. While on a work trip, defendant asked victim if she wanted to go to a movie, which she declined. On another work trip, defendant gave victim a rose. After victim got a new job, defendant sent victim flowers with an unsigned note. Defendant called victim at her new workplace and asked her if she appreciated the flowers, and victim told him it was inappropriate. A month later, defendant again sent victim flowers with a note that started, “HATE, ANGER, BITTERNESS, MALICE, VENOM, HELLISH PRISONS OF OUR

OWN MAKING.” Victim sent defendant a letter constituting a "final notice" warning him to cease his behavior. Six months later, defendant started watching victim while she worked out at her gym and began following her into a grocery store. The Court of Appeals held that evidence was sufficient to prove that defendant intended to harass victim, particularly because the victim expressed that such advances were unwelcome, and that victim was reasonable to feel terrorized, frightened, intimidated, or threatened.

***VanHorn v. State*, 889 N.E.2d 908 (Ind. Ct. App. 2008)**

Defendant was convicted of stalking and appealed, arguing insufficient evidence. Evidence was presented at trial that defendant parked his vehicle near the victim's house on four separate occasions and watched the house through binoculars on two occasions. Defendant argued that such evidence failed to establish “impermissible contact” or “harassment,” pointing out that that made no actual physical contact and he made no telephone calls, left no notes, and at no point stepped onto victim's property. While the court did not consider whether defendant's actions were considered “contact” the court did conclude that defendant's actions were not impermissible. The Court of Appeals reasoned that the defendant had no notice that his conduct was impermissible, as he was parked on a city street, his right to remain in a public place was protected by the due process clause, and constitutionally protected conduct is specifically exempted from the definition of harassment. The fact that defendant was looking towards victim's house with binoculars did not alter this analysis, although the court acknowledged that his acts fell “more within the ambit of voyeurism.” The Court of Appeals also caveated that they were *not* suggesting that mere public sightings could never constitute harassment or impermissible contact; only that they did not constitute impermissible contact in this case.

***Mysliwy v. Mysliwy*, 953 N.E.2d 1072 (Ind. Ct. App. 2011)**

A trial court issued a protective order against offender and offender appealed, arguing evidence was insufficient to issue a protective order on the basis of stalking. The Court of Appeals held that damage done by offender to victim's house on a single day while she was out of town for work, including damage to her furnace, bathtub drain pipe, couch, carpet, and clothing, constituted a single occurrence, not a continuous act of harassment required to find stalking, as ground for issuance of order for protection under the Civil Protection Order Act (CPOA), even though there already was a previous, two-year-old, protection order in place.

***Nicholson v. State*, 963 N.E.2d 1096 (Ind. 2012)**

Defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient. In considering the reasonable fear element of stalking, the Supreme Court concluded that evidence was sufficient to establish that reasonable person would have felt terrorized, frightened, intimidated, or threatened, and that victim actually felt so. The defendant was incarcerated on basis of hundreds of sexually depraved, vagrant phone calls he made to victims' residence where he breathed heavily into the phone, made sounds as if he was masturbating, and said that he was going to place his penis and ejaculate onto the victims. The defendant resumed his course of conduct after his release from incarceration, and one victim testified that she no longer wanted to live in her home because defendant knew where it was, and that she had obtained gun permit and shotgun after defendant called again.

***Fox v. Bonam*, 45 N.E.3d 794 (Ind. Ct. App. 2015)**

The Court issued a protective order against offender based on allegations of stalking, and offender appealed, filing motion to stay enforcement of the protective order. Offender, victim's neighbor, had placed bulls eye targets eight to ten feet away from victim's property line, purposely facing them towards the victim's residence, and stuck a sign close to the property line on a stake clearly facing the victim's residence reading, "Warning! Is there life after death? Trespass here and find out." Offender contended that he had a First Amendment right to post a no-trespassing sign on his property and that his actions did not constitute impermissible contact. The Court of Appeals clarified that harassment may be something *other than* impermissible contact, and that the offender's placement of the targets near the victim's property line was not a constitutionally protected activity.

***Falls v. State*, 131 N.E.3d 1288 (Ind. Ct. App. 2019)**

Defendant was convicted of stalking and appealed, arguing that evidence was insufficient to prove that his conduct constituted "continuing harassment." Evidence was presented at trial that defendant followed victim his vehicle for two and one-half hours, despite the victim's efforts to evade the defendant in her own vehicle. The Court of Appeals clarified that a charge of stalking may be supported by conduct that is purely continuous in nature, even if the conduct isn't "repeated." The court held that evidence was sufficient that defendant's actions constituted "continuing harassment" even though the defendant only followed victim one time.

Stalking, Harassment, & Related Offenses: Iowa

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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IOWA

Summary

What constitutes a "course of conduct" / pattern of behavior?	Repeatedly maintaining a visual or physical proximity to a person without legitimate purpose, repeatedly utilizing a technological device to locate, listen to, or watch a person without legitimate purpose, or repeatedly conveying oral or written threats, threats implied by conduct, or a combination thereof, directed at or toward a person. Iowa Code § 708.11(1)(b). “Repeatedly” means on two or more occasions. Iowa Code § 708.11(1)(d).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat not required. <i>See State v. Evans</i> , 671 N.W.2d 720 (Iowa 2003).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Purposefully engaging in a course of conduct that the offender knows or should have known would cause a reasonable person to feel fear. Iowa Code Ann. § 708.11(2). The offender does not need to intend to cause fear. <i>See State v. Neuzil</i> , 589 N.W.2d 708 (Iowa 1999) (holding that the statute stalking is a general intent crime, and thus the government need not prove that defendant intended to cause fear).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes. The fear element encompasses fear of serious bodily injury or death of the victim's immediate family. Iowa Code § 708.11(2). “Immediate family” includes a spouse, parent, child, sibling, or any other person who regularly resides in the victim's household, or who within the prior six months regularly resided in victim's household. Iowa Code § 708.11(1)(c).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Victim must reasonably feel terrorized, frightened, intimidated, or threatened OR fear

	that defendant intends to cause death or bodily injury to victim or victim's immediate family member. Iowa Code § 708.11(2)(a).
Does fear include emotional distress?	No. There is no published case law that addresses this and the statutory law is silent.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. Iowa Code § 708.11 (2)(a)-(b). The subjective requirement was eliminated in 2017. H.F. 263, 87 th Gen. Assemb., Reg. Sess. (Iowa 2017).
If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)	What constitutes reasonable fear is highly dependent on case law. <i>See, e.g., State v. Evans</i> , 671 N.W.2d 720 (Iowa 2003)(holding sufficiency of evidence in case where defendant repeatedly followed victim and asked to photograph her feet); <i>State v. Limbrecht</i> , 600 N.W.2d 316 (Iowa 1999) (finding a reasonable fear where defendant, prison inmate, repeatedly found excuses to be near victim, a prisoner worker and stare at her; write her letters detailing sexual conduct between them; and driving by victim's house upon his release from prison).
Must the victim tell the defendant to stop in order to constitute stalking?	The stalking statute does not require the victim to tell the offender to stop. However, courts have found this helpful in upholding the sufficiency of evidence on stalking. <i>See, e.g., State v. Evans</i> , 671 N.W.2d 720 (Iowa 2003).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	No. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology facilitated stalking is covered under the regular stalking statute – course of conduct encompasses repeatedly utilizing a technological device to locate, listen to, or watch a person without legitimate purpose. Iowa Code § 708.11(1)(b).

	Other statutes criminalize similar conduct such as unauthorized placement of a global positioning device, Iowa Code § 708.11A
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?)	There is no residency requirement. "If an offense commenced outside the state is consummated within this state, trial of the offense shall be held in the county or counties in which the offense is consummated or the interest protected by the involved penal statute is impaired." Iowa Code § 803.3 (2).
Any unique provisions, elements, or requirements?	No.
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)	<p>Stalking is a Class C Felony (third or subsequent offense) under Iowa Code § 708.11(3)(b).</p> <p>Stalking is a Class D Felony under Iowa Code § 708.11(3)(a).</p> <p>Stalking is an Aggravated Misdemeanor under Iowa Code § 708.11(2).</p>
What aggravating circumstances elevate the gradation of a stalking offense?	<p>Stalking elevated from an aggravated misdemeanor to a Class D felony if the offender:</p> <ul style="list-style-type: none"> - Commits stalking while subject to restrictions under criminal or civil protective order or injunction, or any other court order prohibiting contact between defendant and victim, or which prohibits contact between defendant and another person against whom defendant committed public offense; - Stalks while in possession of deadly weapon; - Stalks a victim who is under 18; or - Commits a second offense. <p>Iowa Code § 708.11(3)(b).</p> <p>Stalking elevated from an aggravated misdemeanor to a Class C felony if:</p> <ul style="list-style-type: none"> - Stalking constitutes a third or subsequent offense <p>Iowa Code § 708.11(3)(a).</p>

Statutes

IOWA CODE ANN. § 664A.7 (WEST 2023). VIOLATION OF NO-CONTACT ORDER OR PROTECTIVE ORDER — CONTEMPT OR SIMPLE MISDEMEANOR PENALTIES

1. Violation of a no-contact order issued under this chapter or a protective order issued pursuant to chapter 232, 235F, 236, 236A, or 598, including a modified no-contact order, is punishable by summary contempt proceedings.
2. A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as determined by the court.
3. If convicted of or held in contempt for a violation of a no-contact order or a modified no-contact order for a public offense referred to in section 664A.2, subsection 1, or held in contempt of a no-contact order issued during a contempt proceeding brought pursuant to section 236.11 or 236A.12, the person shall be confined in the county jail for a minimum of seven days. A jail sentence imposed pursuant to this subsection shall be served on consecutive days. No portion of the mandatory minimum term of confinement imposed by this subsection shall be deferred or suspended. A deferred judgment, deferred sentence, or suspended sentence shall not be entered for a violation of a no-contact order, modified no-contact order, or protective order and the court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence.
4. If convicted or held in contempt for a violation of a civil protective order referred to in section 664A.2, the person shall serve a jail sentence. A jail sentence imposed pursuant to this subsection shall be served on consecutive days. A person who is convicted of or held in contempt for a violation of a protective order referred to in section 664A.2 may be ordered by the court to pay the plaintiff's attorney's fees and court costs.
5. Violation of a no-contact order entered for the offense or alleged offense of domestic abuse assault in violation of section 708.2A, the offense or alleged offense of older individual assault in violation of section 708.2D, or a violation of a protective order issued pursuant to chapter 232, 235F, 236, 236A, 598, or 915 constitutes a public offense and is punishable as a simple misdemeanor. Alternatively, the court may hold a person in contempt of court for such a violation, as provided in subsection 3.
6. A person shall not be held in contempt or convicted of violations under multiple no-contact orders, protective orders, or consent agreements, for the same set of facts and circumstances that constitute a single violation.

IOWA CODE ANN. § 708.7 (WEST 2023). HARASSMENT

1. a. A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:
 - (1) Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.
 - (2) Places a simulated explosive or simulated incendiary device in or near a building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person.
 - (3) Orders merchandise or services in the name of another, or to be delivered to another, without the other person's knowledge or consent.
 - (4) Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the act did not occur.
 - (5) Disseminates, publishes, distributes, posts, or causes to be disseminated, published, distributed, or posted a photograph or film showing another person in a state of full or partial nudity or engaged in a sex act, knowing that the other person has not consented to the dissemination, publication, distribution, or posting.
- b. A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person.
2. a. A person commits harassment in the first degree when the person commits harassment involving any of the following:
 - (1) A threat to commit a forcible felony.
 - (2) A violation of subsection 1, paragraph "a", subparagraph (5).
 - (3) Commits harassment and has previously been convicted of harassment three or more times under this section or any similar statute during the preceding ten years.
 - (4) Harassment that occurs against another person who is lawfully in a place of public accommodation as defined in section 216.2.
- b. Harassment in the first degree is an aggravated misdemeanor.

3. a. A person commits harassment in the second degree when the person commits harassment involving a threat to commit bodily injury, or commits harassment and has previously been convicted of harassment two times under this section or any similar statute during the preceding ten years.

b. Harassment in the second degree is a serious misdemeanor.
4. a. Any other act of harassment is harassment in the third degree.

b. Harassment in the third degree is a simple misdemeanor.
5. For purposes of determining whether or not the person should register as a sex offender pursuant to the provisions of chapter 692A, the fact finder shall make a determination as provided in section 692A.126. However, the fact finder shall not make a determination as provided in section 692A.126 regarding a juvenile convicted of a violation of subsection 1, paragraph “a”, subparagraph (5), and the juvenile shall not be required to register as a sex offender with regard to the violation.
6. The following do not constitute harassment under subsection 1, paragraph “a”, subparagraph (5):
 - a. A photograph or film involving voluntary exposure by a person in public or commercial settings.
 - b. Disclosures made in the public interest, including but not limited to the reporting of unlawful conduct, disclosures by law enforcement, news reporting, legal proceeding disclosures, or medical treatment disclosures.
 - c. Disclosures by an interactive computer service of information provided by another information content provider, as those terms are defined in 47 U.S.C. § 230.
7. A person injured by a violation of section 1, paragraph “a”, subparagraph (4), may bring a civil action against the person whose conduct violated section 1, paragraph “a”, subparagraph (4).
8. As used in this section, unless the context otherwise requires:
 - a. “Full or partial nudity” means the showing of any part of the human genitals or pubic area or buttocks, or any part of the nipple of the breast of a female, with less than fully opaque covering.
 - b. “Personal contact” means an encounter in which two or more people are in visual or physical proximity to each other. “Personal contact” does not require a physical touching or oral communication, although it may include these types of contacts.

- c. “Photographs or films” means the making of any photograph, motion picture film, videotape, or any other recording or transmission of the image of a person.
- d. “Sex act” means the same as defined in section 702.17.

IOWA CODE ANN. § 708.11 (WEST 2023). STALKING

1. As used in this section, unless the context otherwise requires:
 - a. “Accompanying offense” means any public offense committed as part of the course of conduct engaged in while committing the offense of stalking.
 - b. “Course of conduct” means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose, repeatedly utilizing a technological device to locate, listen to, or watch a person without legitimate purpose, or repeatedly conveying oral or written threats, threats implied by conduct, or a combination thereof, directed at or toward a person.
 - c. “Immediate family member” means a spouse, parent, child, sibling, or any other person who regularly resides in the household of a specific person, or who within the prior six months regularly resided in the household of a specific person.
 - d. “Repeatedly” means on two or more occasions.
2. A person commits stalking when all of the following occur:
 - a. The person purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened or to fear that the person intends to cause bodily injury to, or the death of, that specific person or a member of the specific person's immediate family.
 - b. The person has knowledge or should have knowledge that a reasonable person would feel terrorized, frightened, intimidated, or threatened or fear that the person intends to cause bodily injury to, or the death of, that specific person or a member of the specific person's immediate family by the course of conduct.
3.
 - a. A person who commits stalking in violation of this section commits a class “C” felony for a third or subsequent offense.
 - b. A person who commits stalking in violation of this section commits a class “D” felony if any of the following apply:

- (1) The person commits stalking while subject to restrictions contained in a criminal or civil protective order or injunction, or any other court order which prohibits contact between the person and the victim, or while subject to restrictions contained in a criminal or civil protective order or injunction or other court order which prohibits contact between the person and another person against whom the person has committed a public offense.
 - (2) The person commits stalking while in possession of a dangerous weapon, as defined in section 702.7.
 - (3) The person commits stalking by directing a course of conduct at a specific person who is under eighteen years of age.
 - (4) The offense is a second offense.
- c. A person who commits stalking in violation of this section commits an aggravated misdemeanor if the offense is a first offense which is not included in paragraph “b”.
4. Violations of this section and accompanying offenses shall be considered prior offenses for the purpose of determining whether an offense is a second or subsequent offense. A conviction for, deferred judgment for, or plea of guilty to a violation of this section or an accompanying offense which occurred at any time prior to the date of the violation charged shall be considered in determining that the violation charged is a second or subsequent offense. Deferred judgments pursuant to section 907.3 for violations of this section or accompanying offenses and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section or accompanying offenses shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses defined in this section and its accompanying offenses and can therefore be considered corresponding statutes. Each previous violation of this section or an accompanying offense on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense. In addition, however, accompanying offenses committed as part of the course of conduct engaged in while committing the violation of stalking charged shall be considered prior offenses for the purpose of that violation, even though the accompanying offenses occurred at approximately the same time. An offense shall be considered a second or subsequent offense regardless of whether it was committed upon the same person who was the victim of any other previous offense.
 5. Notwithstanding section 804.1, rule of criminal procedure 2.7, Iowa court rules, or any other provision of law to the contrary, upon the filing of a complaint and a finding of probable cause to believe an offense has been committed in violation of this section, or after the filing of an indictment or information alleging a violation of this section, the court shall issue an arrest warrant, rather than a citation or summons. A peace officer shall not issue a citation in lieu of arrest for a violation of this section. Notwithstanding section 804.21 or any other provision of law to the contrary, a person arrested for stalking shall be immediately taken into custody and shall not be released pursuant to pretrial release guidelines, a bond schedule, or any similar device,

until after the initial appearance before a magistrate. In establishing the conditions of release, the magistrate may consider the defendant's prior criminal history, in addition to the other factors provided in section 811.2.

6. For purposes of determining whether or not the person should register as a sex offender pursuant to the provisions of chapter 692A, the fact finder shall make a determination as provided in section 692A.126.

IOWA CODE ANN. § 708.11A (WEST 2023). UNAUTHORIZED PLACEMENT OF GLOBAL POSITIONING DEVICE

1. A person commits unauthorized placement of a global positioning device when the person, without the consent of the other person, places a global positioning device on the other person or an object in order to track the movements of the other person without a legitimate purpose.
2. A person who commits a violation of this section commits a serious misdemeanor.

Relevant Case Law

***State v. Limbrecht*, 600 N.W.2d 316 (Iowa 1999)**

Defendant was convicted of stalking and appealed, arguing that evidence was insufficient to support his conviction. While in prison for sexual assault and arson, defendant became acquainted with victim, a young woman hired by the prison to be an activities specialist. Evidence was presented that defendant repeatedly sabotaged the weight machine, located near victim's work station, so she could be dispatched to fix it. Defendant would take these opportunities to stare at victim, making the victim feel as if he was “mentally undressing” her. The defendant also authored anonymous letters detailing sexual encounters between victim and defendant. Other prison inmates testified that defendant told others he was having a sexual affair with victim, that victim was pregnant with his baby, and that he would “do whatever it took to find out about the child if he had to go to her house, find out where she lived.” Victim was upset by these events and terminated her employment with the prison. Several months later, the victim and her husband began receiving letters in defendant's handwriting alleging that the victim had cheated on her husband with prison inmates. Upon release from prison, defendant repeatedly drove by victim's house. The Court of Appeals held that sufficient to establish that the defendant purposefully engaged in a course of conduct that would have caused a reasonable person to fear bodily injury. Furthermore, evidence that the stalking victim rebuffed the defendant's evidence supported the finding that defendant knew that his conduct would cause fear of bodily injury, for purposes of stalking statute.

***State v. Evans*, 671 N.W.2d 720 (Iowa 2003)**

Defendant was convicted of stalking and appealed, arguing in part that evidence was insufficient. At trial, evidence was presented that defendant was a published photographer who had a foot fetish. Defendant repeatedly followed victim, came to her house, and asked to photograph her feet. The

court found that given the persistent, repeated, and sexual nature of the defendant's requests, evidence was sufficient to convict on the stalking charge. The Court of Appeals considered the fact that victim repeatedly told defendant she was not interested in his offers and on two occasions fled from defendant. The Court also considered it important that defendant's behaviors escalated over time when he started appearing at victim's house. The Court clarified that threats were not required by the stalking statute; nor does the stalking statute require the police to put him on notice that his behavior is causing the victim fear.

State v. Lindell, 828 N.W.2d 1 (Iowa 2013)

Defendant was convicted of stalking, second offense, and appealed. He argued that the State did not allege facts sufficient to prove the element of stalking in the instance case. The State originally alleged that defendant had committed only a single act following his first conviction for stalking. The Supreme Court found that the defendant's previous conviction could be used to establish a "course of conduct" for the second violation, and that doing so would not violate the Double Jeopardy Clause. In this particular case, defendant's stalking behavior spanned the course of six months, with some degree of escalation, and it was the intent of the legislature to prevent long-term, escalating stalking that served to frighten the victim.

Stalking, Harassment, & Related Offenses: Kansas

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>Two or more acts however time, however short, which evidence continuity of purpose.</p> <p>Does not include constitutionally protected activity nor conduct necessary to accomplish a legitimate purpose independent of making contact with the targeted person</p> <p>May include but is not limited to:</p> <ul style="list-style-type: none">- Threatening the safety of the victim or the victim's immediately family member;- Following, approaching, or confronting the victim or the victim's immediate family member;- Appearing in close proximity to or entering the victim's residence, workplace, school, or other place where the victim can be found, or the residence, workplace, or school of the victim's immediate family member;- Causing damage to property or residence of victim or victim's immediate family member;- Placing an object on the property of the victim or the victim's immediate family member, either directly or through a third person;- Causing injury to a pet belonging to victim or victim's immediate family member; or- Any act of communication <p>Kan. Stat. § 21-5427(f)(1).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>A threat is only one type of act that constitutes a "course of conduct." See Kan. Stat. § 21-5427(f)(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>Intent depends on the stalking provision.</p>

	<p>Kan. Stat. § 21-5427(a)(1) requires the offender recklessly engaging in a course of conduct that would cause a reasonable person to feel fear and that actually places the victim in fear.</p> <p>Kan. Stat. § 21-5427(a)(2) requires the offender engage in a course of conduct knowing that the conduct will place the victim in fear.</p> <p>Kan. Stat. § 21-5427(a)(3) requires that after being served court order prohibiting contact with victim, the offender recklessly engages in course of conduct that would cause reasonable person to feel fear and that actually causes fear.</p> <p>Kan. Stat. § 21-5427 (a)(4) requires offender intentionally engaging in a course of conduct targeted at victim under 14 that would cause reasonable person in child's circumstances to fear or would reasonably cause victim's immediate family member to feel fear for child's safety.</p>
<p>Do offender actions toward persons <i>other than the victim</i> help establish course of conduct?</p>	<p>Yes. Actions against the victim's immediate family help establish a course of conduct. Kan. Stat. § 21-5427(f)(1).</p> <p>Immediate family means victim's father, mother, stepparent, child, stepchild, sibling, spouse or grandparent, co-resident, or intimate partner.</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear for safety of victim or victim's immediate family member. <i>See</i> Kan. Stat. § 21-5427(a); <i>see also State v. Loganbill</i>, 518 P.3d 437 (Kan. Ct. App. 2022) (finding that a person targeted by someone accused of reckless stalking may fear for their safety or the safety of a family member after the accused engaged in the course of conduct proving stalking).</p>
<p>Does fear include emotional distress?</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</p>

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>The standard depends on the section of the stalking statute. Under Kan. Stat. § 21-5427(a)(1) there is both a reasonable person standard and a subjective standard, as explicitly stated in statute.</p> <p>Under Kan. Stat. § 21-5427(a)(2) the statute implies that the standard is subjective.</p> <p>Under Kan. Stat. § 21-5427(a)(3) there is both a reasonable person standard and a subjective standard, as explicitly stated in statute.</p> <p>Under Kan. Stat. § 21-5427(a)(4) the statute implies reasonable person standard.</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is highly dependent on factual circumstances.</p> <p><i>See, e.g., State v. Dunn</i>, 375 P.3d 332 (Kan. 2016) (upholding finding of reasonable fear where witness testified that victim appeared frightened of defendant at bank, defendant looked mad, and defendant prevented victim from leaving).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, but a defendant served with a protective order is presumed to have acted knowingly. Kan. Stat. § 21-5427.</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>If the action involves placing an object on the property of the victim or the victim's immediate family member, yes. Otherwise, unclear. <i>See</i> Kan. Stat. § 21-5427(f)(1)(E).</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>Yes. “Course of conduct” includes communication, which encompasses communication via electronic transmission. <i>See</i> Kan. Stat. § 21-5427(f)(2).</p> <p>Other statutes criminalize similar conduct such as harassment by telecommunication. Kan. Stat. 21-6206.</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>There is no residency requirement. A crime commenced outside the state but is completed within the state can be prosecuted. Kan. Stat. § 22-2612.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>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)</p>	<p>Stalking under Kan. Stat. § 21-5427(a)(4) is a Severity Level 7 Felony, or Severity Level 4 Felony upon a second or subsequent conviction (intentionally engaging in course of conduct and the victim is under 16).</p> <p>Stalking under Kan. Stat. § 21-5427(a)(3) is a Severity Level 9 Felony, or Severity Level 5 Felony upon a second or subsequent conviction (recklessly commits act against victim in violation of court order prohibiting victim).</p> <p>Stalking under Kan. Stat. § 21-5427(a)(2) is a Class A misdemeanor, or severity level 5 felony upon a second or subsequent conviction (knowingly engaging in course of conduct).</p> <p>Stalking under Kan. Stat. § 21-5427(a)(1) is a Class A misdemeanor, or severity level 7 felony upon a second or subsequent offense (recklessly engaging in course of conduct).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is enhanced upon:</p> <ul style="list-style-type: none"> - Second or subsequent offense; - Violation of a protective order; - <i>Mens rea</i> elevated from recklessly to knowingly; or - <i>Mens rea</i> elevated to intentionally and the victim is under 16. <p>Kan. Stat. § 21-5427(a)(2)-(4).</p>

Statutes

KAN. STAT. ANN. § 21-5427 (WEST 2023). STALKING

(a) Stalking is:

- (1) Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear;
- (2) engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or
- (3) after being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, prior to its repeal or K.S.A. 21-5924, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.
- (4) intentionally engaging in a course of conduct targeted at a specific child under the age of 14 that would cause a reasonable person in the circumstances of the targeted child, or a reasonable person in the circumstances of an immediate family member of such child, to fear for such child's safety.

(b) Stalking as defined in:

(1) Subsection (a)(1) is a:

- (A) Class A person misdemeanor, except as provided in subsection (b)(1)(B); and
- (B) severity level 7, person felony upon a second or subsequent conviction;

(2) subsection (a)(2) is a:

- (A) Class A person misdemeanor, except as provided in subsection (b)(2)(B); and
- (B) severity level 5, person felony upon a second or subsequent conviction; and

(3) subsection (a)(3) is a:

- (A) Severity level 9, person felony, except as provided in subsection (b)(3)(B); and

(B) severity level 5, person felony, upon a second or subsequent conviction, and

(4) subsection (a)(4) is a:

(A) Severity level 7, person felony, except as provided in subsection (b)(4)(B); and

(B) severity level 4, person felony, upon a second or subsequent conviction.

(c) For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, prior to its repeal or K.S.A. 21-5924, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

(d) In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

(e) The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.

(f) As used in this section:

(1) "Course of conduct" means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:

(A) Threatening the safety of the targeted person or a member of such person's immediate family;

(B) following, approaching or confronting the targeted person or a member of such person's immediate family;

(C) appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family;

(D) causing damage to the targeted person's residence or property or that of a member of such person's immediate family;

(E) placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person;

(F) causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family;

(G) any act of communication;

(2) "communication" means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer;

(3) "computer" means a programmable, electronic device capable of accepting and processing data;

(4) "conviction" includes being convicted of a violation of K.S.A. 21-3438, prior to its repeal, this section or a law of another state which prohibits the acts that this section prohibits; and

(5) "immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person.

KAN. STAT. ANN. § 21-6206 (WEST 2023). HARASSMENT BY TELECOMMUNICATION DEVICE

(a) Harassment by telecommunication device is the use of:

(1) A telecommunications device to:

(A) Knowingly make or transmit any comment, request, suggestion, proposal, image or text which is obscene, lewd, lascivious or indecent;

(B) make or transmit a call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the receiving end;

(C) make or transmit any comment, request, suggestion, proposal, image or text with intent to abuse, threaten or harass any person at the receiving end;

(D) make or cause a telecommunications device to repeatedly ring or activate with intent to harass any person at the receiving end;

(E) knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall be identified and state that it is a recording; or

(F) knowingly permit any telecommunications device under one's control to be used in violation of this paragraph.

(2) Telefacsimile communication to send or transmit such communication to a court in the state of Kansas for a use other than court business, with no requirement of culpable mental state.

(b) Harassment by telecommunication device is a class A nonperson misdemeanor.

(c) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING."

(d) As used in this section, "telecommunications device" includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto.

(e) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in K.S.A. 21-5508, 21-5509, 21-5510 or 21-6401.

KAN. STAT. ANN. § 21-5924 (WEST 2023). VIOLATION OF A PROTECTIVE ORDER; EXTENDED PROTECTIVE ORDERS; PENALTIES

(a) Violation of a protective order is knowingly violating:

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 or 60-3107, and amendments thereto;

(2) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265, and amendments thereto;

(3) a restraining order issued pursuant to K.S.A. 23-2707, 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to its transfer;

(4) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, post release supervision or at any other time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person;

(5) an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or

- (6) a protection from stalking, sexual assault or human trafficking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.
- (b) (1) Violation of a protective order is a class A person misdemeanor, except as provided in subsection (b)(2).
- (2) Violation of an extended protective order as described in K.S.A. 60-3107(e)(2), and amendments thereto, and K.S.A. 60-31a06(d), and amendments thereto, is a severity level 6, person felony.
- (c) No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on such attorney's behalf, who is representing the defendant in any civil or criminal proceeding, from contacting the protected party for a legitimate purpose within the scope of the civil or criminal proceeding. The attorney, or person acting on such attorney's behalf, shall be identified in any such contact.
- (d) As used in this section, "order" includes any order issued by a municipal or district court.

KAN. STAT. ANN. § 60-31A04 (WEST 2023). COMMENCEMENT OF PROCEEDINGS; PERSONS SEEKING RELIEF ON BEHALF OF MINOR; FORMS; NO DOCKET FEE; CONFIDENTIALITY EXCEPTIONS

- (a) A person may seek relief under the protection from stalking, sexual assault or human trafficking act by filing a verified petition with any judge of the district court or clerk of the court. A verified petition must allege facts sufficient to show the following:
- (1) The name of the stalking victim, sexual assault victim or human trafficking victim;
- (2) the name of the defendant;
- (3) the dates on which the alleged stalking, sexual assault or human trafficking behavior occurred; and
- (4) the acts committed by the defendant that are alleged to constitute stalking, sexual assault or human trafficking.
- (b) The following persons may seek relief under the protection from stalking, sexual assault or human trafficking act on behalf of a minor child by filing a verified petition with the judge of the district court or with the clerk of the court in the county where the stalking, sexual assault or human trafficking occurred: (1) A parent of the minor child; (2) an adult residing with the minor child; or (3) the child's court-appointed legal custodian or court-appointed legal guardian.

- (c) The following persons may seek relief for a minor child who is alleged to be a human trafficking victim under the protection from stalking, sexual assault or human trafficking act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging acts committed by an individual that are alleged to constitute human trafficking: (1) A parent of the minor child; (2) an adult residing with the minor child; (3) the child's court-appointed legal custodian or court-appointed legal guardian; (4) a county or district attorney; or (5) the attorney general.
- (d) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.
- (e) Service of process served under this section shall be by personal service. No docket fee shall be required for proceedings under the protection from stalking, sexual assault or human trafficking act.
- (f) The victim's address and telephone number shall not be disclosed to the defendant or to the public, but only to authorized court or law enforcement personnel and to the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

Relevant Case Law

***State v. Kendall*, 331 P.3d 763 (Kan. 2014)**

The defendant was convicted of stalking and violating a protective order and appealed. The Court of Appeals reversed the defendant's conviction for stalking holding that the State failed to prove that the defendant had committed an "act of communication" as proscribed by the stalking statute. The State petitioned for review to determine if the Court of Appeals erred in its interpretation of "act of communication." The Supreme Court of Kansas noted that "act of communication," as required element of crime of stalking, required showing that perpetrator transmitted communication to victim and must be more than mere attempt at communication with victim, but rather act required perpetrator to send communication that was received by victim. Evidence presented at bench trial was sufficient to establish that defendant committed act of communication against victim, as required to find defendant guilty of stalking; victim testified that she determined that calls she was receiving on her cellular phone from state prison were from defendant, record showed that defendant called victim's cell phone on date which charges arose, and victim stated that she was scared when she realized calls were from defendant.

***State v. Dunn*, 375 P.3d 332 (Kan. 2016)**

Defendant was convicted of stalking and appealed, arguing in part that the State did not prove that the victim feared for her safety or that the fear was reasonable. Evidence was presented at trial the defendant and victim were in an on-again, off-again intimate relationship that that defendant and victim had an encounter at a bank after victim got a protective order against defendant. A witness described the victim, after seeing defendant at bank, as "real nervous and afraid, scared, upset,"

heard the victim describe the defendant's appearance at the bank as harassment, testified that the defendant, with a “real mad” look, got right into her face, testified that the defendant positioned himself between the victim's car and its door, which prevented her from leaving, the witness heard the victim tell the defendant to leave her alone, the witness was concerned for victim's safety, and victim testified that she was afraid on the day of her confrontation with the defendant at the bank. The Supreme Court of Kansas considered all of this evidence and held that evidence was sufficient to prove that the victim feared for her safety and that that fear was reasonable; it was irrelevant that the victim and the defendant later reconciled.

***State v. Loganbill*, 518 P.3d 437 (Kan. Ct. App. 2022)**

Defendant, a teacher, was convicted of reckless stalking for showing favoritism toward one of his students and secretly photographing and filming her buttocks. The principal and a safety officer confronted the defendant, who admitted to his actions. The police found multiple photos and videos of the victim’s buttocks on the defendant’s devices, after which he was charged. On appeal, defendant argued in part that the fear requirement in Kan. Stat. § 21-5427(a)(1) required the victim to fear for their safety or the safety of their family members while the accused actively engages in the stalking behavior. The court disagreed, finding that legislative intent and plain meaning indicate that a stalking victim may fear for their safety or that of a family member during or after the accused has engaged in a course of conduct proving stalking.

Stalking, Harassment, & Related Offenses: Kentucky

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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KENTUCKY

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>A pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity not included. See Ky. Rev. Stat. § 508.130(b)(2).</p> <p><i>See also Jones v. Jones</i>, 617 S.W.3d 418 (Ky. Ct. App) (finding that the stalking statute does not require a specific length of time between acts for them to constitute a “course of conduct.”).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>Threat can be explicit or implicit and must be threat made with intent to place person in fear of sexual contact, serious bodily injury, or death. See Ky. Rev. Stat. §§ 508.140, 508.150.</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>Must intentionally engage in course of conduct and must intend to cause reasonable fear of sexual contact, serious bodily injury, or death. See Ky. Rev. Stat. §§ 508.130, 508.140, 508.150.</p>
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	<p>The statute does not make any explicit mention of conduct toward persons other than the victim; however, courts have considered threats against family friends as probative of implicit threats against victim. See <i>Heil v. Com</i>, No. 2007-SC-000162-MR, WL 2167953 at *7 (Ky. May 22, 2008).</p>

<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Conduct must “seriously alarm, annoy, intimidate, or harasses the person.” Ky. Rev. Stat. § 508.130(1)(a)(2).</p> <p>Offender must intend to place the victim in reasonable fear of sexual contact, serious bodily injury, or death. See Ky. Rev. Stat. § 508.140, 508.150; however, there is no indication that actual fear is required.</p>
<p>Does fear include emotional distress?</p>	<p>The offender's conduct must be of the nature that it would cause “substantial mental distress.” Ky. Rev. Stat. § 508.130(1)(b).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both subjective (victim must be seriously alarmed, annoyed, intimidated, or harassed) and objective (course of conduct would cause a reasonable person to suffer substantial emotional distress. See Ky. Rev. Stat. § 508.130(1); see also <i>Heil v. Com</i>, No. 2007-SC-000162-MR, WL 2167953 at *7 (Ky. May 22, 2008)(interpreting statute to require both actual and reasonable distress).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is highly fact-dependent.</p> <p><i>See, e.g., Jones v. Jones</i>, 617 S.W.3d 418 (Ky. Ct. App) (finding a reasonable fear of sexual contact and reasonable substantial mental distress where offender repeatedly sent victim text messages, including one stating he was going to have sexual intercourse with her, went to victim's home uninvited and armed, told her he would “do it for her” if she did not have sexual intercourse with him, made additional comments of a sexual nature, and then grabbed her and attempted to pull her into a bedroom).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</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 included in regular stalking statutes – see Ky. Rev. Stat. Ann. § 508.130(b)(2)(“One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device.”).</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>There is no residency requirement. A person can be charged with stalking if “either the conduct or the result which is an element of the offense occurs within this state.” Ky. Rev. Stat. § 500.060 (1)(a).</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 in the First Degree is a Class D Felony under Ky. Rev. Stat. § 508.140. Stalking in the Second Degree is a Class A Misdemeanor under Ky. Rev. Stat. § 508.150.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is enhanced to stalking in the first degree if:</p> <ul style="list-style-type: none"> - A protective order has been issued protect the same victim and the defendant has been served with the summons or order or has been given actual notice; - A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; - The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims;

	<p>- The act or acts were committed while the defendant had a deadly weapon on or about his person. Ky. Rev. Stat. § 508.140.</p>
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Statutes

KY. REV. STAT. ANN. § 508.130 (WEST 2023). DEFINITIONS FOR KRS 508.130 TO 508.150

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

(1) (a) To “stalk” means to engage in an intentional course of conduct:

1. Directed at a specific person or persons;
2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
3. Which serves no legitimate purpose.

(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

(2) “Course of conduct” means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of “course of conduct.” If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.

(3) “Protective order” means:

- (a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;
- (b) A foreign protective order, as defined in KRS 403.720 and 456.010;
- (c) An order issued under KRS 431.064;
- (d) A restraining order issued in accordance with KRS 508.155;

- (e) An order of protection as defined in KRS 403.720 and 456.010; and
- (f) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

KY. REV. STAT. ANN. § 508.140 (WEST 2023). STALKING IN THE FIRST DEGREE

(1) A person is guilty of stalking in the first degree,

(a) When he intentionally:

- 1. Stalks another person; and
- 2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
 - a. Sexual contact as defined in KRS 510.010;
 - b. Serious physical injury; or
 - c. Death; and

(b) 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or

- 1. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
- 2. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or
- 3. The act or acts were committed while the defendant had a deadly weapon on or about his person.

(2) Stalking in the first degree is a Class D felony.

KY. REV. STAT. ANN. § 508.150 (WEST 2023). STALKING IN THE SECOND DEGREE

(1) A person is guilty of stalking in the second degree when he intentionally:

(a) Stalks another person; and

(b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:

1. Sexual contact as defined in KRS 510.010;
2. Physical injury; or
3. Death.

(2) Stalking in the second degree is a Class A misdemeanor.

KY. REV. STAT. ANN. § 508.155 (WEST 2023). RESTRAINING ORDER OR INTERPERSONAL PROTECTIVE ORDER TO BE ISSUED UPON VIOLATION OF KRS 508.140 OR 508.150

(1) (a) Before January 1, 2016, a verdict of guilty or a plea of guilty to KRS 508.140 or 508.150 shall operate as an application for a restraining order utilizing the provisions of this section and limiting the contact of the defendant and the victim who was stalked, unless the victim requests otherwise.

(b) Beginning January 1, 2016, a verdict of guilty or a plea of guilty to KRS 508.140 or 508.150 shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:

1. An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
2. The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and
3. The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.

(2) The court shall give the defendant notice of his or her right to request a hearing on the application for a restraining order. If the defendant waives his or her right to a hearing on this matter, then the court may issue the restraining order without a hearing.

(3) If the defendant requests a hearing, it shall be held at the time of the verdict or plea of guilty, unless the victim or defendant requests otherwise. The hearing shall be held in the court where the verdict or plea of guilty was entered.

(4) A restraining order may grant the following specific relief:

- (b) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim; or
- (c) 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 serious alarm, annoyance, intimidation, or harassment, including but not limited to personal, written, telephonic, or any other form of written or electronic communication or contact with the victim. An order issued pursuant to this subsection relating to a school, place of business, or similar nonresidential location shall be sufficiently limited to protect the stalking victim but shall also protect the defendant's right to employment, education, or the right to do legitimate business with the employer of a stalking victim as long as the defendant does not have contact with the stalking victim. The provisions of this subsection shall not apply to a contact by an attorney regarding a legal matter.
- (5) A restraining order issued pursuant to this section shall be valid for a period of not more than ten (10) years, the specific duration of which shall be determined by the court. Any restraining order shall be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim, his or her immediate family, or both.
- (6) Unless the defendant has been convicted of a felony, or is otherwise ineligible to purchase or possess a firearm under federal law, a restraining order issued pursuant to this section shall not operate as a ban on the purchase or possession of firearms or ammunition by the defendant.
- (7) The restraining order shall be issued on a form prescribed by the Administrative Office of the Courts and may be lifted upon application of the stalking victim to the court which granted the order.
- (8) Within twenty-four (24) hours of entry of a restraining order or entry of an order rescinding a restraining order, the circuit clerk shall forward a copy of the order to the Law Information Network of Kentucky (LINK).
- (9) A restraining order issued under this section shall be enforced in any county of the Commonwealth. Law enforcement officers acting in good faith in enforcing a restraining order shall be immune from criminal and civil liability.
- (10) A violation by the defendant of an order issued pursuant to this section shall be a Class A misdemeanor. Nothing in this section shall preclude the filing of a criminal complaint for stalking based on the same act which is the basis for the violation of the restraining order.

KY. REV. STAT. ANN. § 525.070 (WEST 2023). HARASSMENT

*** Section (1)(c) held unconstitutional by *Musselman v. Com.*, 705 S.W.2d 476 (Ky. 1986) ***

- (1) A person is guilty of harassment when, with intent to intimidate, harass, annoy, or alarm another person, he or she:
- (a) Strikes, shoves, kicks, or otherwise subjects him to physical contact;
 - (b) Attempts or threatens to strike, shove, kick, or otherwise subject the person to physical contact;
 - (c) In a public place, makes an offensively coarse utterance, gesture, or display, or addresses abusive language to any person present;
 - (d) Follows a person in or about a public place or places;
 - (e) Engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose; or
 - (f) Being enrolled as a student in a local school district, and while on school premises, on school-sponsored transportation, or at a school-sponsored event:
 - 1. Damages or commits a theft of the property of another student;
 - 2. Substantially disrupts the operation of the school; or
 - 3. Creates a hostile environment by means of any gestures, written communications, oral statements, or physical acts that a reasonable person under the circumstances should know would cause another student to suffer fear of physical harm, intimidation, humiliation, or embarrassment.
- (2) (a) Except as provided in paragraph (b) of this subsection, harassment is a violation.
- (b) Harassment, as defined in paragraph (a) of subsection (1) of this section, is a Class B misdemeanor.

KY. REV. STAT. ANN. § 525.080 (WEST 2023). HARASSING COMMUNICATIONS

- (1) A person is guilty of harassing communications when, with intent to intimidate, harass, annoy, or alarm another person, he or she:
- (a) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of electronic or written communication in a manner which causes annoyance or alarm and serves no purpose of legitimate communication;

- (b) Makes a telephone call, whether or not conversation ensues, with no purpose of legitimate communication; or
- (c) Communicates, while enrolled as a student in a local school district, with or about another school student, anonymously or otherwise, by telephone, the Internet, telegraph, mail, or any other form of electronic or written communication in a manner which a reasonable person under the circumstances should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication.

(2) Harassing communications is a Class B misdemeanor.

Relevant Case Law

***Morgan v. Com*, 189 S.W.3d 99 (Ky. 2006) (overruled on other grounds)**

Defendant was convicted of second degree stalking and appealed, arguing in part that evidence was insufficient to support the conviction for second-degree stalking. Defendant argued specifically that there was not sufficient evidence to establish he engaged in a “course of conduct,” defined as two or more acts directed at the victim which seriously alarmed, annoyed, intimidated, or harassed her. Regarding the first of the defendant's two acts, the Supreme Court found that, while the defendant's entry into the victim's trailer was directed at the victim, the victim had absolutely no knowledge of the entry until later, and therefore, it cannot be reasonably argued that the victim suffered emotional distress.

***Heil v. Commonwealth*, No. 2007–SC–000162–MR., 2008 WL 2167953 (Ky. May 22, 2008)**

Defendant was convicted of first-degree stalking and appealed, arguing that “prior bad acts” evidence at trial was erroneously introduced. The stalking charge arose out of conduct in July 2005 and at trial, testimony was presented that the defendant had also begun sexually assaulting the victim’s daughter before the stalking incidents. Evidence of the defendant's violent outbursts and threats against his wife early in their marriage, between 1993-1996, was also presented. Defendant argued that he spied on and abused the victim’s daughter was irrelevant and should not have been admitted. The prosecution argued that the abuse evidence was relevant to prove the defendant's intent — *i.e.*, because defendant was desperate to prevent the discovery of his acts toward the victim’s daughter and thus desperate to maintain control over his family, which led him to purposefully engage in a course of conduct to frighten the victim to stay with him. The Supreme Court agreed that the abuse evidence) was relevant to the defendant's state of mind, but was more prejudicial than probative. Defendant also argued that prior threats against victim and her daughter should be inadmissible, arguing that some of these threats occurred long before the summer of 2005, but the court noted that the “temporal remoteness of an alleged prior bad act bears more heavily on weight than on admissibility.” The Court here stated that the trial court was reasonable to conclude that the incidents from the 1990s contributed significantly to an accurate understanding of the events in the summer of 2005.

***Calhoun v. Wood*, 516 S.W.3d 357 (Ky. Ct. App. 2017)**

Respondent appeals the issuance an interpersonal protective order against him, arguing that there was insufficient evidence to prove that the respondent stalked the petitioner. The Court of Appeals affirmed the issuance of the protective order, holding that evidence supported finding that respondent stalked petitioner, who had rejected respondent's requests to pursue a romantic relationship with him. The petitioner alleged respondent had walked into her apartment unannounced and drilled a hole in her tire so that she could not go to work. The petitioner also told the respondent multiple times to leave her alone and stop contacting her, but he persisted in doing so. Further, the petitioner's landlord had surveillance video of the apartment complex showing respondent's vehicle repeatedly driving around.

***Jones v. Jones*, 2021 WL 68316 (Ky. Ct. App. 2021)**

Brother-in-law of widow appealed from a court order issuing an interpersonal protective order (IPO) against brother-in-law in favor of widow. Brother-in-law argued in part that evidence was insufficient to prove that he "stalked" the widow. Brother-in-law first argued that his actions did not constitute a "course of conduct." The court found that brother-in-law repeatedly sending widow text messages, including one stating he was going to have sexual intercourse with her, brother-in-law went to widow's home uninvited and armed, told her he would "do it for her" if she did not have sexual intercourse with him, made additional comments of a sexual nature, and then grabbed her and attempted to pull her into a bedroom. Although these acts occurred over two days, the Court of Appeals found that the statute does not require a specific length of time between acts for them to constitute a "course of conduct." The Court of Appeals also found that brother-in-law's conduct was explicitly threatening, and it would undoubtedly put a person in reasonable fear of sexual contact, as well as cause a reasonable person substantial mental distress.

Stalking, Harassment, & Related Offenses: Louisiana

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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LOUISIANA

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>Pattern of conduct means a series of acts over a period of time, however short, evidencing an intent to inflict a continuity of emotional distress upon the person. Constitutionally protected activity is not included within the meaning of pattern of conduct. La. Stat. § 40.2 (A)(2).</p> <p>When the victim is 12 years old or younger, pattern of conduct includes repeated acts of nonconsensual contact involving the victim or a family member. La. Stat. § 40.2 (D).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>Verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted. La. Rev. Stat. § 40.2 (A); <i>See also</i> Crim. Jury Instr. § 10:42 (stating that “in order to convict the defendant of stalking, you must find: [...] (2) that [victim] [was alarmed] [suffered emotional distress] [as a result of verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other criminal act to himself or any member of his family or any person with whom he is acquainted]”).</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>Offender must intend to follow or harass. La. Stat. § 40.2 (A).</p> <p>The offender does not need to intend to place the victim in fear. <i>See State v. Terrio</i>, NO. 19-K-90, 2019 WL 1285288 (La. Ct. App. Mar. 20, 2019) (“Through the deletion of the phrase, ‘with the intent to place that person in fear of death or bodily injury,’ ... we find that stalking is a general intent crime that requires only that defendant have the general intent to repeatedly follow or harass the victim in a manner that would cause a</p>

	reasonable person to feel alarmed or to suffer emotional distress.’”).
Do offender actions toward persons <i>other than the victim</i> help establish course of conduct?	Yes, stalking includes threats to the victim’s family or members or acquaintances. La. Stat. § 40.2(A). <i>See also State v. Cartwright</i> , 252 So. 3d 1045 (La. Ct. App. 2018) (Conviction upheld where defendant disseminated false information <i>about</i> the victim to multiple community members and this was considered course of conduct/ repeated harassment).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear is not a requirement but is an aggravating factor for an enhanced sentence if the defendant placed victim in reasonable fear of bodily injury or death. La. Stat. § 40.2 (2)(a). For general stalking, only need to prove that a reasonable person would feel alarmed or suffer emotional distress. La. Stat. § 40.2 (A).
Does fear include emotional distress?	Yes, “stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. member of his family or any person with whom he is acquainted.” La. Stat. § 40.2 (A).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. La. Stat. § 40.2 (A).
If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)	What constitutes reasonable fear is case specific. <i>State v. Cartwright</i> , 252 So. 3d 1045 (La. Ct. App. 2018) (defendant disseminating false statements about victim to multiple people in the community and threatening victim would cause a reasonable

	<p>person to feel alarmed or suffer emotional distress).</p> <p><i>State v. Zeitoun</i>, 231 So. 3d 934 (La. App. Ct. 2017) (holding that victim’s fear was reasonable fear when offender threatened to kill victim, attacked victim, and frequently violated protective order).</p> <p>Courts have also looked at the prior history between the defendant and the victim to determine if the fear was reasonable. <i>In State v. DeBarge</i>, 210 So. 3d 377 (La. Ct. App. 2016), the state proved reasonable fear beyond a reasonable doubt where the victim testified that there was “lot of physical abuse” during her marriage with the defendant, the defendant followed her and would frequently text her to let her know he was watching her, and the defendant entered her yard and dumped garbage throughout the yard while she and her son were inside the residence sleeping.</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. Stalking by harassing includes sending messages via a third party. La. Stat. § 40.2 (C)(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 cyberstalking statute. La. Stat. § 40.3.</p> <p>Technology-facilitated stalking is also covered under the regular stalking statute which includes transmitting electronic mail under the harassment definition. La. Stat. § 40.2 (C)(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. There is no published case law that addresses this and the statutory law is silent.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>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)</p>	<p>Crimes are not graded but penalties increase under certain circumstances. La. Stat. § 40.2 (B).</p> <ul style="list-style-type: none"> - Regular stalking is punishable by a \$500 to \$1000 fine and 3 months to 1 year imprisonment; - Stalking of a victim who is protected by a court order is punishable by 90 days to 2 years imprisonment and/or up to \$5000 fine; - Offender 13 years or older who stalks a victim who is 12 years or younger and who causing victim to be in fear of death or bodily injury with or without the use of a weapon is punishable by 1 to 3 years imprisonment (with or without hard labor), and/or up to \$1500 to \$5000 fine - Stalking of a victim under the age of 18 is punishable by up to 3 years imprisonment (with or without hard labor) and/or up to \$2000 fine; - Stalking and causing victim to be in fear of death or bodily injury with or without the use of a weapon is punishable by 1 to 5 years imprisonment (with or without hard labor), without option for parole, probation, or suspended sentence, and/or up to \$1000 fine; - Stalking of a victim under the age of 18 and causing victim to be in fear of death or bodily injury with or without the use of a weapon is punishable by 2 to 5 years imprisonment (with or without hard labor), without option for parole, probation, or suspended sentence, and/or up to \$1000 fine; - Second stalking conviction within 7 years is punishable by 5 to 20 years imprisonment (with or without hard labor), without option for

	<p>parole, probation, or suspended sentence, and/or up to \$5000 fine;</p> <ul style="list-style-type: none"> - Third or subsequent stalking conviction is punishable by 10 to 40 years imprisonment (with or without hard labor), and/or up to \$5000 fine.
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>See above</p>

Statutes

LA. STAT. ANN. § 40.2 (2023). STALKING

- A. Stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.
- B. (1) (a) Notwithstanding any law to the contrary, on first conviction, whoever commits the crime of stalking shall be fined not less than five hundred dollars nor more than one thousand dollars and shall be imprisoned for not less than thirty days nor more than one year. Notwithstanding any other sentencing provisions, any person convicted of stalking shall undergo a psychiatric evaluation. Imposition of the sentence shall not be suspended unless the offender is placed on probation and participates in a court-approved counseling which could include but shall not be limited to anger management, abusive behavior intervention groups, or any other type of counseling deemed appropriate by the courts.
 - (b) Whoever commits the crime of stalking against a victim under the age of eighteen when the provisions of Paragraph (6) of this Subsection are not applicable shall be imprisoned for not more than three years, with or without hard labor, and fined not more than two thousand dollars, or both.
- (2) (a) Any person who commits the offense of stalking and who is found by the trier of fact, whether the jury at a jury trial, the judge in a bench trial, or the judge at a sentencing hearing following a jury trial, beyond a reasonable doubt to have placed the victim of the stalking in fear of death or bodily injury by the actual use of or the defendant's having in his possession during the instances which make up the crime of stalking a dangerous

weapon or is found beyond a reasonable doubt to have placed the victim in reasonable fear of death or bodily injury, shall be imprisoned for not less than one year nor more than five years, with or without hard labor, without benefit of probation, parole, or suspension of sentence and may be fined one thousand dollars, or both. Whether or not the defendant's use of or his possession of the dangerous weapon is a crime or, if a crime, whether or not he is charged for that offense separately or in addition to the crime of stalking shall have no bearing or relevance as to the enhanced sentence under the provisions of this Paragraph.

- (b) If the victim is under the age of eighteen, and when the provisions of Paragraph (6) of this Subsection are not applicable, the offender shall be imprisoned for not less than two years nor more than five years, with or without hard labor, without benefit of probation, parole, or suspension of sentence and may be fined not less than one thousand nor more than two thousand dollars, or both.
- (3) Any person who commits the offense of stalking against a person for whose benefit a protective order, a temporary restraining order, or any lawful order prohibiting contact with the victim issued by a judge or magistrate is in effect in either a civil or criminal proceeding, protecting the victim of the stalking from acts by the offender which otherwise constitute the crime of stalking, shall be punished by imprisonment with or without hard labor for not less than ninety days and not more than two years or fined not more than five thousand dollars, or both.
- (4) Upon a second conviction occurring within seven years of a prior conviction for stalking, the offender shall be imprisoned with or without hard labor for not less than five years nor more than twenty years, without benefit of probation, parole, or suspension of sentence, and may be fined not more than five thousand dollars, or both.
- (5) Upon a third or subsequent conviction, the offender shall be imprisoned with or without hard labor for not less than ten years and not more than forty years and may be fined not more than five thousand dollars, or both.
- (6) (a) Any person thirteen years of age or older who commits the crime of stalking against a child twelve years of age or younger and who is found by the trier of fact, whether the jury at a jury trial, the judge in a bench trial, or the judge at a sentencing hearing following a jury trial, beyond a reasonable doubt to have placed the child in reasonable fear of death or bodily injury, or in reasonable fear of the death or bodily injury of a family member of the child shall be punished by imprisonment with or without hard labor for not less than one year and not more than three years and fined not less than fifteen hundred dollars and not more than five thousand dollars, or both.
 - (b) Lack of knowledge of the child's age shall not be a defense.

C. For the purposes of this Section, the following words shall have the following meanings:

- (1) "Harassing" means the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures.
- (2) "Pattern of conduct" means a series of acts over a period of time, however short, evidencing an intent to inflict a continuity of emotional distress upon the person. Constitutionally protected activity is not included within the meaning of pattern of conduct.
- (3) Repealed by Acts 1993, No. 125, § 2.

D. As used in this Section, when the victim of the stalking is a child twelve years old or younger:

- (1) "Pattern of conduct" includes repeated acts of nonconsensual contact involving the victim or a family member.
- (2) "Family member" includes:
 - (a) A child, parent, grandparent, sibling, uncle, aunt, nephew, or niece of the victim, whether related by blood, marriage, or adoption.
 - (b) A person who lives in the same household as the victim.
- (3) (a) "Nonconsensual contact" means any contact with a child twelve years old or younger that is initiated or continued without that child's consent, that is beyond the scope of the consent provided by that child, or that is in disregard of that child's expressed desire that the contact be avoided or discontinued.
 - (b) "Nonconsensual contact" includes:
 - (i) Following or appearing within the sight of that child.
 - (ii) Approaching or confronting that child in a public place or on private property.
 - (iii) Appearing at the residence of that child.
 - (iv) Entering onto or remaining on property occupied by that child.
 - (v) Contacting that child by telephone.
 - (vi) Sending mail or electronic communications to that child.
 - (vii) Placing an object on, or delivering an object to, property occupied by that child.

(c) “Nonconsensual contact” does not include any otherwise lawful act by a parent, tutor, caretaker, mandatory reporter, or other person having legal custody of the child as those terms are defined in the Louisiana Children's Code.

(4) “Victim” means the child who is the target of the stalking.

E. Whenever it is deemed appropriate for the protection of the victim, the court may send written notice to any employer of a person convicted for a violation of the provisions of this Section describing the conduct on which the conviction was based.

F. (1) (a) Upon motion of the district attorney or on the court's own motion, whenever it is deemed appropriate for the protection of the victim, the court may, in addition to any penalties imposed pursuant to the provisions of this Section, grant a protective order which directs the defendant to refrain from abusing, harassing, interfering with the victim or the employment of the victim, or being physically present within a certain distance of the victim.

(b) For any defendant placed on probation for a violation of the provisions of this Section, the court shall, in addition to any penalties imposed pursuant to the provisions of this Section, grant a protective order which directs the defendant to refrain from abusing, harassing, interfering with the victim or the employment of the victim, or being physically present within a certain distance of the victim.

(2) Any protective order granted pursuant to the provisions of this Subsection shall be served on the defendant at the time of sentencing.

(3) (a) The court shall order that the protective order be effective either for an indefinite period of time or for a fixed term which shall not exceed eighteen months.

(b) If the court grants the protective order for an indefinite period of time pursuant to Subparagraph (a) of this Paragraph, after a hearing, on the motion of any party and for good cause shown, the court may modify the indefinite effective period of the protective order to be effective for a fixed term, not to exceed eighteen months, or to terminate the effectiveness of the protective order. A motion to modify or terminate the effectiveness of the protective order may be granted only after a good faith effort has been made to provide reasonable notice of the hearing to the victim, the victim's designated agent, or the victim's counsel, and either of the following occur:

(i) The victim, the victim's designated agent, or the victim's counsel is present at the hearing or provides written waiver of such appearance.

(ii) After a good faith effort has been made to provide reasonable notice of the hearing, the victim could not be located.

- (4) (a) Immediately upon granting a protective order, the court shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2, shall sign such order, and shall forward it to the clerk of court for filing, without delay.
- (b) The clerk of the issuing court shall send a copy of the Uniform Abuse Prevention Order or any modification thereof to the chief law enforcement official of the parish where the victim resides. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer as provided in this Subparagraph until otherwise directed by the court.
- (c) The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order, or any modification thereof, to the Louisiana Protective Order Registry pursuant to R.S. 46:2136.2, by facsimile transmission, mail, or direct electronic input, where available, as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court.
- G. (1) Except as provided in Paragraph (2) of this Subsection, the provisions of this Section shall not apply to a private investigator licensed pursuant to the provisions of Chapter 56 of Title 37 of the Louisiana Revised Statutes of 1950, acting during the course and scope of his employment and performing his duties relative to the conducting of an investigation.
- (2) The exception provided in Paragraph (1) of this Subsection does not apply if both of the following conditions apply:
- (a) The private investigator was retained by a person who is charged with an offense involving sexual assault as defined by R.S. 46:2184 or who is subject to a temporary restraining order or protective order obtained by a victim of sexual assault pursuant to R.S. 46:2182 et seq.
- (b) The private investigator was retained for the purpose of harassing the victim.
- H. The provisions of this Section shall not apply to an investigator employed by an authorized insurer regulated pursuant to the provisions of Title 22 of the Louisiana Revised Statutes of 1950, acting during the course and scope of his employment and performing his duties relative to the conducting of an insurance investigation.
- I. The provisions of this Section shall not apply to an investigator employed by an authorized self-insurance group or entity regulated pursuant to the provisions of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, acting during the course and scope of his employment and performing his duties relative to the conducting of an insurance investigation.
- J. A conviction for stalking shall not be subject to expungement as provided for by Title XXXIV of the Code of Criminal Procedure

LA. STAT. ANN. § 40.3 (2023). CYBERSTALKING

A. For the purposes of this Section, the following words shall have the following meanings:

- (1) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.
- (2) “Electronic mail” means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

B. Cyberstalking is action of any person to accomplish any of the following:

- (1) Use in electronic mail or electronic communication of any words or language threatening to inflict bodily harm to any person or to such person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.
- (2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing any person.
- (3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to threaten, terrify, or harass.
- (4) Knowingly permit an electronic communication device under the person's control to be used for the taking of an action in Paragraph (1), (2), or (3) of this Subsection.

C. (1) Whoever commits the crime of cyberstalking shall be fined not more than two thousand dollars, or imprisoned for not more than one year, or both.

(2) Upon a second conviction occurring within seven years of the prior conviction for cyberstalking, the offender shall be imprisoned for not less than one hundred and eighty days and not more than three years, and may be fined not more than five thousand dollars, or both.

(3) Upon a third or subsequent conviction occurring within seven years of a prior conviction for stalking, the offender shall be imprisoned for not less than two years and not more than five years and may be fined not more than five thousand dollars, or both.

(4) Repealed by Acts 2020, No. 352, § 2.

- D. Any offense under this Section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received, or originally viewed by any person.
- E. This Section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others.

LA. STAT. ANN. § 14:40.7 (2023). CYBERBULLYING

- A. Cyberbullying is the transmission of any electronic textual, visual, written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen.
- B. For purposes of this Section:
 - (1) “Cable operator” means any person or group of persons who provides cable service over a cable system and directly, or through one or more affiliates, owns a significant interest in such cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
 - (2) “Electronic textual, visual, written, or oral communication” means any communication of any kind made through the use of a computer online service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or online messaging service.
 - (3) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.
 - (4) “Telecommunications service” means the offering of telecommunications for a fee directly to the public, regardless of the facilities used.
- C. An offense committed pursuant to the provisions of this Section may be deemed to have been committed where the communication was originally sent, originally received, or originally viewed by any person.
- D. (1) Except as provided in Paragraph (2) of this Subsection, whoever commits the crime of cyberbullying shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both.

(2) When the offender is under the age of eighteen, the disposition of the matter shall be governed exclusively by the provisions of Title VII of the Children's Code.

- E. The provisions of this Section shall not apply to a provider of an interactive computer service, provider of a telecommunications service, or a cable operator as defined by the provisions of this Section.
- F. The provisions of this Section shall not be construed to prohibit or restrict religious free speech pursuant to Article I, Section 8 of the Constitution of Louisiana.

LA. STAT. ANN. § 14:79 (2023). VIOLATION OF PROTECTIVE ORDERS

- A. (1)(a) Violation of protective orders is the willful disobedience of a preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 320 and 871.1 after a contradictory court hearing, or the willful disobedience of a temporary restraining order or any ex parte protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., criminal stay-away orders as provided for in Code of Criminal Procedure Article 320, Children's Code Article 1564 et seq., or Code of Civil Procedure Articles 3604 and 3607.1, if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by law.
 - (b) A defendant may also be deemed to have been properly served if tendered a certified copy of a temporary restraining order or ex parte protective order, or if tendered a faxed or electronic copy of a temporary restraining order or ex parte protective order received directly from the issuing magistrate, commissioner, hearing officer, judge or court, by any law enforcement officer who has been called to any scene where the named defendant is present. Such service of a previously issued temporary restraining order or ex parte protective order if noted in the police report shall be deemed sufficient evidence of service of process and admissible in any civil or criminal proceedings. A law enforcement officer making service under this Subsection shall transmit proof of service to the judicial administrator's office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after making service, exclusive of weekends and holidays. This proof shall include, at a minimum, the case caption, docket number, type of order, serving agency and officer, and the date and time service was made.
- (2) Violation of protective orders shall also include the willful disobedience of an order of protection issued by a foreign state.
- (3) Violation of protective orders shall also include the willful disobedience of the following:

- (a) An order issued by any state, federal, parish, city, or municipal court judge, magistrate judge, commissioner or justice of the peace that a criminal defendant stay away from a specific person or persons as a condition of that defendant's release on bond.
 - (b) An order issued by any state, federal, parish, city, or municipal court judge, magistrate judge, commissioner or justice of the peace that a defendant convicted of a violation of any state, federal, parish, municipal, or city criminal offense stay away from any specific person as a condition of that defendant's release on probation.
 - (c) A condition of a parole release pursuant to R.S. 15:574.4.2(A)(5) or any other condition of parole which requires that the parolee stay away from any specific person.
 - (d) An order issued pursuant to R.S. 46:1846.
- (4) Violation of protective orders shall also include the possession of a firearm or carrying a concealed weapon in violation of R.S. 46:2136.3, the purchase or attempted purchase of a firearm, and the carrying of a concealed weapon in violation of R.S. 14:95.1, 95.1.3, or 95.10.
- B. (1) On a first conviction for violation of protective orders, except as provided in Subsection C of this Section, the offender shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.
- (2) On a second or subsequent conviction for violation of protective orders, except as provided in Subsection C of this Section, regardless of whether the current offense occurred before or after the earlier convictions, the offender shall be fined not more than one thousand dollars and imprisoned with or without hard labor for not less than fourteen days nor more than two years. At least fourteen days of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence. If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-monitored domestic abuse intervention program as defined by R.S. 14:35.3.
- C. (1) Except as provided in Paragraph (2) of this Subsection, whoever is convicted of the offense of violation of protective orders where the violation involves a battery or any crime of violence as defined by R.S. 14:2(B) against the person for whose benefit the protective order is in effect, or where the violation involves the offender going to the residence or household, school, or place of employment of the person for whose benefit the protective order is in effect while in possession of a firearm, shall be fined not more than one thousand dollars and imprisoned with or without hard labor for not less than three months nor more than two years. At least thirty days of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence. If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-monitored domestic abuse intervention program as defined by R.S. 14:35.3.

(2) Whoever is convicted of the offense of violation of protective orders where the violation involves a battery or any crime of violence as defined by R.S. 14:2(B) against the person for whose benefit the protective order is in effect, or where the violation involves the offender going to the residence or household, school, or place of employment of the person for whose benefit the protective order is in effect while in possession of a firearm, and who has a conviction of violating a protective order or of an assault or battery upon the person for whose benefit the protective order is in effect during the five-year period prior to commission of the instant offense, regardless of whether the instant offense occurred before or after the earlier convictions, the offender shall be fined not more than two thousand dollars and imprisoned with or without hard labor for not less than one year nor more than five years. At least one year of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence.

D. If, as part of any sentence imposed under this Section, a fine is imposed, the court may direct that the fine be paid for the support of the spouse or children of the offender.

E. (1) Law enforcement officers shall use every reasonable means, including but not limited to immediate arrest of the violator, to enforce a preliminary or permanent injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 320 and 871.1 after a contradictory court hearing, or to enforce a temporary restraining order or ex parte protective order issued pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Article 320 if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by law.

(2) Law enforcement officers shall at a minimum issue a summons to the person in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 320, and 871.1.

F. This Section shall not be construed to bar or limit the effect of any other criminal statute or civil remedy.

G. "Instant offense" as used in this Section means the offense which is before the court.

H. An offender ordered to participate in a court-monitored domestic abuse intervention program under the provision of this Section shall pay the cost incurred in participating in the program, unless the court determines that the offender is unable to pay. Failure to make payment under this Subsection shall subject the offender to revocation of probation.

LA. STAT. ANN. § 46:2171 (2023). STATEMENT OF PURPOSE

The legislature hereby finds and declares that there is a present and growing need to develop innovative strategies and services which will reduce and treat the trauma of stranger and acquaintance stalking. The nature of stalking allegations are sometimes not easily substantiated to meet the prosecution's burden of proving the case beyond a reasonable doubt, and victims of stalking are left without protection. Orders of protection are a proven deterrent that can protect victims of stalking from further victimization; however, many victims are forced to pursue civil orders of protection through ordinary process, often unrepresented, rather than through a shortened, summary proceeding. Additionally, victims of stalking are not always aware of the vast resources available to assist them in recovering from the trauma associated with being a victim of stalking. It is the intent of the legislature to provide a civil remedy for victims of stalking that will afford the victim immediate and easily accessible protection.

LA. STAT. ANN. § 46:2173 (2023). PROTECTION FROM STALKING

A victim of stalking by a perpetrator who is a stranger to or acquaintance of the victim shall be eligible to receive all services, benefits, and other forms of assistance provided by Chapter 28 of this Title, provided the services, benefits, and other forms of assistance are applicable based on the status of the relationship between the victim and perpetrator.

Relevant Case Law

***State v. DeBarge*, 210 So. 3d 377 (La. Ct. App. 2016)**

Defendant was convicted of stalking after sending hundreds of letters to his ex-wife and continuing to send letters after a protective order was issued. Defendant appealed, arguing there was insufficient evidence to prove that he placed the victim in reasonable fear of bodily injury or death to support his conviction under subsection (B)(2)(a). At trial, the victim testified that there was “lot of physical abuse” during her marriage with the defendant, the defendant followed her and would frequently text her to let her know he was watching her, and the defendant entered her yard and dumped garbage throughout the yard while she and her son were inside the residence sleeping. The victim also testified that the defendant’s behavior required her to seek a protective order for her and her son’s safety. Lastly, the victim’s current husband testified that the victim would said that if the defendant was released from jail, she believed he was going to kill her. The Court of Appeals affirmed the conviction and held that the state proved beyond a reasonable doubt that the victim was “in fear of death or bodily injury by his continued and actual use—and pattern of conduct and the harassment that had been part and parcel of the years leading up to the event.”

***State v. Cartwright*, 252 So. 3d 1045 (La. Ct. App. 2018)**

Defendant was convicted of his third offense of stalking and appealed, arguing that there was insufficient evidence to support his conviction and that the trial court erred in admitting his prior stalking convictions into evidence. Evidence presented that the defendant stated to multiple people

that the victim was going to kill him and that he was going to kill the victim in self-defense. The defendant also sent letters to the police accusing the victim of threatening others at gunpoint. The Court of Appeals found there was sufficient evidence to support the conviction: dissemination throughout the town of his intention to arm himself with a shotgun against the victim and false statements about the victim to the police constituted repeated harassment. Further, defendant's prior stalking convictions were essential elements of the charge of stalking (third offense) even with the defense's stipulation to the prior convictions, there was binding precedent that the state could still introduce evidence of the convictions. *See State v. Ball*, 756 So. 2d 275 (La. 1999). Therefore, the conviction was affirmed.

***State v. Smith*, 237 So.3d 29 (La. Ct. App. 2018)**

Defendant was convicted of stalking a person under a protective order and multiple counts of violating a protective order and appealed arguing, *inter alia*, that there was insufficient evidence to support his stalking conviction and the trial court erred in admitting evidence of similar crimes, wrongs, or acts in domestic abuse cases. At trial, the victim testified that the defendant hit her and threatened to kill her, blocked her car in so she could not leave, went to her mother's house and made threats to kill the victim and the victim's friend, damaged the victim's friend's car, followed her to her patient's houses and harassed her, attempted to break into her home. The Court of Appeals affirmed the stalking conviction and found there was sufficient evidence that the defendant repeatedly followed and harassed the victim. As a result of the defendant's conduct, the victim had to change jobs, evacuate her home, and install security cameras. Further, the Court of Appeals held that the trial court did not err in admitting evidence of prior acts because the defendant's violation of a protective order by repeatedly harassing the victim, her friend, and other members of her family resulted in the fifteen counts of violation of a protective order. Thus, the previous domestic battery and resulting protective order form part of the *res gestae* of the offenses of violation of a protective order.

Stalking, Harassment, & Related Offenses: Maine

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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MAINE

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct means 2 or more acts and includes directly or indirectly following, monitoring, tracking, observing, surveilling, threatening, harassing, or communicating to or about a person or interfering with a person's property. Me. Rev. Stat. tit. 17-A, § 210-A (2)(A).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required, but can be considered part of a course of conduct and can be implied by conduct. Me. Rev. Stat. tit. 17-A, § 210-A (2)(A). Harassment statute defines threat as threat of physical force directed against any person, family or business that are made with the intention of causing fear. Me. Rev. Stat. tit. 5, § 4651 (2)(A).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Intentionally or knowingly engaging in a course of conduct. Me. Rev. Stat. tit. 17-A, § 210-A (1)(A).
Do offender actions toward persons other than the victim help establish course of conduct?	Yes, a person is guilty of stalking if engages in course of conduct "directed at or concerning a specific person" that would cause a reasonable person to fear bodily injury or death of someone of close relation. Me. Rev. Stat. tit. 17-A, §§ 210-A (1)(A)(2),(4). Further, a domestic violence stalking conviction upheld where defendant repeatedly called the victim, accusing her of cheating on him and making threats toward her parents and pet, including a threat to

	kill her father. <i>State v. Gagne</i> , 159 A.3d 316, 319 (Me. 2017).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear of bodily injury or death to oneself or a close relation; fear of injury or death to one's animal; or to fear of damage, destruction, or tampering with one's property. Causing a reasonable person to suffer serious inconvenience or emotional distress is included. Me. Rev. Stat. tit. 17-A, § 210-A (1)(A).
Does fear include emotional distress?	Yes, and emotional distress is defined as "mental or emotional suffering of the person being stalked as evidenced by anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of emotional distress or a mental health diagnosis." Me. Rev. Stat. tit. 17-A, § 210-A (2)(D).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard (the statute used to require both but this subjective standard was deleted when the statute was amended in 2008). Me. Rev. Stat. tit. 17-A, § 210-A (1)(A); S.P. 681, 123 rd Leg., 1 st Spec. Sess. (Me. 2008).
If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)	What constitutes reasonable fear is case specific. <i>Childs v. Ballou</i> , 148 A.3d 291, 299 (Me. 2016) (Reasonable to fear bodily injury or suffer emotional distress found when offender sent multiple emails, violated a protective order, and sent law enforcement to conduct "welfare checks."). <i>See also State v. Elliott</i> , 987 A.2d 513, 518 (Me. 2010) (state proved that the defendant's course of conduct or following

	<p>the victim, parking and watching her outside her place of work and home would also cause a reasonable person to suffer intimidation or serious inconvenience, annoyance or alarm).</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, per case law. <i>See Childs v. Ballou</i>, 148 A.3d 291, 299 (Me. 2016) (“Ballou also began repeatedly requesting that law enforcement officers conduct ‘well-being checks’ regarding the child at Childs’s home. In September 2014, Ballou was informed by the Sheriff's Office that it would no longer conduct such checks because Ballou was ‘looking for Law Enforcement to violate his protection order by reporting back on his child, ex-wife’s home and her actions....The court also specifically found that he had used law enforcement to intrude into Childs’s home and stalk her.’”)</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. Me. Rev. Stat. tit. 17-A, § 210-A (2)(A).</p> <p>Other statutes criminalize similar conduct such as electronic harassment. <i>See</i> Me. Rev. Stat. tit. 17, § 506.</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. There is no published case law that addresses this and the statutory law is silent.</p>

<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>Gradation of crimes (<i>list out statutes in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)</p>	<p>Stalking is either a Class B, Class C, or Class D crime. Me. Rev. Stat. Ann. tit. 17-A, § 210-A (1)(C)-(E)</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Regular stalking is a Class D crime;</p> <p>Stalking becomes a Class C crime if the offender: Has one or more prior stalking convictions in Maine or another jurisdiction; Stalks 2 or more victims from an identifiable group.</p> <p>Stalking becomes a Class B crime if the offender has one or more prior stalking convictions in Maine or another jurisdiction and at least one of the prior convictions was for stalking 2 or more victims from an identifiable group.</p> <p>Me. Rev. Stat. Ann. tit. 17-A, § 210-A (1)(C)-(E)</p>

Statutes

ME. REV. STAT. ANN. TIT. 5, § 4651 (WEST 2023). DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Court. "Court" means any District Court and, with regard to section 4659, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.
2. Harassment. "Harassment" means:

- A. Three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to personal property and that do in fact cause fear, intimidation or damage to personal property; or
 - B. Repealed. Laws 2011, c. 559, § C-2.
 - C. A single act or course of conduct constituting a violation of section 4681; Title 17, section 2931; or Title 17-A, section 201, 202, 203, 204, 207, 208, 209, 210, 210-A, 211, 253, 254, 255-A, 256, 258, 259-A, 259-B, 260, 261, 282, 283, 301, 302, 303, 506, 506-A, 511, 511-A, 556, 802, 805, 806, 852 or 853.
 - D. This definition does not include any act protected by law.
- 3. Law enforcement agency. “Law enforcement agency” means the State Police, a sheriff's department or a municipal police department.
 - 4. Business. “Business” means any corporation, partnership, limited liability corporation, professional corporation or any other legal business entity recognized under the laws of the State.

ME. REV. STAT. ANN. TIT. 17-A, § 210-A (WEST 2023). STALKING

- 1. A person is guilty of stalking if:
 - A. The actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person:
 - (1) To suffer serious inconvenience or emotional distress;
 - (2) To fear bodily injury or to fear bodily injury to a close relation;
 - (3) To fear death or to fear the death of a close relation;
 - (4) To fear damage or destruction to or tampering with property; or
 - (5) To fear injury to or the death of an animal owned by or in the possession and control of that specific person.

Violation of this paragraph is a Class D crime;

- B. Deleted. Laws 2001, c. 383, § 12, eff. Jan. 31, 2003.

- C. The actor violates paragraph A and has one or more prior convictions in this State or another jurisdiction. Notwithstanding section 2, subsection 3-B, as used in this paragraph, “another jurisdiction” also includes any Indian tribe.

Violation of this paragraph is a Class C crime. In determining the sentence for a violation of this paragraph the court shall impose a sentencing alternative pursuant to section 1502, subsection 2 that includes a term of imprisonment. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least one year.

For the purposes of this paragraph, “prior conviction” means a conviction for a violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19, section 769; Title 19-A, section 4011; Title 22, section 4036 or Title 19-A, section 4113; Title 22, section 4036; any other temporary, emergency, interim or final protective order; an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe; or a court-approved consent agreement. Section 9-A governs the use of prior convictions when determining a sentence;

- D. The actor violates paragraph A and the course of conduct is directed at or concerning 2 or more specific persons that are members of an identifiable group.

Violation of this paragraph is a Class C crime; or

- E. The actor violates paragraph C and at least one prior conviction was for a violation of paragraph D.

Violation of this paragraph is a Class B crime. In determining the sentence for a violation of this paragraph the court shall impose a sentencing alternative pursuant to section 1502, subsection 2 that includes a term of imprisonment. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least 2 years.

2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. “Course of conduct” means 2 or more acts, including but not limited to acts in which the actor, by any action, method, device or means, directly or indirectly follows, monitors, tracks, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property. “Course of conduct” also includes, but is not limited to, threats implied by conduct and gaining unauthorized access to personal, medical, financial or other identifying or confidential information.
- B. “Close relation” means a current or former spouse or domestic partner, parent, child, sibling, stepchild, stepparent, grandparent, any person who regularly resides in the household or who

within the prior 6 months regularly resided in the household or any person with a significant personal or professional relationship.

- C. Deleted. Laws 2007, c. 685, § 1.
- D. “Emotional distress” means mental or emotional suffering of the person being stalked as evidenced by anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of emotional distress or a mental health diagnosis.
- E. “Serious inconvenience” means that a person significantly modifies that person's actions or routines in an attempt to avoid the actor or because of the actor's course of conduct. “Serious inconvenience” includes, but is not limited to, changing a phone number, changing an electronic mail address, moving from an established residence, changing daily routines, changing routes to and from work, changing employment or work schedule or losing time from work or a job.
- F. Repealed. Laws 2001, c. 383, § 13, eff. Jan. 31, 2003.

ME. REV. STAT. ANN. TIT. 17-A, § 210-B (WEST 2023). DOMESTIC VIOLENCE TERRORIZING

- 1. A person is guilty of domestic violence terrorizing if:
 - A. The person violates section 210 and the victim is a family or household member as defined in Title 19-A, section 4102, subsection 6. Violation of this paragraph is a Class D crime; or
 - B. The person violates paragraph A and at the time of the offense:
 - (1) Has one or more prior convictions for violating paragraph A or for violating section 207-A, 208-D, 208-E, 208-F, 209-A, 210-C or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 207-A, 208-D, 208-E, 208-F, 209-A, 210-C or 211-A in another jurisdiction;
 - (2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or Title 19-A, section 4113, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4113, subsection 1 in another jurisdiction;
 - (3) Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4102, subsection 6; or

- (4) Has one or more prior convictions for violating section 208, 208-B or 208-C, and the State had pled and proved that the victim of the applicable prior conviction was a family or household member, as defined in Title 19-A, section 4102, subsection 6, or has one or more prior convictions in another jurisdiction for engaging in conduct substantially similar to that contained in section 208, 208-B or 208-C and it had been pled and proved that the victim was a family or household member.

Violation of this paragraph is a Class C crime.

2. Section 9-A governs the use of prior convictions when determining a sentence.

ME. REV. STAT. ANN. TIT 17-A, § 210-C (WEST 2023). DOMESTIC VIOLENCE STALKING

1. A person is guilty of domestic violence stalking if:
 - A. The person violates section 210-A and the victim is a family or household member as defined in Title 19-A, section 4102, subsection 6. Violation of this paragraph is a Class D crime; or
 - B. The person violates paragraph A and at the time of the offense:
 - (1) Has one or more prior convictions for violating paragraph A or for violating section 207-A, 208-D, 208-E, 208-F, 209-A, 210-B or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 207-A, 208-D, 208-E, 208-F, 209-A, 210-B or 211-A in another jurisdiction;
 - (2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or Title 19-A, section 4113, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4113, subsection 1 in another jurisdiction;
 - (3) Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4102, subsection 6; or
 - (4) Has one or more prior convictions for violating section 208, 208-B or 208-C, and the State had pled and proved that the victim of the applicable prior conviction was a family or household member, as defined in Title 19-A, section 4102, subsection 6, or has one or more prior convictions in another jurisdiction for engaging in conduct substantially similar to that contained in section 208, 208-B or 208-C and it had been pled and proved that the victim was a family or household member.

Violation of this paragraph is a Class C crime.

2. Section 9-A governs the use of prior convictions when determining a sentence.

ME. REV. STAT. ANN. TIT. 17-A, § 435 (WEST 2023). ADDED JURISDICTION TO PROSECUTE

1. In addition to the State's having jurisdiction pursuant to section 7 to convict a person under section 432 or 433, the State has jurisdiction to convict a person under this chapter when that person is physically located outside of this State and the prohibited conduct:
 - A. Occurs outside of this State and the victim of the crime is a resident of this State at the time of the crime; and
 - B. Is sufficient under this section to constitute a crime in this State.
2. As used in this section, "resident" means a person who lives in this State either permanently or for an extended period. "Extended period" includes, but is not limited to, the period of time a student attends a school or college and the period of time a person serving in the Armed Forces of the United States is stationed in this State.

ME. REV. STAT. ANN. TIT. 17, § 506 (WEST 2023). HARASSMENT BY TELEPHONE OR BY ELECTRONIC COMMUNICATION DEVICE

1. A person is guilty of harassment by telephone or by electronic communication device if:
 - A. By means of telephone or electronic communication device the person makes any comment, request, suggestion or proposal that is, in fact, offensively coarse or obscene, without the consent of the person called or contacted. Violation of this paragraph is a Class E crime;
 - A-1. By means of telephone or electronic communication device the person, with the intent to cause affront or alarm or for the purpose of arousing or gratifying sexual desire, sends an image or video of a sexual act as defined in section 251, subsection 1, paragraph C or of the actor's or another person's genitals and:
 - (1) The person called or contacted is in fact under 14 years of age;
 - (2) The person called or contacted is in fact 14 or 15 years of age and the actor is at least 5 years older than the person called or contacted; or
 - (3) The person called or contacted suffers from a mental disability that is reasonably apparent or known to the actor.

Violation of this paragraph is a Class D crime;

A-2. By means of telephone or electronic communication device the person sends an image or a video of a sexual act as defined in section 251, subsection 1, paragraph C or of the actor's or another person's genitals without the consent of the person called or contacted after the person called or contacted has notified the actor, in writing or otherwise, that the person does not consent to receiving such images or videos. Violation of this paragraph is a Class E crime;

B. The person makes a telephone call or makes a call or contact by means of an electronic communication device, whether or not oral or written conversation ensues, without disclosing the person's identity and with the intent to annoy, abuse, threaten or harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime;

C. The person makes or causes the telephone or electronic communication device of another repeatedly or continuously to ring or activate or receive data, with the intent to harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime;

D. The person makes repeated telephone calls or repeated calls or contacts by means of an electronic communication device, during which oral or written conversation ensues, with the intent to harass any person at the called or contacted number or account. Violation of this paragraph is a Class E crime; or

E. The person knowingly permits any telephone or electronic communication device under the person's control to be used for any purpose prohibited by this section. Violation of this paragraph is a Class E crime.

2. The crime defined in this section may be prosecuted and punished in the county in which the defendant was located when the defendant used the telephone or electronic communication device, or in the county in which the telephone called or made to ring or the electronic communication device called or made to ring or be activated or receive data by the defendant was located.

2-A. As used in this section, "electronic communication device" means any electronic or digital product that communicates at a distance by electronic transmission impulses or by fiber optics, including any software capable of sending and receiving communication, allowing a person to electronically engage in the conduct prohibited under this section.

3. Deleted. Laws 2017, c. 397, § 1, eff. Aug. 1, 2018.

ME. REV. STAT. ANN. TIT 17-A, § 506-A (WEST 2023). HARASSMENT

1. A person is guilty of harassment if, without reasonable cause:

A. The person engages in any course of conduct with the intent to harass, torment or threaten another person:

(1) After having been notified, in writing or otherwise, not to engage in such conduct by:

(a) Any sheriff, deputy sheriff, constable, police officer or justice of the peace. The notification not to engage in such conduct expires one year from the date of issuance; or

(b) A court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007 or Title 19-A, section 4108 or 4110; or

(2) If the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees; or

(3) After having been notified, in writing or otherwise, while the person was a member of the National Guard, not to engage in such conduct by a commanding officer. A person violates this subparagraph regardless of whether the person is a member of the National Guard when the person engages in the conduct and regardless of where the conduct occurs. The notification not to engage in such conduct expires one year from the date of issuance.

Violation of this paragraph is a Class E crime; or

B. The person violates paragraph A and, at the time of the harassment, the person has 2 or more prior Maine convictions under this section in which the victim was the same person or a member of that victim's immediate family or for engaging in substantially similar conduct to that contained in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.

2. Repealed. Laws 2001, c. 383, § 67, eff. Jan. 31, 2003.

3. For the purposes of this section, “immediate family” means spouse, parent, child, sibling, stepchild and stepparent, “National Guard” has the same meaning as in Title 37-B, section 102, subsection 1 and “commanding officer” has the same meaning as in Title 37-B, section 402, subsection 4.

ME. REV. STAT. ANN. TIT. 17-A, § 506-B (WEST 2023). VIOLATION OF PROTECTIVE ORDER

1. Violation of a protection from harassment order issued under Title 5, section 4654 or 4655, subsection 1, paragraphs A to C-1, is a Class D crime as provided in Title 5, section 4659, subsection 1.

2. Violation of a protective order in crimes between family members issued under Title 15, section 321 is a Class D crime as provided in Title 15, section 321, subsection 6.
3. Violation of a protection from abuse order issued under Title 19-A, section 4108 or 4110, subsection 3, paragraphs A to G, is a Class D crime as provided in Title 19-A, section 4113, subsection 1 or a Class C crime as provided in Title 19-A, section 4113, subsection 4.

ME. REV. STAT. ANN. TIT. 17-A, § 511 (WEST 2023). VIOLATION OF PRIVACY

1. A person is guilty of violation of privacy if, except in the execution of a public duty or as authorized by law, that person intentionally:
 - A. Commits a civil trespass on property with the intent to overhear or observe any person in a private place;
 - B. Installs or uses in a private place without the consent of the person or persons entitled to privacy in that place, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place;
 - C. Installs or uses outside a private place without the consent of the person or persons entitled to privacy therein any device for observing, photographing, hearing, recording, amplifying or broadcasting images or sounds originating in that place that would not ordinarily be visible, audible or comprehensible outside that place; or
 - D. Engages in visual surveillance in a public place by means of mechanical or electronic equipment with the intent to observe or photograph, or record, amplify or broadcast an image of any portion of the body of another person present in that place when that portion of the body is in fact concealed from public view under clothing and a reasonable person would expect it to be safe from surveillance.
- 1-A. It is a defense to a prosecution under subsection 1, paragraph D that the person subject to surveillance had in fact attained 14 years of age and had consented to the visual surveillance.
2. As used in this section, “private place” means a place where one may reasonably expect to be safe from surveillance, including, but not limited to, changing or dressing rooms, bathrooms and similar places.
3. Violation of privacy is a Class D crime.

Relevant Case law

***State v. Nastvogel*, 798 A.2d 1114 (Me. 2002)**

Defendant was convicted of stalking and harassment and appealed arguing the harassment statute was vague because it did not define course of conduct. When the victim ended her relationship with the defendant, the defendant began calling her multiple times a day. The defendant was served with a harassment order and called the victim immediately. Once the defendant was arrested, he continued to call the victim from jail. The Supreme Court held that the harassment statute was not unconstitutionally void for vagueness as applied to defendant, even though it did not define the requisite course of conduct given that phrase appeared undefined numerous times in criminal statutes, phrase could be defined fairly to include repeated behavior, phrase had been used to refer to series of actions leading to single criminal episode or act, and defendant called complainant at least twice after receiving protection from harassment order directing him not to contact victim.

***Craig v. Caron*, 102 A.3d 1175 (Me. 2014)**

Appellant appealed the trial court's order granting the petitioner an order of protection based on stalking. While the Supreme Court found that the evidence unquestionably supported the court's finding that Caron engaged in conduct that would cause a reasonable person to suffer serious inconvenience or emotional distress, there was no *course of conduct*. Entering petitioner's home one evening without permission, refusing to leave when asked, and assaulting petitioner, all in the course of a brief period of time, did not constitute 2 or more acts of following, monitoring, tracking, observing, surveilling, threatening, harassing, communicating to or about petitioner, or interfering with petitioner's property, and, therefore, did not constitute stalking that warranted issuance of order of protection from abuse. The Supreme Court recognized that there were 2 or more acts but noted the legislative intent of the stalking statute was to circumstances in which the "2 or more acts" were distinct acts separated by time.

***Childs v. Ballou*, 148 A.3d 291 (Me. 2016)**

Appellant appeals the trial court's granting ex-wife a 2-year extension of a protection order. The prior order prohibited contact except emails to discuss their child in common. While this order was in place, the appellant showed up at the victim's house multiple times and sent multiple emails discussing matters that did not relate to their child. Further, before the protection order was in place, the appellant would send the victim hundreds of text messages a day. On appeal, the appellant argued that the extension of the protection order violated his First Amendment rights by prohibiting communications that are not threatening and are "at worst upsetting." The Court of Appeals held that the trial court's extension of the protection order did not violate the appellants right to free speech because his conduct went well beyond what he characterized as mere voicing of opinion about his child's interests.

Stalking, Harassment, & Related Offenses: Maryland

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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MARYLAND

Summary

What constitutes a "course of conduct" / pattern of behavior?	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).
What types of threats are required (credible, explicit, implicit, bodily injury?)	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.
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	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).
Do offender actions toward persons other than the victim help establish course of conduct?	Yes, the statute includes a reasonable fear that a third person will suffer harm. Md. Code § 3-802 (a)(1)(ii).
Does fear include emotional distress?	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>What type of victim fear is required? (for safety, of bodily injury, etc.)?</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>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</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>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</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).
Must the victim tell the defendant to stop in order to constitute stalking?	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).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	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.”).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	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>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>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>Any unique provisions, elements, or requirements?</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>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)</p>	<p>Stalking is a misdemeanor. Md. Code Ann. § 3-802(d).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</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.

Stalking, Harassment, & Related Offenses: Massachusetts

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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MASSACHUSETTS

Summary

What constitutes a "course of conduct" / pattern of behavior?	A course of conduct is pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress. Mass. Gen. Laws ch. 265, § 43 (a)(1). There must be at least 3 harassing incidents directed at the victim. <i>Com. v. Walters</i> , 37 N.E.3d 980, 997 (Mass. 2015).
What types of threats are required (credible, explicit, implicit, bodily injury?)	A threat with the intent to place the person in imminent fear of death or bodily injury. Includes threats “conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.” Mass. Gen. Laws ch. 265, § 43 (a)(2).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Offender must willfully and maliciously engage in a course of conduct. Mass. Gen. Laws ch. 265, § 43 (a)(1).
Do offender actions toward persons other than the victim help establish course of conduct?	No, but indirect threats are explained via case law. <i>Com. v. Walters</i> , 37 N.E.3d 980, 993 (Mass. 2015) (“Where communication of the threat is indirect—for example, through an intermediary—the Commonwealth must prove beyond a reasonable doubt that the defendant intended the threat to reach the victim.”).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Imminent fear of death or bodily injury Mass. Gen. Laws ch. 265, § 43 (a)(1).

Does fear include emotional distress?	Yes, emotional distress is in addition to imminent fear of bodily injury. Mass. Gen. Laws ch. 265, § 43 (a)(1).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. Mass. Gen. Laws ch. 265, § 43 (a)(1).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	What constitutes a reasonable fear depends on case law. <i>Com. v. Walters</i> , 37 N.E.3d 980, 992 (Mass. 2015) (“[T]he threat component of the stalking statute specifically targets communications by the defendant that are aimed at placing the victim in fear of physical violence, whether or not the defendant actually intends to commit the threatened act of violence.”).
Must the victim tell the defendant to stop in order to constitute stalking?	No. there is no published case law that addresses this and the statutory law is silent.
Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)	No. there is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered by the regular stalking statute and the harassment statute. Mass. Gen. Laws ch. 265, § 43 (a)(2); Mass. Gen. Laws ch. 265, § 43A (a).
Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)	The law is silent regarding whether victim/defendant must reside in the jurisdiction.
Any unique provisions, elements, or requirements?	No.

<p>Gradation of crimes (<i>list out statutes in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)</p>	<p>Crimes are not graded but penalties increase under certain circumstances. See Mass. Gen. Laws Ann. ch. 265, § 43</p> <ul style="list-style-type: none"> - Regular stalking is punishable by up to 5 years imprisonment; - Stalking committed in violation of a no contact order is punishable by 1-5 years imprisonment; - Stalking with a prior conviction is punishable by 2-10 years imprisonment.
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>See above</p>

Statutes

MASS. GEN. LAWS ANN. CH. 265, § 43 (WEST 2023). STALKING; PUNISHMENT

(a) Whoever

- (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and
- (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury,

shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of correction for not more than 2 ½ years or by both such fine and imprisonment. The conduct, acts or threats described in this subsection shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

(b) Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to sections eighteen, thirty-four B, or thirty-four C of chapter two hundred and eight; or section thirty-two of chapter two hundred and nine; or sections three, four, or five of chapter two hundred and nine A; or sections fifteen or twenty of chapter two hundred and nine C or a protection order issued by another jurisdiction; or a temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year

and not more than five years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person 18 years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this subsection.

- (c) Whoever, after having been convicted of the crime of stalking, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of two years.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter

two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person 18 years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this section.

MASS. GEN. LAWS ANN. CH. 265, § 43A (WEST 2023). CRIMINAL HARASSMENT; PUNISHMENT

- (a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than 2 ½ years or by a fine of not more than \$1,000, or by both such fine and imprisonment. The conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.
- (b) Whoever, after having been convicted of the crime of criminal harassment, commits a second or subsequent such crime, or whoever commits the crime of criminal harassment having previously been convicted of a violation of section 43, shall be punished by imprisonment in a house of correction for not more than two and one-half years or by imprisonment in the state prison for not more than ten years.

MASS. GEN. LAWS ANN. CH. 209A, § 7 (WEST 2023). ABUSE PREVENTION ORDERS; DOMESTIC VIOLENCE RECORD SEARCH; SERVICE OF ORDER; ENFORCEMENT; VIOLATIONS

When considering a complaint filed under this chapter, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant, together with a copy of the complaint, order and summons and notice of any suspension or surrender ordered pursuant to section three B of this chapter. Law enforcement agencies shall establish adequate procedures to ensure that, when effecting service upon a defendant pursuant to this paragraph, a law enforcement officer shall, to the extent practicable: (i) fully inform the defendant of the contents of the order and the available penalties for any violation of an order or terms thereof and (ii) provide the defendant with informational resources, including, but not limited to, a list of certified batterer intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling programs located within or near the court's jurisdiction. The law enforcement agency shall promptly make its return of service to the court.

Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to ensure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with that directive.

Each abuse prevention order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. In addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a crime under this statute to pay a fine of \$25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such order, or as a condition of a continuance without a finding, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation. If the court determines that the violation was in retaliation for the defendant being reported by the plaintiff to the department of revenue for failure to pay child support payments or for the establishment of paternity, the defendant shall be punished by a fine of not less than one thousand dollars and not more than ten thousand dollars and by

imprisonment for not less than sixty days; provided, however, that the sentence shall not be suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served sixty days of such sentence.

When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program. To the extent permitted by professional requirements of confidentiality, said program shall communicate with local battered women's programs for the purpose of protecting the victim's safety. Additionally, it shall specify the defendant's attendance requirements and keep the probation department informed of whether the defendant is in compliance.

In addition to, but not in lieu of, such orders for treatment, if the defendant has a substance abuse problem, the court may order appropriate treatment for such problem. All ordered treatment shall last until the end of the probationary period or until the treatment program decides to discharge the defendant, whichever comes first. When the defendant is not in compliance with the terms of probation, the court shall hold a revocation of probation hearing. To the extent possible, the defendant shall be responsible for paying all costs for court ordered treatment.

Where a defendant has been found in violation of an abuse prevention order under this chapter or a protection order issued by another jurisdiction, the court may, in addition to the penalties provided for in this section after conviction, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court defined exclusion zone, the defendant's location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the department of probation. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke his probation and the defendant shall be fined, imprisoned or both as provided in this section. Based on the defendant's ability to pay, the court may also order him to pay the monthly costs or portion thereof for monitoring through the global positioning satellite tracking system.

In each instance where there is a violation of an abuse prevention order or a protection order issued by another jurisdiction, the court may order the defendant to pay the plaintiff for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

Any such violation may be enforced in the superior, the district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order. The provisions of section eight of chapter one hundred and thirty-six shall not apply to any order, complaint or summons issued pursuant to this section.

Relevant Case law

***Com. v. Julien*, 797 N.E.2d 470 (Mass. App. Ct. 2003)**

Defendant was convicted of stalking and multiple felonies and appealed arguing, *inter alia*, that there was insufficient evidence to support his stalking conviction. Specifically, the defendant argued that the State failed to prove that he engaged in a “knowing pattern of conduct.” The Court of Appeals disagreed, noting that “more than two incidents are required to establish a knowing pattern of conduct or series of acts over a period of time,” as element of stalking. In this case, there was sufficient evidence to prove that the defendant engaged in a knowing pattern of conduct when he forcibly entered the victim’s apartment (hitting her in the chest with the door as he did so), told her he was going to kill her and her daughter, and later that evening, after he left, called her and said “he should burn the house down.”

***Com. v. Paton*, 824 N.E.2d 887 (Mass. App. Ct. 2005)**

Defendant was convicted of criminal harassment and appealed arguing, *inter alia*, that there was insufficient evidence to prove that his actions would cause a reasonable person to suffer emotional distress. In interpreting the harassment statute, the Court noted that the statute tracks the stalking statute, except that the stalking statute contains the additional element of making a threat to induce fear of death or bodily injury. The criminal harassment statute requires, as does the stalking statute, that the conduct would cause a “reasonable person to suffer substantial emotional distress.” The Court of Appeals held that the evidence was sufficient to show that defendant's conduct would cause a reasonable person to suffer emotional distress when the defendant appeared at a bar where the victim worked, appeared at the gym the victim went to, at other locations such as gym, victim expressed anxiety and fear of being alone and encountering defendant, and reasonable person would have been greatly disturbed by and fearful of defendant's menacing and unexpected appearances, which were material invasions of victim's mental tranquility.

***Com. v. Walters*, 37 N.E.3d 980 (Mass. 2015)**

The defendant was convicted of stalking and other crimes and appealed, arguing, *inter alia*, that a Facebook post did not constitute a threat under the stalking statute. The Supreme Court of Massachusetts held that the fact that the threat appears on the internet is not a barrier to prosecution for stalking when the posted threat meets the requirements of making a threat with the intent to place the person in imminent fear of death or bodily injury. In determining if the threat was a “true threat” the Court noted that it “is necessary to focus on the content of the page in the context of the past and present relationship between the defendant and the victim to determine whether there was sufficient evidence of the defendant's intent to threaten the victim and whether the victim's fear was reasonable.” Here, however, the Court held that there was insufficient evidence to prove that the threat was a “true threat” and therefore the stalking conviction was vacated.

Stalking, Harassment, & Related Offenses: Michigan

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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MICHIGAN

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct under both stalking and aggravated stalking means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose. Mich. Comp. Laws §§ 750.411H(a), 750.411i(a).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required under the regular stalking statute but aggravated stalking can exist when one of the stalking actions is a "credible threat." A credible threat means "a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual. Mich. Comp. Laws § 750.411i (b).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must engage in a willful course of conduct. Mich. Comp. Laws § 750.411H(d).
Do offender actions toward person other than the victim help establish course of conduct?	No, but stalking can be enhanced to aggravated stalking if the course of conduct includes the making of "1 or more credible threats against the victim, a member of the victim's family, or another individual living the same household as the victim." Mich. Comp. Laws § 750.411i(2)(c).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Stalking statute does not require fear. <i>See Hayford v. Hayford</i> , 760 N.W.2d 503, 509 (2008).
Does fear include emotional distress?	Yes, emotional distress is defined as "significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling." Mich. Comp. Laws § 750.411H(b).

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both. Stalking means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Mich. Comp. Laws § 750.411H(d).</p> <p>If stalking by harassment, the conduct must cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Mich. Comp. Laws § 750.411H(e).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>There is no published case law that addresses this and the statutory law is silent.</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, but evidence that the victim told the defendant to stop gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, etc. Mich. Comp. Laws §§ 750.411H(4), 750.411i(5).</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</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 by the regular stalking statute and the aggravated stalking statute. Mich. Comp. Laws §§ 750.411H(e)(v)(vi), 750.411i(f)(v)(vi). Other statutes criminalize similar conduct such as posting electronic messages without consent and cyberbullying. Mich. Comp. Laws §§ 750.411s, 750.411x.</p>
<p>Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</p>

<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>Gradation of crimes (<i>list out statutes in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)</p>	<p>Stalking ranges from a misdemeanor punishable by up to 1-year imprisonment to a felony punishable by up to 5 years imprisonment. Mich. Comp. Laws § 750.411H(2)(a)-(b).</p> <p>Aggravated stalking is a felony punishable by up to 5 years imprisonment or 5 to 10 years imprisonment under certain circumstances set-forth below. Mich. Comp. Laws § 750.411i(3)(a)-(b).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Regular stalking becomes a felony if the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim. Mich. Comp. Laws § 750.411H(2)(a)-(b).</p> <p>Stalking becomes aggravated stalking if:</p> <ul style="list-style-type: none"> - There was a restraining order in place when offender committed one of the acts of the course of conduct; - The offender violated probation, parole, or pretrial release; - The course of conduct includes 1 or more credible threats; or - The offender has previously violated a stalking statute <p>Mich. Comp. Laws § 750.411i(3)(a)-(b).</p>

Statutes

MICH. COMP. LAWS ANN. § 750.411H (WEST 2023). STALKING; PENALTIES; CONDITIONS OF PROBATION; PRESUMPTIONS

(1) As used in this section:

- (a) “Course of conduct” means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

- (b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
- (c) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
- (d) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (e) “Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:
 - (i) Following or appearing within the sight of that individual.
 - (ii) Approaching or confronting that individual in a public place or on private property.
 - (iii) Appearing at that individual's workplace or residence.
 - (iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
 - (v) Contacting that individual by telephone.
 - (vi) Sending mail or electronic communications to that individual.
 - (vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.
- (f) “Victim” means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(2) An individual who engages in stalking is guilty of a crime as follows:

- (a) Except as provided in subdivision (b), a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.
- (b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

- (3) The court may place an individual convicted of violating this section on probation for a term of not more than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:
- (a) Refrain from stalking any individual during the term of probation.
 - (b) Refrain from having any contact with the victim of the offense.
 - (c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and if, determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.
- (4) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (5) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

**MICH. COMP. LAWS ANN. § 750.411I (WEST 2023).AGGRAVATED STALKING;
CIRCUMSTANCES; PENALTIES; CONDITIONS OF PROBATION; PRESUMPTIONS**

Sec. 411i.

- (1) As used in this section:
- (a) “Course of conduct” means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.
 - (b) “Credible threat” means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.
 - (c) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

- (d) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
- (e) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (f) “Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:
 - (i) Following or appearing within the sight of that individual.
 - (ii) Approaching or confronting that individual in a public place or on private property.
 - (iii) Appearing at that individual's workplace or residence.
 - (iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
 - (v) Contacting that individual by telephone.
 - (vi) Sending mail or electronic communications to that individual.
 - (vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.
- (g) “Victim” means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

- (2) An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:
 - (a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.
 - (b) At least 1 of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(c) The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.

(d) The individual has been previously convicted of a violation of this section or section 411h.1

(3) Aggravated stalking is a felony punishable as follows:

(a) Except as provided in subdivision (b), by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.

(4) The court may place an individual convicted of violating this section on probation for any term of years, but not less than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

(a) Refrain from stalking any individual during the term of probation.

(b) Refrain from any contact with the victim of the offense.

(c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(5) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(6) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

MICH. COMP. LAWS ANN. § 750.411s (WEST 2023). POSTING MESSAGE THROUGH ELECTRONIC MEDIUM WITHOUT CONSENT

Sec. 411s.

- (1) A person shall not post a message through the use of any medium of communication, including the internet or a computer, computer program, computer system, or computer network, or other electronic medium of communication, without the victim's consent, if all of the following apply:
 - (a) The person knows or has reason to know that posting the message could cause 2 or more separate noncontinuous acts of unconsented contact with the victim.
 - (b) Posting the message is intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested.
 - (c) Conduct arising from posting the message would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
 - (d) Conduct arising from posting the message causes the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (2) A person who violates subsection (1) is guilty of a crime as follows:
 - (a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.
 - (b) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both:
 - (i) Posting the message is in violation of a restraining order and the person has received actual notice of that restraining order or posting the message is in violation of an injunction or preliminary injunction.
 - (ii) Posting the message is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.
 - (iii) Posting the message results in a credible threat being communicated to the victim, a member of the victim's family, or another individual living in the same household as the victim.
 - (iv) The person has been previously convicted of violating this section or section 145d, 411h, or 411i, or section 6 of 1979 PA 53, MCL 752.796, or a substantially similar law of another state, a political subdivision of another state, or of the United States.
 - (v) The victim is less than 18 years of age when the violation is committed and the person committing the violation is 5 or more years older than the victim.

- (3) This section does not apply to an internet or computer network service provider who in good faith, and without knowledge of the specific nature of the message posted, provides the medium for disseminating information or communication between persons.
- (4) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for the expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.
- (5) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.
- (6) This section does not prohibit constitutionally protected speech or activity.
- (7) A person may be prosecuted in this state for violating or attempting to violate this section only if 1 of the following applies:
 - (a) The person posts the message while in this state.
 - (b) Conduct arising from posting the message occurs in this state.
 - (c) The victim is present in this state at the time the offense or any element of the offense occurs.
 - (d) The person posting the message knows that the victim resides in this state.
- (8) As used in this section:
 - (a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.
 - (b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.
 - (c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

- (d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.
- (e) "Credible threat" means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.
- (f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.
- (g) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
- (h) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.
- (i) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating or attempting to transfer, send, post, publish, disseminate, or otherwise communicate information, whether truthful or untruthful, about the victim.
- (j) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes any of the following:
 - (i) Following or appearing within sight of the victim.
 - (ii) Approaching or confronting the victim in a public place or on private property.
 - (iii) Appearing at the victim's workplace or residence.
 - (iv) Entering onto or remaining on property owned, leased, or occupied by the victim.
 - (v) Contacting the victim by telephone.
 - (vi) Sending mail or electronic communications to the victim through the use of any medium, including the internet or a computer, computer program, computer system, or computer network.
 - (vii) Placing an object on, or delivering or having delivered an object to, property owned, leased, or occupied by the victim.

- (k) “Victim” means the individual who is the target of the conduct elicited by the posted message or a member of that individual's immediate family.

MICH. COMP. LAWS ANN. § 750.411X (WEST 2023). CYBERBULLYING; PENALTIES

Sec. 411x.

- (1) A person shall not cyberbully another person.
- (2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- (3) A person who violates subsection (1), and who has a prior conviction for a violation of subsection (1), is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.
- (4) A person who violates subsection (1) in a manner that involves a continued pattern of harassing or intimidating behavior and by that violation causes serious injury to the victim is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both. As used in this subsection, “serious injury” means permanent, serious disfigurement, serious impairment of health, or serious impairment of a bodily function of a person.
- (5) A person who violates subsection (1) in a manner that involves a continued pattern of harassing or intimidating behavior and by that violation causes the death of the victim is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10,000.00, or both.
- (6) As used in this section:
- (a) “Cyberbully” includes posting a message or statement in a public media forum about any other person if both of the following apply:
- (i) The message or statement is intended to place a person in fear of bodily harm or death and expresses an intent to commit violence against the person.
- (ii) The message or statement is posted with the intent to communicate a threat or with knowledge that it will be viewed as a threat.
- (b) “Pattern of harassing or intimidating behavior” means a series of 2 or more separate noncontinuous acts of harassing or intimidating behavior.

- (c) “Public media forum” means the internet or any other medium designed or intended to be used to convey information to other individuals, regardless of whether a membership or password is required to view the information.

**MICH. COMP. LAWS ANN. § 600.2950A (WEST 2023). PERSONAL PROTECTION ORDERS;
STALKING OR AGGRAVATED STALKING**

Sec. 2950a.

- (1) Except as provided in subsections (27), (28), and (30), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin an individual from engaging in conduct that is prohibited under section 411h, 411i, or 411s of the Michigan penal code, 1931 PA 328, MCL 750.411h, 750.411i, and 750.411s. A court shall not grant relief under this subsection unless the petition alleges facts that constitute stalking as defined in section 411h or 411i, or conduct that is prohibited under section 411s, of the Michigan penal code, 1931 PA 328, MCL 750.411h, 750.411i, and 750.411s. Relief may be sought and granted under this subsection whether or not the individual to be restrained or enjoined has been charged or convicted under section 411h, 411i, or 411s of the Michigan penal code, 1931 PA 328, MCL 750.411h, 750.411i, and 750.411s, for the alleged violation.
- (2) Except as provided in subsections (27), (28), and (30), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin an individual from engaging in any of the following:
- (a) One or more of the acts listed in subsection (3), if the respondent has been convicted of a sexual assault of the petitioner, or the respondent has been convicted of furnishing obscene material to the petitioner under section 142 of the Michigan penal code, 1931 PA 328, MCL 750.142, or a substantially similar law of the United States, another state, or a foreign country or tribal or military law. A court shall grant relief under this subdivision if the court determines that the respondent has been convicted of a sexual assault of the petitioner or that the respondent was convicted of furnishing obscene material to the petitioner under section 142 of the Michigan penal code, 1931 PA 328, MCL 750.142, or a substantially similar law of the United States, another state, or a foreign country or tribal or military law.
- (b) One or more of the acts listed in subsection (3), if the petitioner has been subjected to, threatened with, or placed in reasonable apprehension of sexual assault by the individual to be enjoined. A court shall not grant relief under this subdivision unless the petition alleges facts that demonstrate that the respondent has perpetrated or threatened sexual assault against the petitioner. Evidence that a respondent has furnished obscene material to a minor

petitioner is evidence that the respondent has threatened sexual assault against the petitioner. Relief may be sought and granted under this subdivision regardless of whether the individual to be restrained or enjoined has been charged with or convicted of sexual assault or an offense under section 142 of the Michigan penal code, 1931 PA 328, MCL 750.142, or a substantially similar law of the United States, another state, or a foreign country or tribal or military law.

- (3) The court may restrain or enjoin an individual against whom a protection order is sought under subsection (2) from 1 or more of the following:
- (a) Entering onto premises.
 - (b) Threatening to sexually assault, kill, or physically injure petitioner or a named individual.
 - (c) Purchasing or possessing a firearm.
 - (d) Interfering with the petitioner's efforts to remove the petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
 - (e) Interfering with the petitioner at the petitioner's place of employment or education or engaging in conduct that impairs the petitioner's employment or educational relationship or environment.
 - (f) Following or appearing within the sight of the petitioner.
 - (g) Approaching or confronting the petitioner in a public place or on private property.
 - (h) Appearing at the petitioner's workplace or residence.
 - (i) Entering onto or remaining on property owned, leased, or occupied by the petitioner.
 - (j) Contacting the petitioner by telephone.
 - (k) If the petitioner is a minor who is enrolled in a public or nonpublic school that operates any of grades K to 12, attending school in the same building as the petitioner.
 - (l) Sending mail or electronic communications to the petitioner.
 - (m) Placing an object on, or delivering an object to, property owned, leased, or occupied by the petitioner.
 - (n) Engaging in conduct that is prohibited under section 411s of the Michigan penal code, 1931 PA 328, MCL 750.411s.

- (o) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence or sexual assault.
- (4) Section 520j of the Michigan penal code, 1931 PA 328, MCL 750.520j, applies in any hearing on a petition for, a motion to modify or terminate, or an alleged violation of a personal protection order requested or issued under subsection (2), except as follows:
- (a) The written motion and offer of proof must be filed at least 24 hours before a hearing on a petition to issue a personal protection order or on an alleged violation of a personal protection order.
- (b) The written motion and offer of proof must be filed at the same time that a motion to modify or terminate a personal protection order is filed.
- (5) If the respondent to a petition under this section is an individual who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer licensed or certified by the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, a department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her employment, the petitioner shall notify the court of the respondent's occupation before the personal protection order is issued. This subsection does not apply to a petitioner who does not know the respondent's occupation.
- (6) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court a mailing address.
- (7) If a court issues or refuses to issue a personal protection order, the court shall immediately state in writing the specific reasons for issuing or refusing to issue the personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue a personal protection order.
- (8) A court shall not issue a mutual personal protection order. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court under subsection (1) or (2).
- (9) A personal protection order is effective and immediately enforceable anywhere in this state after being signed by a judge. Upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.
- (10) The court that issues a personal protection order shall designate a law enforcement agency that is responsible for entering the personal protection order into the L.E.I.N.

(11) A personal protection order issued under this section must include all of the following, to the extent practicable in a single form:

- (a) A statement that the personal protection order has been entered to enjoin or restrain conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following:
 - (i) If the respondent is 17 years of age or older, immediate arrest and the civil and criminal contempt powers of the court. If the respondent is found guilty of criminal contempt, he or she must be imprisoned for not more than 93 days and may be fined not more than \$500.00.
 - (ii) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody and the dispositional alternatives listed in section 18 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.
 - (iii) If the respondent violates the personal protection order in a jurisdiction other than this state, the enforcement procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.
- (b) A statement that the personal protection order is effective and immediately enforceable anywhere in this state after being signed by a judge, and that on service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.
- (c) A statement listing each type of conduct enjoined.
- (d) An expiration date stated clearly on the face of the order.
- (e) A statement that the personal protection order is enforceable anywhere in this state by any law enforcement agency.
- (f) The name of the law enforcement agency designated by the court to enter the personal protection order into the L.E.I.N.
- (g) For an ex parte order, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined is served or receives actual notice of the personal protection order and that motion forms and filing instructions are available from the clerk of the court.

(12) A court shall not issue a personal protection order ex parte without written or oral notice to the individual enjoined or his or her attorney unless it clearly appears from specific facts shown by a verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or

damage will result from the delay required to effectuate notice or that the notice will precipitate adverse action before a personal protection order can be issued.

- (13) A personal protection order issued under subsection (12) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. A motion to modify or rescind the personal protection order must be filed within 14 days after the order is served or after the individual restrained or enjoined receives actual notice of the personal protection order unless good cause is shown for filing the motion after 14 days have elapsed.
- (14) Except as otherwise provided in this subsection, a court shall schedule a hearing on a motion to modify or rescind an ex parte personal protection order within 14 days after the motion to modify or rescind is filed. If the respondent is a person described in subsection (5) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the motion to modify or rescind is filed.
- (15) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance without requiring proof of service on the individual restrained or enjoined:
- (a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.
 - (b) Provide the petitioner with 2 or more true copies of the personal protection order.
 - (c) If the individual restrained or enjoined is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency of the existence of the personal protection order.
 - (d) If the personal protection order prohibits the individual restrained or enjoined from purchasing or possessing a firearm, notify the county clerk of the individual's county of residence of the existence and content of the personal protection order.
 - (e) If the individual restrained or enjoined is identified in the pleadings as a department of corrections employee, notify the department of corrections of the existence of the personal protection order.
 - (f) If the individual restrained or enjoined is identified in the pleadings as a person who may have access to information concerning the petitioner or a child of the petitioner or individual and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located of the existence of the personal protection order.

- (16) The clerk of a court that issues a personal protection order shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court under subsection (10) to be immediately entered into the L.E.I.N.
- (17) The law enforcement agency that receives a true copy of a personal protection order under subsection (15) or (16) shall immediately, without requiring proof of service, enter the personal protection order into the L.E.I.N.
- (18) A personal protection order issued under this section must be served personally, by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other method allowed by the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the individual restrained or enjoined is less than 18 years of age, the parent, guardian, or custodian of the individual must also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian. A proof of service or proof of oral notice must be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or immediate enforcement under subsection (21) or (22).
- (19) The clerk of the court that issued a personal protection order shall immediately notify the law enforcement agency that received the personal protection order under subsection (15) or (16) if either or both of the following occur:
- (a) The clerk of the court receives proof that the individual restrained or enjoined has been served.
 - (b) The personal protection order is rescinded, modified, or extended by court order.
- (20) The law enforcement agency that receives information under subsection (19) shall enter the information or cause the information to be entered into the L.E.I.N.
- (21) Subject to subsection (22), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the L.E.I.N.
- (22) If the individual restrained or enjoined by a personal protection order has not been served, a law enforcement agency or officer responding to a call alleging a violation of the personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific

conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the L.E.I.N. that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court that issued the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined must be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. Failure to immediately comply with the personal protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

- (23) An individual 17 years of age or older who refuses or fails to comply with a personal protection order issued under this section is subject to the criminal contempt powers of the court and, if found guilty of criminal contempt, must be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual less than 17 years of age who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.
- (24) An individual who knowingly and intentionally makes a false statement to a court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.
- (25) A personal protection order issued under this section is also enforceable under section 15b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15b, and chapter 17.1
- (26) A personal protection order issued under this section may enjoin or restrain an individual from purchasing or possessing a firearm.
- (27) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) or (3) if any of the following apply:
- (a) The respondent is the unemancipated minor child of the petitioner.
 - (b) The petitioner is the unemancipated minor child of the respondent.
 - (c) The respondent is a minor child less than 10 years of age.
- (28) If the respondent is less than 18 years old, issuance of a personal protection order under this section is subject to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

- (29) A personal protection order issued before March 1, 1999 is not invalid on the ground that it does not comply with 1 or more of the requirements added by 1998 PA 476.
- (30) A court shall not issue a personal protection order under this section if the petitioner is a prisoner. If a personal protection order is issued in violation of this subsection, a court shall rescind the personal protection order upon notification and verification that the petitioner is a prisoner.
- (31) As used in this section:
- (a) “Convicted” means 1 of the following:
- (i) The subject of a judgment of conviction or a probation order entered in a court that has jurisdiction over criminal offenses, including a tribal court or a military court.
 - (ii) Assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, if the individual's status of youthful trainee is revoked and an adjudication of guilt is entered.
 - (iii) The subject of an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28.
 - (iv) The subject of an order of disposition or other adjudication in a juvenile matter in another state or country.
- (b) “Federal law enforcement officer” means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.
- (c) “L.E.I.N.” means the law enforcement information network administered under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.
- (d) “Personal protection order” means an injunctive order issued by the family division of circuit court restraining or enjoining conduct prohibited under subsection (1) or (3).
- (e) “Prisoner” means a person subject to incarceration, detention, or admission to a prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of federal, state, or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.
- (f) “Sexual assault” means an act, attempted act, or conspiracy to engage in an act of criminal conduct as defined in section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code,

1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or an offense under a law of the United States, another state, or a foreign country or tribal or military law that is substantially similar to an offense listed in this subdivision.

Relevant Case Law

***Hayford v. Hayford*, 760 N.W.2d 503 (Mich. Ct. App. 2008)**

Family Court granted an eighteen-year-old son a personal protection order (PPO) against his father and the father appealed arguing there was insufficient evidence to prove that he harassed or stalked his son. The son made it clear to his father that he did not wish further contact. However, the father's behavior demonstrated his inability to honor those wishes. He continued to call his son, attend his son's band concert, placed an advertisement in the newspaper with the son's name, the names of his family members, and other personal information, prompting coworkers of both the son and his mother to question them about the advertisement, contacted the son's doctor multiple times causing the doctor to be wary of treating the son, and visited the hospital on the day of petitioner's surgery, causing him stress immediately beforehand. The Court of Appeals, reviewing this evidence, found it was sufficient to support the issuance of the PPO.

***Armstrong v. Shirvell*, 596 Fed. Appx. 433 (6th Cir. 2015)**

Plaintiff, the first openly gay student council president at state university, filed suit against the Michigan Assistant Attorney General Shirvell, an alumnus of the university, claiming, *inter alia*, that the AG committed stalking in connection with his online and in-person "campaign" against him. A jury found Shirvell liable of stalking and he appealed. The Circuit Court affirmed, finding that the student proved the elements of stalking where Shirvell appeared outside his home on more than one occasion, followed him to activities on campus, appeared at student meeting he was attending, repeatedly called his summer employer's office, and followed his friends in search of him, and made statements went far beyond criticism of his qualifications, campaign promises, and public views and included many lies about the private life of a private figure.

Stalking, Harassment, & Related Offenses: Military

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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MILITARY

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Conduct” means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system. “Course of conduct” means a repeated maintenance of visual or physical proximity to a specific person; a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or a pattern of conduct composed of repeated acts evidencing a continuity of purpose. 10 U.S.C.A. § 930 (b)(1), (2)(A)-(C).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threats are not required but can be part of a course of conduct by “repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person.” 10 U.S.C.A. § 930 (b)(2)(B).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must “wrongfully” engage in conduct and the offender must know or should have known that such conduct would cause fear. 10 U.S.C.A. § 930 (a)(1)-(2); <i>See also United States v. Sweeney</i> , No. ACM 32026, 1997 WL 37705 (A.F. Ct. Crim. App. Jan. 17, 1997) (Stalking does not require that the defendant offer to do harm or overtly threaten to do harm. Rather, the offense of stalking requires a pattern of conduct which causes the victim emotional distress because she fears what is not overtly threatened: death or bodily injury).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	No. There is no published case law that addresses this and the statutory law is silent.

<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear of death, bodily harm, or sexual assault to oneself, immediate family, or intimate partner. 10 U.S.C.A. § 930 (a)(1).</p>
<p>Does fear include emotional distress?</p>	<p>While not included in the stalking statute, courts include emotional distress as an element of fear when a person is charged with harassment (stalking) under Article 134, 10 U.S.C.A. § 934.¹ <i>See also United States v. Saunders</i>, 59 M.J. 1, 9 (C.A.A.F. 2003) (harassment (stalking) under Article 134 (the general article) requires “a knowing and willful course of conduct directed at a specific person, which would cause substantial emotional distress in a reasonable person or which placed that person in reasonable fear of bodily injury.”).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both. The offender must cause a reasonable fear and actually induce reasonable fear. 10 U.S.C.A. § 930 (a)(1)-(3); <i>United States v. Gutierrez</i>, 73 M.J. 172, 176 (C.A.A.F. 2014) (“This record contains evidence of repeated occasions of discrete stalking conduct, as well as a pattern of repeated telephone calls and text messages from which the jury could infer both objective and subjective awareness of fear of bodily harm or sexual assault.”); <i>See also United States v. Spinoza</i>, No. 201700236, 2019 WL 421664, at *4 (N-M. Ct. Crim. App. Feb. 4, 2019) (noting the three elements of stalking).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>United States v. Lull</i>, No. ACM 39555, 2020 WL 5269803, at *16 (A.F. Ct. Crim. App. Sept. 2, 2020) (Reasonable fear element was established where defendant frequently sat in his truck outside victim’s apartment, came to the victim’s home and banged on her door</p>

¹ Offenders who engage in conduct that have same elements as stalking have been charged under this statute and charged with “harassment” even though there is no “harassment” statute in the military code.
Compilation, Page 398

	<p>repeatedly, and pushed his way into the victim’s home when she opened the door).</p> <p><i>United States v. Sweeney</i>, No. ACM 32026, 1997 WL 37705, at *4 (A.F. Ct. Crim. App. Jan. 17, 1997) (“Even though he had been barred from the base and even though his wife took measures to avoid his knowing her whereabouts, the appellant made sure his wife knew that he could find her and be near her... We believe the evidence shows that this pattern of physical presence was intended to cause the appellant's wife emotional distress by placing her in fear of physical harm, and that it did cause her such 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>No. There is no published case law that addresses this and the statutory law is silent.</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 not criminalized by statute. However, some of technology-facilitated conduct has been addressed by case law as contributing to a “course of conduct.” <i>See, e.g., United States v. Gutierrez</i>, 73 M.J. 172, 176 (C.A.A.F. 2014) (where defendant repeatedly contacted the victim through text message, phone calls, and Facebook, and when the victim blocked his Facebook account he created new ones). Although the contents of these messages were not overtly threatening when viewed in isolation, they were evidence of repeated unwelcome conduct); <i>United States v. Rhine</i>, 67 M.J. 646, 650 (A.F. Ct. Crim. App. 2009) (the victim testified that she arrived at work one day to find that the defendant has modified her work computer user account to prevent her from logging onto the computer. The defendant also contacted the victim’s sister by logging into the victim’s MySpace account and told her sister of their relationship. The defendant also changed the username and password of the</p>

	victim's personal email account. This was considered when affirming the defendant's stalking conviction).
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?)	No. There is no published case law that addresses this and the statutory law is silent.
Any unique provisions, elements, or requirements?	No.
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)	Stalking is not graded and punishment is based on the court-martial's determination. 10 U.S.C.A. § 930. Court martial sentencing maximums are determined by 10 U.S.C.A. § 856.
What aggravating circumstances elevate the gradation of a stalking offense?	There are no aggravating factors but there is a general list of factors that may be considered when sentencing an accused under 10 U.S.C.A. § 856.

Statutes

10 U.S.C.A. § 856 (WEST 2023). SENTENCING

(a) Sentence maximums.--The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(b) Sentence minimums for certain offenses.

(1) Except as provided in subsection (c) of section 853a of this title (article 53a), punishment for any offense specified in paragraph (2) shall include dismissal or dishonorable discharge, as applicable.

(2) The offenses referred to in paragraph (1) are as follows:

(A) Rape under subsection (a) of section 920 of this title (article 120).

(B) Sexual assault under subsection (b) of such section (article).

(C) Rape of a child under subsection (a) of section 920b of this title (article 120b).

(D) Sexual assault of a child under subsection (b) of such section (article).

(E) An attempt to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 880 of this title (article 80).

(F) Conspiracy to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 881 of this title (article 81).

(c) Imposition of sentence.--

(1) In general.--In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces, taking into consideration--

(A) the nature and circumstances of the offense and the history and characteristics of the accused;

(B) the impact of the offense on--

(i) the financial, social, psychological, or medical well-being of any victim of the offense; and

(ii) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(C) the need for the sentence--

(i) to reflect the seriousness of the offense;

(ii) to promote respect for the law;

(iii) to provide just punishment for the offense;

(iv) to promote adequate deterrence of misconduct;

(v) to protect others from further crimes by the accused;

(vi) to rehabilitate the accused; and

(vii) to provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service; and

(D) the sentences available under this chapter.

(2) Sentencing by military judge.--In announcing the sentence in a general or special court-martial in which the accused is sentenced by a military judge alone under section 853 of this title (article 53), the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

(3) Sentencing by members.--In a general or special court-martial in which the accused has elected sentencing by members, the court-martial shall announce a single sentence for all of the offenses of which the accused was found guilty.

(4) Sentence of confinement for life without eligibility for parole.--

(A) If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

(B) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless--

(i) the sentence is set aside or otherwise modified as a result of--

(I) action taken by the convening authority or the Secretary concerned; or

(II) any other action taken during post-trial procedure and review under any other provision of subchapter IX of this chapter;

(ii) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

(iii) the accused is pardoned.

(d) Appeal of sentence by the United States.

(1) With the approval of the Judge Advocate General concerned, and consistent with standards and procedures set forth in regulations prescribed by the President, the Government may appeal a sentence to the Court of Criminal Appeals, on the grounds that--

(A) the sentence violates the law; or

(B) the sentence is plainly unreasonable, as determined in accordance with standards and procedures prescribed by the President.

(2) An appeal under this subsection must be filed within 60 days after the date on which the judgment of a court-martial is entered into the record under section 860c of this title (article 60c).

10 U.S.C.A. § 915 (WEST 2023). COMMUNICATING THREATS

(a) **Communicating threats generally.**--Any person subject to this chapter who wrongfully communicates a threat to injure the person, property, or reputation of another shall be punished as a court-martial may direct.

(b) **Communicating threat to use explosive, etc.**--Any person subject to this chapter who wrongfully communicates a threat to injure the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct.

(c) **Communicating false threat concerning use of explosive, etc.**--Any person subject to this chapter who maliciously communicates a false threat concerning injury to the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct. As used in the preceding sentence, the term "false threat" means a threat that, at the time the threat is communicated, is known to be false by the person communicating the threat.

10 U.S.C.A. § 930 (WEST 2023). STALKING

(a) **In general.**--Any person subject to this chapter--

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner; and

(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) **Definitions.**--In this section:

- (1) The term “conduct” means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.
- (2) The term “course of conduct” means--
- (A) a repeated maintenance of visual or physical proximity to a specific person;
 - (B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or
 - (C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.
- (3) The term “repeated”, with respect to conduct, means two or more occasions of such conduct.
- (4) The term “immediate family”, in the case of a specific person, means--
- (A) that person's spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or
 - (B) any other person living in his or her household and related to him or her by blood or marriage.
- (5) The term “intimate partner”, in the case of a specific person, means--
- (A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or has cohabited as a spouse with the specific person; or
 - (B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

10 U.S.C.A. § 934 (WEST 2023). GENERAL ARTICLE²

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. As used in the

² Offenders who engage in conduct that have same elements as stalking have been charged under this statute and charged with “harassment” even though there is no “harassment” statute in the military code.
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preceding sentence, the term “crimes and offenses not capital” includes any conduct engaged in outside the United States, as defined in section 5 of title 18, that would constitute a crime or offense not capital if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18.

Relevant Case Law

United States v. Saunders, 59 M.J. 1 (C.A.A.F. 2003)

Defendant was convicted of harassment (stalking) for a course of conduct over a six-month period. The victim testified that after dating for a few months, the defendant became possessive of her, began calling her all day and all night, and following her. When the victim tried to end the relationship, the defendant locked himself in her room and attempted to cut his wrists. The defendant’s Captain issued a no contact order, prohibiting the defendant to contact the victim. The defendant violated the order by continuing to repeatedly call the victim. The defendant appealed his conviction, arguing that he lacked fair notice that his conduct was a crime because “harassment” is not an offense specified in the Manual for Courts–Martial. The defendant was charged under Article 134 which criminalizes service-discrediting conduct by military service members. Under Article 134, “if conduct by an accused does not fall under any of the listed offenses ... a specification not listed in this Manual may be used to allege the offense.” In this case, the defendant was charged with harassment based on the elements of the Georgia stalking statute. The Court of Appeals for the Armed Forces held that the defendant had fair notice that his conduct was a crime stating that “while the terms vary somewhat from statute to statute, federal and state statutes criminalize the act of knowingly pursuing a course of conduct that would produce emotional distress in a reasonable person or create a reasonable fear of death or injury to that person or an immediate family member when that course of conduct in fact creates emotional distress and reasonable fear in the targeted person.”

United States v. Gutierrez, 73 M.J. 172 (C.A.A.F. 2014)

Defendant was found guilty of stalking but found not guilty of rape. After an incident that resulted in the rape charge, the defendant began a pattern of calling the victim and sending her text and Facebook messages. The defendant also went to the victim’s apartment in the middle of the night on multiple occasions, ringing the doorbell incessantly and scaring the victim’s 9-year-old daughter. On appeal, the defendant argued that since the government relied upon the evidence underlying the rape allegation as evidence of a “course of conduct” required to establish the offense of stalking, the panel’s acquittal on that charge removed that incident as a possible basis for establishing a “course of conduct.” The Court of Appeals for the Armed Forces disagreed and stated that, although the defendant was acquitted of rape, the panel could independently consider the evidence supporting that incident while deliberating on the stalking charge. Although the defendant was acquitted of rape specification, evidence relating to that incident could be construed as causing complainant fear of bodily harm, and as establishing, along with other incidents, repeated telephone calls and text messages, a “course of conduct,” required for stalking conviction.

Stalking, Harassment, & Related Offenses: Minnesota

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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MINNESOTA

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct is 2 or more acts within 5-year period that violate or attempt to violate certain enumerated laws. Minn. Stat. § 609.749 (5)(b)(1)-(12).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required but one of the enumerated laws in which is used to determine if offender committed stalking is "terroristic threat." Minn. Stat. § 609.749 (5)(b)(3).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The defendant must know or have reason to know that the victim or one or more members of a single household would feel terrorized or fear bodily harm. Minn. Stat. § 609.749 (5)(a).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes. Furthermore, if stalking is based, at least in part, on harassment, then actions that place the victim "in reasonable fear that the person's family or household members will be subject to substantial bodily harm" can establish the course of conduct. Minn. Stat. § 609.749 5)(a), (2)(b)(2).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	The defendant must know or have reason to know that the victim or one or more members of a single household would feel terrorized or fear bodily harm. Minn. Stat. § 609.749 (5)(a).
Does fear include emotional distress?	Yes, if stalking is based, in part, on harassment which defines substantial emotional distress as "mental distress, mental suffering, or mental anguish as demonstrated by a victim's response to an act including but not limited to seeking psychotherapy as defined in section 604.20, losing sleep or appetite, being diagnosed with a mental-health condition, experiencing suicidal ideation, or having difficulty concentrating on tasks resulting in a loss of productivity." Minn. Stat. § 609.749 (2)(b)(4).

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both. The defendant must know or have reason to know that the victim or one or more members of a single household would feel terrorized or fear bodily harm and the stalking does cause such a reaction. Minn. Stat. § 609.749 (5)(a).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>There is no published case law that addresses this and the statutory law is silent.</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>i.e., getting a third person to stalk the victim</i>)</p>	<p>Yes, if stalking is based, in part, on harassment, then actions that “directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act” or using “another’s personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person” can constitute part of a stalking course of conduct. Minn. Stat. § 609.749 (2)(c).</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 by the stalking statute. Minn. Stat. § 609.749 (2)(c)(4). Other statutes criminalize similar conduct such as obscene or harassing phone calls and delivering harassing messages electronically. Minn. Stat. § 609.79; Minn. Stat. Ann. § 609.795.</p> <p><i>But see Matter of Welfare of AJB</i>, 929 N.W.2d 840 (Minn. 2019); <i>State v. Peterson</i>, 936 N.W.2d 912 (Minn. Ct. App. 2019). Both cases hold that Minn. Stat. § 609.749 subd. (2)(c)(6) and Minn. Stat. § 609.795 subd. (1)(3) are unconstitutionally overbroad in violation of the First Amendment.</p>
<p>Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)</p>	<p>No. But offender may be prosecuted in any county in which one of the acts was committed and, in some circumstances, in the county which the offender or victim resides (if different</p>

	from where any of the acts were committed). Minn. Stat. § 609.749 (1b)(a).
Any unique provisions, elements, or requirements?	No.
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)	Stalking is graded as a felony and offender "may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both." Minn. Stat. Ann. § 609.749 (5)(a).
What aggravating circumstances elevate the gradation of a stalking offense?	There are no aggravating circumstances for stalking.

Statutes

MINN. STAT. ANN. § 609.713 (WEST 2023). THREATS OF VIOLENCE

Subdivision 1. Threaten violence; intent to terrorize. Whoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, vehicle or facility of public transportation or otherwise to cause serious public inconvenience, or in a reckless disregard of the risk of causing such terror or inconvenience may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. As used in this subdivision, "crime of violence" has the meaning given "violent crime" in section 609.1095, subdivision 1, paragraph (d).

MINN. STAT. ANN. § 609.748 (WEST 2023). HARASSMENT; RESTRAINING ORDER

Subdivision 1. Definition. For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Harassment" includes:

(1) a single incident of physical or sexual assault, a single incident of harassment under section 609.749, subdivision 2, clause (8), a single incident of nonconsensual dissemination of private sexual images under section 617.261, or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;

(2) targeted residential picketing; and

- (3) a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.
- (b) "Respondent" includes any adults or juveniles alleged to have engaged in harassment or organizations alleged to have sponsored or promoted harassment.
- (c) "Targeted residential picketing" includes the following acts when committed on more than one occasion:
 - (1) marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building; or
 - (2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Subd. 2. Restraining order; court jurisdiction.

- (a) A person who is a victim of harassment or the victim's guardian or conservator may seek a restraining order from the district court in the manner provided in this section.
- (b) The parent, guardian or conservator, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor.
- (c) A minor may seek a restraining order if the minor demonstrates that the minor is emancipated and the court finds that the order is in the best interests of the emancipated minor. A minor demonstrates the minor is emancipated by a showing that the minor is living separate and apart from parents and managing the minor's own financial affairs, and shows, through an instrument in writing or other agreement, or by the conduct of the parties that all parents who have a legal parent and child relationship with the minor have relinquished control and authority over the minor.
- (d) An application for relief under this section may be filed in the county of residence of either party or in the county in which the alleged harassment occurred. There are no residency requirements that apply to a petition for a harassment restraining order.

Subd. 3. Contents of petition; hearing; notice.

- (a) A petition for relief must allege facts sufficient to show the following:
 - (1) the name of the alleged harassment victim;
 - (2) the name of the respondent; and

(3) that the respondent has engaged in harassment.

A petition for relief must state whether the petitioner has had a previous restraining order in effect against the respondent. The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section and shall advise the petitioner of the right to sue in forma pauperis under section 563.01. The court shall advise the petitioner of the right to request a hearing. If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing. Upon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing. Personal service must be made upon the respondent not less than five days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date. Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.

(b) Notwithstanding paragraph (a), the order for a hearing and a temporary order issued under subdivision 4 may be served on the respondent by means of a one-week published notice under section 645.11, if:

(1) the petitioner files an affidavit with the court stating that an attempt at personal service made by a peace officer was unsuccessful because the respondent is avoiding service by concealment or otherwise; and

(2) a copy of the petition and order for hearing and any temporary restraining order has been mailed to the respondent at the respondent's residence or place of business, if the respondent is an organization, or the respondent's residence or place of business is not known to the petitioner.

(c) Regardless of the method of service, if the respondent is a juvenile, whenever possible, the court also shall have notice of the pendency of the case and of the time and place of the hearing served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner.

(d) A request for a hearing under this subdivision must be made within 20 days of service of the petition.

[...]

Subd. 4. Temporary restraining order; relief by court.

(a) The court may issue a temporary restraining order that provides any or all of the following:

(1) orders the respondent to cease or avoid the harassment of another person; or

(2) orders the respondent to have no contact with another person.

- (b) The court may issue an order under paragraph (a) if the petitioner files a petition in compliance with subdivision 3 and if the court finds reasonable grounds to believe that the respondent has engaged in harassment. When a petition alleges harassment as defined by subdivision 1, paragraph (a), clause (1), the petition must further allege an immediate and present danger of harassment before the court may issue a temporary restraining order under this section. When signed by a referee, the temporary order becomes effective upon the referee's signature.
- (c) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3. If the respondent is a juvenile, whenever possible, a copy of the restraining order, along with notice of the pendency of the case and the time and place of the hearing, shall also be served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner. A temporary restraining order may be entered only against the respondent named in the petition.
- (d) The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subdivision 5. The court shall hold the hearing on the issuance of a restraining order if the petitioner requests a hearing. The hearing may be continued by the court upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or if service is made by published notice under subdivision 3 and the petitioner files the affidavit required under that subdivision.
- (e) If the temporary restraining order has been issued and the respondent requests a hearing, the hearing shall be scheduled by the court upon receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of the hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date.
- (f) A request for a hearing under this subdivision must be made within 20 days of the date of completed service of the petition.

Subd. 5. Restraining order.

- (a) The court may issue a restraining order that provides any or all of the following:
- (1) orders the respondent to cease or avoid the harassment of another person; or
 - (2) orders the respondent to have no contact with another person.

(b) The court may issue an order under paragraph (a) if all of the following occur:

- (1) the petitioner has filed a petition under subdivision 3;
- (2) a peace officer has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of the right to request a hearing, or service has been made by publication under subdivision 3, paragraph (b); and
- (3) the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.

A restraining order may be issued only against the respondent named in the petition; except that if the respondent is an organization, the order may be issued against and apply to all of the members of the organization. If the court finds that the petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions, relief granted by the restraining order may be for a period of up to 50 years. In all other cases, relief granted by the restraining order must be for a fixed period of not more than two years. When a referee presides at the hearing on the petition, the restraining order becomes effective upon the referee's signature.

- (c) An order issued under this subdivision must be personally served upon the respondent.
- (d) If the court orders relief for a period of up to 50 years under paragraph (a), the respondent named in the restraining order may request to have the restraining order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order. Application for relief under this paragraph must be made in the county in which the restraining order was issued. Upon receipt of the request, the court shall set a hearing date. Personal service must be made upon the petitioner named in the restraining order not less than 30 days before the date of the hearing. At the hearing, the respondent named in the restraining order has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting the restraining order no longer apply and are unlikely to occur. If the court finds that the respondent named in the restraining order has met the burden of proof, the court may vacate or modify the order. If the court finds that the respondent named in the restraining order has not met the burden of proof, the court shall deny the request and no request may be made to vacate or modify the restraining order until five years have elapsed from the date of denial. An order vacated or modified under this paragraph must be personally served on the petitioner named in the restraining order.

[...]

Subd. 6. Violation of restraining order.

- (a) A person who violates a restraining order issued under this section is subject to the penalties provided in paragraphs (b) to (d).

- (b) Except as otherwise provided in paragraphs (c) and (d), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.
- (c) A person is guilty of a gross misdemeanor who violates the order within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.
- (d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person violates the order:
 - (1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency;
 - (2) because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;
 - (3) by falsely impersonating another;
 - (4) while possessing a dangerous weapon;
 - (5) with an intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or
 - (6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.
- (e) A person who commits violations in two or more counties may be prosecuted in any county in which one of the acts was committed for all acts in violation of this section.
- (f) A person may be prosecuted at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides, or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established under chapter 5B.
- (g) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.
- (h) A violation of a temporary restraining order or restraining order shall also constitute contempt of court.

- (i) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

[...]

MINN. STAT. ANN. § 609.749 (WEST 2023). HARASSMENT; STALKING; PENALTIES

*** Section (2)(4) (stalking by telephone) recognized as unconstitutional by *State v. Morales*, No. A19-2077, 2020 WL 7330306 (Minn. Ct. App. Dec. 14, 2020)***

Subd. 1. Repealed by Laws 2020, c. 96, § 6, eff. Aug. 1, 2020.

Subd. 1a. Repealed by Laws 2020, c. 96, § 6, eff. Aug. 1, 2020.

Subd. 1b. Venue.

- (a) When acts constituting a violation of this section are committed in two or more counties, the accused may be prosecuted in any county in which one of the acts was committed for all acts in violation of this section.
- (b) The conduct described in subdivision 2, clauses (4) and (5), may be prosecuted at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established by chapter 5B. The conduct described in subdivision 2, clause (2), may be prosecuted where the actor or victim resides. The conduct described in subdivision 2, clause (6), may be prosecuted where any letter, telegram, message, package, or other object is sent or received or, in the case of wireless or electronic communication or communication made through other available technologies, where the actor or victim resides or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established by chapter 5B.

Subd. 1c. Arrest. For all violations under this section, except a violation of subdivision 2, clause (7), a peace officer may make an arrest under the provisions of section 629.34. A peace officer may not make a warrantless, custodial arrest of any person for a violation of subdivision 2, clause (7).

Subd. 2. Harassment crimes.

- (a) As used in this subdivision, the following terms have the meanings given:

- (1) “family or household members” has the meaning given in section 518B.01, subdivision 2, paragraph (b);
 - (2) “personal information” has the meaning given in section 617.261, subdivision 7, paragraph (f);
 - (3) “sexual act” has the meaning given in section 617.261, subdivision 7, paragraph (g); and
 - (4) “substantial emotional distress” means mental distress, mental suffering, or mental anguish as demonstrated by a victim's response to an act including but not limited to seeking psychotherapy as defined in section 604.20, losing sleep or appetite, being diagnosed with a mental-health condition, experiencing suicidal ideation, or having difficulty concentrating on tasks resulting in a loss of productivity.
- (b) A person who commits any of the acts listed in paragraph (c) is guilty of a gross misdemeanor if the person, with the intent to kill, injure, harass, or intimidate another person:
- (1) places the other person in reasonable fear of substantial bodily harm;
 - (2) places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or
 - (3) causes or would reasonably be expected to cause substantial emotional distress to the other person.
- (c) A person commits harassment under this section if the person:
- (1) directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;
 - (2) follows, monitors, or pursues another, whether in person or through any available technological or other means;
 - (3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;
 - (4) repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;
 - (5) makes or causes the telephone of another repeatedly or continuously to ring;
 - (6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing loss, or any communication made through any available technologies or other objects;

- (7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties; or
- (8) uses another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person.

Subd. 3. Aggravated violations.

- (a) A person who commits any of the following acts is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both:
 - (1) commits any offense described in subdivision 2 because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;
 - (2) commits any offense described in subdivision 2 by falsely impersonating another;
 - (3) commits any offense described in subdivision 2 and a dangerous weapon was used in any way in the commission of the offense;
 - (4) commits any offense described in subdivision 2 with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or
 - (5) commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim.
- (b) A person who commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Subd. 4. Second or subsequent violations; felony.

- (a) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency, and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.
- (b) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of the first of two or more previous qualified domestic violence-related offense convictions or

adjudications of delinquency, and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Subd. 5. Stalking.

(a) A person who engages in a pattern of stalking conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(b) For purposes of this subdivision, a “stalking” means two or more acts within a five-year period that violate or attempt to violate the provisions of any of the following or a similar law of another state, the United States, the District of Columbia, tribe, or United States territories:

(1) this section;

(2) sections 609.185 to 609.205 (first- to third-degree murder and first- and second-degree manslaughter);

(3) section 609.713 (terroristic threats);

(4) section 609.224 (fifth-degree assault);

(5) section 609.2242 (domestic assault);

(6) section 518B.01, subdivision 14 (violations of domestic abuse orders for protection);

(7) section 609.748, subdivision 6 (violations of harassment restraining orders);

(8) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7) (certain trespass offenses);

(9) section 609.78, subdivision 2 (interference with an emergency call);

(10) section 609.79 (obscene or harassing telephone calls);

(11) section 609.795 (letter, telegram, or package; opening; harassment);

(12) section 609.582 (burglary);

(13) section 609.595 (damage to property);

(14) section 609.765 (criminal defamation);

(15)sections 609.342 to 609.3451 (first- to fifth-degree criminal sexual conduct); or

(16)section 629.75, subdivision 2 (violations of domestic abuse no contact orders).

(c) Words set forth in parentheses after references to statutory sections in paragraph (b) are mere catchwords included solely for convenience in reference. They are not substantive and may not be used to construe or limit the meaning of the cited statutory provision.

Subd. 6. Mental health assessment and treatment.

(a) When a person is convicted of a felony offense under this section, or another felony offense arising out of a charge based on this section, the court shall order an independent professional mental health assessment of the offender's need for mental health treatment. The court may waive the assessment if an adequate assessment was conducted prior to the conviction.

(b) Notwithstanding sections 13.384, 13.85, 144.291 to 144.298, 260B.171, or 260C.171, the assessor has access to the following private or confidential data on the person if access is relevant and necessary for the assessment:

(1) medical data under section 13.384;

(2) welfare data under section 13.46;

(3) corrections and detention data under section 13.85;

(4) health records under sections 144.291 to 144.298; and

(5) juvenile court records under sections 260B.171 and 260C.171.

Data disclosed under this section may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

(c) If the assessment indicates that the offender is in need of and amenable to mental health treatment, the court shall include in the sentence a requirement that the offender undergo treatment.

(d) The court shall order the offender to pay the costs of assessment under this subdivision unless the offender is indigent under section 563.01.

Subd. 7. Exception. Conduct is not a crime under this section if it is performed under terms of a valid license, to ensure compliance with a court order, or to carry out a specific lawful commercial purpose or employment duty, is authorized or required by a valid contract, or is authorized, required, or protected by state, federal, or tribal law or the state, federal, or tribal constitutions. Subdivision 2, clause (2), does not impair the right of any individual or group to engage in speech protected by the

federal, state, or tribal constitutions, or federal, state, or tribal law, including peaceful and lawful handbilling and picketing.

Subd. 8. Harassment; stalking; firearms.

- (a) When a person is convicted of harassment or stalking under this section and the court determines that the person used a firearm in any way during commission of the crime, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.
- (b) Except as otherwise provided in paragraph (a), when a person is convicted of harassment or stalking under this section, the court shall inform the defendant that the defendant is prohibited from possessing a firearm for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.
- (c) Except as otherwise provided in paragraph (a), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1996, of harassment or stalking under this section, or to possess a firearm if the person has been convicted on or after August 1, 2014, of a stalking crime under this section, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a firearm in violation of this paragraph is guilty of a gross misdemeanor.
- (d) If the court determines that a person convicted of harassment or stalking under this section owns or possesses a firearm and used it in any way during the commission of the crime, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.
- (e) Except as otherwise provided in paragraphs (d) and (g), when a person is convicted of harassment or stalking under this section, the court shall order the defendant to transfer any firearms that the person possesses, within three business days, to a federally licensed firearms dealer, a law enforcement agency, or a third party who may lawfully receive them. The transfer may be permanent or temporary. A temporary firearm transfer only entitles the receiving party to possess the firearm. A temporary transfer does not transfer ownership or title. A defendant may not transfer firearms to a third party who resides with the defendant. If a defendant makes a temporary transfer, a federally licensed firearms dealer or law enforcement agency may charge the defendant a reasonable fee to store the person's firearms and may establish policies for disposal of abandoned firearms, provided such policies require that the person be notified via certified mail prior to disposal of abandoned firearms. For temporary firearms transfers under

this paragraph, a law enforcement agency, federally licensed firearms dealer, or third party shall exercise due care to preserve the quality and function of the transferred firearms and shall return the transferred firearms to the person upon request after the expiration of the prohibiting time period imposed under this subdivision, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The return of temporarily transferred firearms to a defendant shall comply with state and federal law. If a defendant permanently transfers the defendant's firearms to a law enforcement agency, the agency is not required to compensate the defendant and may charge the defendant a reasonable processing fee. A law enforcement agency is not required to accept a person's firearm under this paragraph. The court shall order that the person surrender all permits to carry and purchase firearms to the sheriff.

- (f) A defendant who is ordered to transfer firearms under paragraph (e) must file proof of transfer as provided for in this paragraph. If the transfer is made to a third party, the third party must sign an affidavit under oath before a notary public either acknowledging that the defendant permanently transferred the defendant's firearms to the third party or agreeing to temporarily store the defendant's firearms until such time as the defendant is legally permitted to possess firearms. The affidavit shall indicate the serial number, make, and model of all firearms transferred by the defendant to the third party. The third party shall acknowledge in the affidavit that the third party may be held criminally and civilly responsible under section 624.7144 if the defendant gains access to a transferred firearm while the firearm is in the custody of the third party. If the transfer is to a law enforcement agency or federally licensed firearms dealer, the law enforcement agency or federally licensed firearms dealer shall provide proof of transfer to the defendant. The proof of transfer must specify whether the firearms were permanently or temporarily transferred and include the name of the defendant, date of transfer, and the serial number, make, and model of all transferred firearms. The defendant shall provide the court with a signed and notarized affidavit or proof of transfer as described in this section within two business days of the firearms transfer. The court shall seal affidavits and proofs of transfer filed pursuant to this paragraph.
- (g) When a person is convicted of harassment or stalking under this section, the court shall determine by a preponderance of the evidence if the person poses an imminent risk of causing another person substantial bodily harm. Upon a finding of imminent risk, the court shall order that the local law enforcement agency take immediate possession of all firearms in the person's possession. The local law enforcement agency shall exercise due care to preserve the quality and function of the defendant's firearms and shall return the firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The local law enforcement agency shall, upon written notice from the person, transfer the firearms to a federally licensed firearms dealer or a third party who may lawfully receive them. Before a local law enforcement agency transfers a firearm under this paragraph, the agency shall require the third party or federally licensed firearms dealer receiving the firearm to submit an affidavit or proof of transfer that complies with the requirements for affidavits or proofs of transfer established in paragraph (f). The agency shall file all affidavits or proofs of transfer received with the court within two business days of the transfer. The court shall seal all affidavits or proofs of transfer filed pursuant to this paragraph. A federally licensed firearms dealer or third party who accepts a firearm

transfer pursuant to this paragraph shall comply with paragraphs (e) and (f) as if accepting transfer from the defendant. If the law enforcement agency does not receive written notice from the defendant within three business days, the agency may charge a reasonable fee to store the defendant's firearms. A law enforcement agency may establish policies for disposal of abandoned firearms, provided such policies require that the person be notified via certified mail prior to disposal of abandoned firearms.

MINN. STAT. ANN. § 609.79 (WEST 2023). OBSCENE OR HARASSING TELEPHONE CALLS

Subdivision 1. Crime defined; obscene call. Whoever,

(1) by means of a telephone,

(i) makes any comment, request, suggestion or proposal which is obscene, lewd, or lascivious,

(ii) with the intent to harass or intimidate another person, repeatedly makes telephone calls, whether or not conversation ensues, and thereby places the other person in reasonable fear of substantial bodily harm; places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or causes or would reasonably be expected to cause substantial emotional distress to the other person, or

(iii) with the intent to harass or intimidate any person at the called or notified number, makes or causes the telephone of another to repeatedly or continuously ring or receive electronic notifications and thereby places the other person in reasonable fear of substantial bodily harm; places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or causes or would reasonably be expected to cause substantial emotional distress as defined in section 609.749, subdivision 2, paragraph (a), clause (4), to the other person, or

(2) having control of a telephone, knowingly permits it to be used for any purpose prohibited by this section, shall be guilty of a misdemeanor.

MINN. STAT. ANN. § 609.795 (WEST 2023). LETTER, TELEGRAM, OR PACKAGE; OPENING; HARASSMENT

Subdivision 1. Misdemeanors. Whoever does any of the following is guilty of a misdemeanor:

(1) knowing that the actor does not have the consent of either the sender or the addressee, intentionally opens any sealed letter, telegram, or package addressed to another; or

- (2) knowing that a sealed letter, telegram, or package has been opened without the consent of either the sender or addressee, intentionally publishes any of the contents thereof; or
- (3) with the intent to harass or intimidate another person, repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, or packages and thereby places the other person in reasonable fear of substantial bodily harm; places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or causes or would reasonably be expected to cause substantial emotional distress as defined in section 609.749, subdivision 2, paragraph (a), clause (4), to the other person.

Subd. 2. Repealed by Laws 1993, c. 326, art. 2, § 34.

Subd. 3. Venue. The offense may be prosecuted either at the place where the letter, telegram, or package is sent or received or, alternatively in the case of wireless electronic communication, where the sender or receiver resides.

MINN. STAT. ANN. § 611A.0315 (WEST 2023). VICTIM NOTIFICATION; DOMESTIC ASSAULT; CRIMINAL SEXUAL CONDUCT; STALKING

Subdivision 1. Notice of decision not to prosecute.

- (a) A prosecutor shall make every reasonable effort to notify a victim of domestic assault, a criminal sexual conduct offense, or stalking that the prosecutor has decided to decline prosecution of the case or to dismiss the criminal charges filed against the defendant. Efforts to notify the victim should include, in order of priority:
 - (1) contacting the victim or a person designated by the victim by telephone; and
 - (2) contacting the victim by mail. If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.
- (b) Whenever a prosecutor dismisses criminal charges against a person accused of domestic assault, a criminal sexual conduct offense, or stalking, a record shall be made of the specific reasons for the dismissal. If the dismissal is due to the unavailability of the witness, the prosecutor shall indicate the specific reason that the witness is unavailable.
- (c) Whenever a prosecutor notifies a victim of domestic assault, criminal sexual conduct, or stalking under this section, the prosecutor shall also inform the victim of the method and benefits of seeking an order for protection under section 518B.01 or a restraining order under section 609.748 and that the victim may seek an order without paying a fee.

Subd. 2. Definitions. For the purposes of this section, the following terms have the meanings given them.

- (a) “Assault” has the meaning given it in section 609.02, subdivision 10.
- (b) “Domestic assault” means an assault committed by the actor against a family or household member.
- (c) “Family or household member” has the meaning given it in section 518B.01, subdivision 2.
- (d) “Harassment” or “stalking” means a violation of section 609.749.
- (e) “Criminal sexual conduct offense” means a violation of sections 609.342 to 609.3453.

MINN. STAT. ANN. § 518B.01 (WEST 2023). DOMESTIC ABUSE ACT

[...]

Subd. 14. Violation of an order for protection.

- (a) A person who violates an order for protection issued by a judge or referee is subject to the penalties provided in paragraphs (b) to (d).
- (b) Except as otherwise provided in paragraphs (c) and (d), whenever an order for protection is granted by a judge or referee or pursuant to a similar law of another state, the United States, the District of Columbia, tribal lands, United States territories, Canada, or a Canadian province, and the respondent or person to be restrained knows of the existence of the order, violation of the order for protection is a misdemeanor. Upon a misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of three days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. If the court stays imposition or execution of the jail sentence and the defendant refuses or fails to comply with the court's treatment order, the court must impose and execute the stayed jail sentence. A violation of an order for protection shall also constitute contempt of court and be subject to the penalties provided in chapter 588.
- (c) A person is guilty of a gross misdemeanor who violates this subdivision within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. Upon a gross misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of ten days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for gross misdemeanor convictions.

- (d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person violates this subdivision:
- (1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency; or
 - (2) while possessing a dangerous weapon, as defined in section 609.02, subdivision 6.

Upon a felony conviction under this paragraph in which the court stays imposition or execution of sentence, the court shall impose at least a 30-day period of incarceration as a condition of probation. The court also shall order that the defendant participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for felony convictions.

- (e) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section or a similar law of another state, the United States, the District of Columbia, tribal lands, United States territories, Canada, or a Canadian province restraining the person or excluding the person from the residence or the petitioner's place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The probable cause required under this paragraph includes probable cause that the person knows of the existence of the order. If the order has not been served, the officer shall immediately serve the order whenever reasonably safe and possible to do so. An order for purposes of this subdivision, includes the short-form order described in subdivision 8a. When the order is first served upon the person at a location at which, under the terms of the order, the person's presence constitutes a violation, the person shall not be arrested for violation of the order without first being given a reasonable opportunity to leave the location in the presence of the peace officer. A person arrested under this paragraph shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.
- (f) If the court finds that the respondent has violated an order for protection and that there is reason to believe that the respondent will commit a further violation of the provisions of the order restraining the respondent from committing acts of domestic abuse or excluding the respondent from the petitioner's residence, the court may require the respondent to acknowledge an obligation to comply with the order on the record. The court may require a bond sufficient to deter the respondent from committing further violations of the order for protection, considering the financial resources of the respondent, and not to exceed \$10,000. If the respondent refuses to comply with an order to acknowledge the obligation or post a bond under this paragraph, the court shall commit the respondent to the county jail during the term of the order for protection or until the respondent complies with the order under this paragraph. The warrant must state the cause of commitment, with the sum and time for which any bond is required. If an order is issued

under this paragraph, the court may order the costs of the contempt action, or any part of them, to be paid by the respondent. An order under this paragraph is appealable.

- (g) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated any order for protection granted pursuant to this section or a similar law of another state, the United States, the District of Columbia, tribal lands, United States territories, Canada, or a Canadian province, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court and punished therefor. The hearing may be held by the court in any county in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation, or in the county in which the alleged violation occurred, if the petitioner and respondent do not reside in this state. The court also shall refer the violation of the order for protection to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).
- (h) If it is alleged that the respondent has violated an order for protection issued under subdivision 6 or a similar law of another state, the United States, the District of Columbia, tribal lands, United States territories, Canada, or Canadian province, and the court finds that the order has expired between the time of the alleged violation and the court's hearing on the violation, the court may grant a new order for protection under subdivision 6 based solely on the respondent's alleged violation of the prior order, to be effective until the hearing on the alleged violation of the prior order. If the court finds that the respondent has violated the prior order, the relief granted in the new order for protection shall be extended for a fixed period, not to exceed one year, except when the court determines a longer fixed period is appropriate.
- (i) The admittance into petitioner's dwelling of an abusing party excluded from the dwelling under an order for protection is not a violation by the petitioner of the order for protection.

A peace officer is not liable under section 609.43, clause (1), for a failure to perform a duty required by paragraph (e).

- (j) When a person is convicted under paragraph (b) or (c) of violating an order for protection and the court determines that the person used a firearm in any way during commission of the violation, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.
- (k) Except as otherwise provided in paragraph (j), when a person is convicted under paragraph (b) or of violating an order for protection, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this

information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

- (l) Except as otherwise provided in paragraph (j), a person is not entitled to possess a pistol if the person has been convicted under paragraph (b) or (c) after August 1, 1996, of violating an order for protection, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.
- (m) If the court determines that a person convicted under paragraph (b) or (c) of violating an order for protection owns or possesses a firearm and used it in any way during the commission of the violation, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

Relevant Case Law

***State v. Stockwell*, 770 N.W.2d 533 (Minn. Ct. App. 2009)**

Defendant was convicted of felony stalking and appealed arguing that (1) the statute is overbroad in violation of the First Amendment, both on its face and as applied; (2) the statute is unconstitutionally vague; and (3) there was insufficient evidence to support her conviction. The Court of Appeals held that the statute was not unconstitutional: the defendant's conduct of following the victim and pursuing her in a car, bumper to bumper, for multiple blocks, was not expressive conduct but rather was dangerous and intimidating because of its aggressive nature. Further, the defendant engaged in conduct that is clearly proscribed, such as following, and therefore cannot complain of the vagueness of the law as applied to the conduct of others. Lastly, the Court of Appeals held that there was sufficient evidence to support felony stalking where the defendant followed the victim dangerously close for several blocks, refused to pass when provided an opportunity, continued to follow the victim into her workplace parking lot, accosted the victim, and made threatening statements to the victim based on her apparent religion.

***State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019)**

The defendant was convicted of two counts of stalking by telephone and appealed, arguing, *inter alia*, that the stalking by telephone statute violates the First Amendment to the United States Constitution because it is facially overbroad, proscribes a substantial amount of protected speech, and cannot be remedied by narrowing its construction or severing language. To convict under the stalking by telephone statute, the State must prove that the defendant knew or had reason to know that his conduct would cause the victim to feel fear, loss of power, worry, or ill-treated; and that the defendant's conduct caused this reaction in the victim. The Court of Appeals held that the stalking by telephone section of statute criminalizing certain forms of harassment facially violated the First Amendment because it could prohibit and chill protected expression, and thus, defendant's conviction under statute was reversed, overruling *State v. Hall*, 887 N.W.2d 847 (Minn. Ct. App. 2019). The statute was not limited to prohibiting conduct directly linked to criminal activity, it

reached negligent expressive communication such as telephone calls and text messages, and allowed the State to prove its case by a victim's subjective reaction to the defendant's conduct.

Stalking, Harassment, & Related Offenses: Mississippi

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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MISSISSIPPI

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct “means a pattern of conduct composed of a series of two (2) or more acts over a period of time, however short, evidencing a continuity of purpose” and may include following or confronting a person against their will, contacting the person via phone, mail, or electronic means, or threatening or harming the person or a third party. Miss. Code § 97-3-107 (8)(a).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threats are not required but implicit or explicit credible threats can be part of the course of conduct. Miss. Code § 97-3-107 (1)(a). “Credible threat” means a verbal or written threat to cause harm to a specific person or to cause damage to property that would cause a reasonable person to fear for the safety of that person or damage to the property. Miss. Code § 97-3-107 (8)(b).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must purposefully engage in a course of conduct and know or should know that the conduct would cause reasonable fear. Miss. Code § 97-3-107 (1)(a). <i>See also Jones v. B.L. Development Corp.</i> , 940 So.2d 961, 969 (Miss. Ct. App. 2006) (“[I]t is clear that for a [stalking] violation to occur the offending conduct must be intentional.”).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, course of conduct includes causing a reasonable person to fear for the safety of another person and can include threatening or causing harm to the other person or a third party. Miss. Code § 97-3-107 (8)(a).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear for his or her own safety, to fear for the safety of another person, or to fear damage or

	destruction of his or her property. Miss. Code § 97-3-107 (1)(a).
Does fear include emotional distress?	No. There is no published case law that addresses this and the statutory law is silent.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. Miss. Code § 97-3-107 (1)(a). A reasonable person means a reasonable person in the victim's circumstances. Miss. Code § 97-3-107 (8)(c).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	There is no published case law that addresses this and the statutory law is silent as to what constitutes reasonable fear.
Must the victim tell the defendant to stop in order to constitute stalking?	No. Absence of actual notice is specifically precluded as a defense. Miss. Code § 97-3-107 (5).
Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)	No. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is explicitly recognized as potential course of conduct under the stalking statute. Miss. Code § 97-3-107 (8)(a)(ii). Other statutes criminalize similar conduct such as cyberstalking and obscene electronic and telecommunications, Miss. Code §§ 97-45-15, 97-29-45.
Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)	There is no residency requirement. See Miss. Code §§ 99-11-15, 17, 19.
Any unique provisions, elements, or requirements?	No.
Gradation of crimes (<i>list out statues in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)	Regular stalking is not graded as a misdemeanor or a felony but is punishable by up to 1 year in jail. Miss. Code § 97-3-107 (1)(b).

	<p>Aggravated stalking is graded as a felony and is punishable by up to 5 years imprisonment or, if at the time of the offense the offender was a registered sex offender and the victim was under 16 years old, then the punishment is up to 6 years imprisonment. Miss. Code § 97-3-107 (2)(b).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Regular stalking becomes aggravated stalking if the offender:</p> <ul style="list-style-type: none"> - Uses a deadly weapon with the intent to place the victim in fear of death or great bodily injury; - Has been convicted of stalking within the past 7 years; or - Was required to register as a sex offender and the victim was under 18 years old. <p>Miss. Code § 97-3-107 (2)(a).</p> <p>Aggravated stalking is punishable by up to 6 years imprisonment, as opposed to up to 5 years, if at the time of the offense the offender was a registered sex offender and the victim was under 16 years old, then the punishment is up to 6 years imprisonment. Miss. Code § 97-3-107 (2)(b).</p>

Statutes

MISS. CODE ANN. § 97-3-85 (WEST 2023). THREATENING LETTERS, PUNISHMENT

If any person shall post, mail, deliver, or drop a threatening letter or notice to another, whether such other be named or indicated therein or not, with intent to terrorize or to intimidate such other, he shall, upon conviction, be punished by imprisonment in the county jail not more than six months, or by fine not more than five hundred dollars, or both.

MISS. CODE ANN. § 97-3-107 (WEST 2023). STALKING AND AGGRAVATED STALKING; ELEMENTS; VENUE; DEFENSES; PENALTIES; RESTRAINING ORDERS; DEFINITIONS; APPLICATION

- (1) (a) Any person who purposefully engages in a course of conduct directed at a specific person, or who makes a credible threat, and who knows or should know that the conduct would cause a reasonable person to fear for his or her own safety, to fear for the safety of another person, or to fear damage or destruction of his or her property, is guilty of the crime of stalking.
- (b) A person who is convicted of the crime of stalking under this section shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.
- (c) Any person who is convicted of a violation of this section when there is in effect at the time of the commission of the offense a valid temporary restraining order, ex parte protective order, protective order after hearing, court approved consent agreement, or an injunction issued by a municipal, justice, county, circuit or chancery court, federal or tribal court or by a foreign court of competent jurisdiction prohibiting the behavior described in this section against the same party, shall be punished by imprisonment in the county jail for not more than one (1) year and by a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00).
- (2) (a) A person who commits acts that would constitute the crime of stalking as defined in this section is guilty of the crime of aggravated stalking if any of the following circumstances exist:
- (i) At least one (1) of the actions constituting the offense involved the use or display of a deadly weapon with the intent to place the victim of the stalking in reasonable fear of death or great bodily injury to self or a third person;
- (ii) Within the past seven (7) years, the perpetrator has been previously convicted of stalking or aggravated stalking under this section or a substantially similar law of another state, political subdivision of another state, of the United States, or of a federally recognized Indian tribe, whether against the same or another victim; or
- (iii) At the time of the offense, the perpetrator was a person required to register as a sex offender pursuant to state, federal, military or tribal law and the victim was under the age of eighteen (18) years.
- (b) Aggravated stalking is a felony punishable as follows:
- (i) Except as provided in subparagraph (ii), by imprisonment in the custody of the Department of Corrections for not more than five (5) years and a fine of not more than Three Thousand Dollars (\$3,000.00).

- (ii) If, at the time of the offense, the perpetrator was required to register as a sex offender pursuant to state, federal, military or tribal law, and the victim was under the age of eighteen (18) years, by imprisonment for not more than six (6) years in the custody of the Department of Corrections and a fine of Four Thousand Dollars (\$4,000.00).
- (3) Upon conviction, the sentencing court shall consider issuance of an order prohibiting the perpetrator from any contact with the victim. The duration of any order prohibiting contact with the victim shall be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim or another person.
- (4) Every conviction of stalking or aggravated stalking may require as a condition of any suspended sentence or sentence of probation that the defendant, at his own expense, submit to psychiatric or psychological counseling or other such treatment or behavioral modification program deemed appropriate by the court.
- (5) In any prosecution under this section, it shall not be a defense that the perpetrator was not given actual notice that the course of conduct was unwanted or that the perpetrator did not intend to cause the victim fear.
- (6) When investigating allegations of a violation of this section, law enforcement officers shall utilize the Uniform Offense Report prescribed by the Office of the Attorney General in consultation with the sheriffs' and police chiefs' associations. However, failure of law enforcement to utilize the Uniform Offense Report shall in no way invalidate the crime charged under this section.
- (7) For purposes of venue, any violation of this section shall be considered to have been committed in any county in which any single act was performed in furtherance of a violation of this section. An electronic communication shall be deemed to have been committed in any county from which the electronic communication is generated or in which it is received.
- (8) For the purposes of this section:
- (a) "Course of conduct" means a pattern of conduct composed of a series of two (2) or more acts over a period of time, however short, evidencing a continuity of purpose and that would cause a reasonable person to fear for his or her own safety, to fear for the safety of another person, or to fear damage or destruction of his or her property. Such acts may include, but are not limited to, the following or any combination thereof, whether done directly or indirectly: (i) following or confronting the other person in a public place or on private property against the other person's will; (ii) contacting the other person by telephone or mail, or by electronic mail or communication as defined in Section 97-45-1; or (iii) threatening or causing harm to the other person or a third party.
- (b) "Credible threat" means a verbal or written threat to cause harm to a specific person or to cause damage to property that would cause a reasonable person to fear for the safety of that person or damage to the property.

(c) "Reasonable person" means a reasonable person in the victim's circumstances.

(9) The incarceration of a person at the time the threat is made shall not be a bar to prosecution under this section. Constitutionally protected activity is not prohibited by this section.

MISS. CODE ANN. § 97-29-45 (WEST 2023). OBSCENE ELECTRONIC AND TELECOMMUNICATIONS

(1) It shall be unlawful for any person or persons:

(a) To make any comment, request, suggestion or proposal by means of telecommunication or electronic communication which is obscene, lewd or lascivious with intent to abuse, threaten or harass any party to a telephone conversation, telecommunication or electronic communication;

(b) To make a telecommunication or electronic communication with intent to terrify, intimidate or harass, and threaten to inflict injury or physical harm to any person or to his property;

(c) To make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;

(d) To make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;

(e) To make repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(f) Knowingly to permit a computer or a telephone of any type under his control to be used for any purpose prohibited by this section.

(2) Upon conviction of any person for the first offense of violating subsection (1) of this section, such person shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned in the county jail for not more than six (6) months, or both.

(3) Upon conviction of any person for the second offense of violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned in the county jail for not more than one (1) year, or both.

(4) For any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not more than Two Thousand Dollars (\$2,000.00) and/or imprisoned in the State Penitentiary for not more than two (2) years, or both.

- (5) The provisions of this section do not apply to a person or persons who make a telephone call that would be covered by the provisions of the federal Fair Debt Collection Practices Act, 15 USCS Section 1692 et seq.
- (6) Any person violating this section may be prosecuted in the county where the telephone call, conversation or language originates in case such call, conversation or language originates in the State of Mississippi. In case the call, conversation or language originates outside of the State of Mississippi then such person shall be prosecuted in the county to which it is transmitted.
- (7) For the purposes of this section, “telecommunication” and “electronic communication” mean and include any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet.
- (8) No person shall be held to have violated this section solely for providing access or connection to telecommunications or electronic communications services where the services do not include the creation of the content of the communication. Companies organized to do business as commercial broadcast radio stations, television stations, telecommunications service providers, Internet service providers, cable service providers or news organizations shall not be criminally liable under this section.

MISS. CODE ANN. § 93-21-21 (WEST 2023). VIOLATION OF ORDER OR AGREEMENT

- (1) Upon a knowing violation of (a) a protection order or court-approved consent agreement issued pursuant to this chapter, (b) a similar order issued by a foreign court of competent jurisdiction for the purpose of protecting a person from domestic abuse, or a similar order by a state military court as defined in Section 33-13-151, or (c) a bond condition imposed pursuant to Section 99-5-37, the person violating the order or condition commits a misdemeanor punishable by imprisonment in the county jail for not more than six (6) months or a fine of not more than One Thousand Dollars (\$1,000.00), or both.
- (2) Alternatively, upon a knowing violation of a protection order or court-approved consent agreement issued pursuant to this chapter or a bond condition issued pursuant to Section 99-5-37, the issuing court may hold the person violating the order or bond condition in contempt, the contempt to be punishable as otherwise provided by applicable law. A person shall not be both convicted of a misdemeanor and held in contempt for the same violation of an order or bond condition.
- (3) When investigating allegations of a violation under subsection (1) of this section, law enforcement officers shall utilize the uniform offense report prescribed for this purpose by the

Office of the Attorney General in consultation with the sheriffs and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged under subsection (1) of this section.

- (4) In any conviction for a violation of a domestic abuse protection order as described in subsection (1) of this section, the court shall enter the disposition of the matter into the corresponding uniform offense report.
- (5) Nothing in this section shall be construed to interfere with the court's authority, if any, to address bond condition violations in a more restrictive manner.

MISS. CODE ANN. § 97-45-15 (WEST 2023). CYBERSTALKING

(1) It is unlawful for a person to:

- (a) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.
- (b) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying or harassing any person.
- (c) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to threaten, terrify or harass.
- (d) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(2) Whoever commits the offense of cyberstalking shall be punished, upon conviction:

- (a) Except as provided herein, the person is guilty of a felony punishable by imprisonment for not more than two (2) years or a fine of not more than Five Thousand Dollars (\$5,000.00), or both.
- (b) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both:

- (i) The offense is in violation of a restraining order and the person has received actual notice of that restraining order or posting the message is in violation of an injunction or preliminary injunction.
 - (ii) The offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release or a condition of release on bond pending appeal.
 - (iii) The offense results in a credible threat being communicated to the victim, a member of the victim's family, or another individual living in the same household as the victim.
 - (iv) The person has been previously convicted of violating this section or a substantially similar law of another state, a political subdivision of another state, or of the United States.
- (3) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest or assembly.

Relevant Case Law

Jones v. B.L. Development Corp., 940 So.2d 961 (Miss. Ct. App. 2006)

Employee sued employer for multiple claims, including negligence for violating the stalking/harassment statute. The Court of Appeals upheld the finding of liability for stalking. The Court noted that the supervisor's course of conduct revealed a continuity of purpose to sexually harass the employee and to attempt to gratify his lewd inclinations towards the employee. This was the type of injury meant to be prevented by the stalking statute, and thus, the employee was in the class of persons sought to be protected by the statute. Further, the Court found that the supervisor knowingly and willfully engaged in a pattern of conduct for nine months which seriously alarmed and annoyed the employee.

Ude v. State, 992 So.2d 1213 (Miss. Ct. App. 2008)

Defendant was convicted of stalking and appealed arguing in part that the evidence presented was insufficient to support his conviction. Evidence was presented that the defendant repeatedly called victim, visited her office, and sent her gifts and food despite being told many times that he was not to have any contact with her. When the victim confronted the defendant about his behavior and told him that she did not wish to have any contact with him, he became angry and violent and yelled at her. The defendant once became so angry and agitated during meeting with the victim that he had to be removed from the room after shoving a chair at her when he witnessed her talking to another student. The Court of Appeals affirmed the conviction and found that the defendant's harassing behavior affected the victim both emotionally and academically.

***McCalpin v. State*, 85 So.3d 891 (Miss. Ct. App. 2012)**

Defendant was convicted of felony stalking and filed a motion for post-conviction relief arguing that there was insufficient evidence to support his conviction and to revoke his post-release supervision. At trial, evidence showed that the defendant followed a 16-year old victim in his vehicle, stopping his vehicle close to victim's vehicle so that she could not leave parking space, continued to stare at the victim even after being confronted by victim's mother, and refused to leave victim's presence until chased away by a male acquaintance of victim. The Court of Appeals held that the evidence was sufficient to support the defendant's conviction and revocation or post-release supervision. Even if defendant had not engaged in a repeated course of conduct, his actions supported a finding that his actions constituted credible threats with intent to place victim in reasonable fear of death or great bodily injury.

Stalking, Harassment, & Related Offenses: Missouri

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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MISSOURI

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct is a pattern of conduct “composed of two or more acts, which may include communication by any means, over a period of time, however short, evidencing a continuity of purpose.” Mo. Stat. § 565.002(4).
What types of threats are required (credible, explicit, implicit, bodily injury?)	For stalking in the first degree, if by threat, then the threat must be communicated with the intent to cause fear and the threat must be against life, bodily injury, kidnapping, or threat to animals. Mo. Stat. § 565.225 (2)(1). Threat is not required for stalking in the second degree.
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	For stalking the first degree, the offender must intend to cause fear, must follow with the intent to disturb the victim, or must engage in course of conduct that disturbs the victim. Mo. Stat. § 565.225 (1)(2); <i>See also State v. Cartwright</i> , 17 S.W.3d 149 (Mo. Ct. App. 2000) (A violation of Mo. Stat. § 565.225(2)(1) must show a defendant’s intent to cause victim to fear for safety, which does not depend on the victim’s actions). For stalking in the second degree, the offender must purposefully engage in a course of conduct or must follow with the intent to disturb the victim. Mo. Stat. § 565.227(1).
Do offender actions toward persons <i>other than the victim</i> help establish course of conduct?	Yes, for stalking in the first degree, a threat can be against the person's family or household members, or the person's domestic animals or livestock. Mo. Stat. § 565.225 (2)(1); <i>see also State v. Graham</i> , 553 S.W.3d 411 (Mo. Ct. App. 2018) (sufficient evidence that Defendant intended to harass victim based on text messages sent to victim’s adult son).

<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>For stalking in the first degree, fear of death, physical injury, or kidnapping of victim, victim’s family member, or victim’s animal. Mo. Stat. § 565.225(2)(1).</p>
<p>Does fear include emotional distress?</p>	<p>Yes. The term “disturbs” encompasses fear, intimidation, and emotional distress. Mo. Stat. § § 565.225(1), 565.227(1).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>The fear, intimidation, or emotional distress in response to the defendant’s actions is measured by a reasonable person standard. Mo. Ann. Stat. § 565.225(1); <i>See also State.v. Joyner</i>, 458 S.W2d 875, 883 (Mo. Ct. App. 2015) (A “victim’s subjective state of mind is not an essential element of the crime of stalking.”).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</p>	<p>There is limited case law that discusses what constitutes reasonable fear.</p> <p>In <i>State v. Lazinger</i>, 565 S.W.3d 220 (Mo. Ct. App. 2018), a prosecution for aggravated stalking of ex-husband and son, testimony of ex-husband's and son's subjective feelings of defendant's prior conduct was probative of how reasonable person would react to defendant's course of conduct in the future. The State was required to prove that reasonable person would have been frightened under circumstances of defendant's alleged stalking when she telephoned son and visited son's lacrosse practice, and ex-husband and son testified that defendant's prior conduct had caused them to be afraid of her, and evidence of ex-husband's and son's reactions supported reasonable inference that defendant was aware that her prior conduct had frightened ex-husband and son, since ex-husband obtained order of protection based on that conduct.</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>No. There is no published case law that addresses this and the statutory law is silent.</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>Case law addresses technology-facilitated stalking. <i>See State v. Martin</i>, 940 S.W.2d 6 (Mo. Ct. App. 1997) (Evidence that defendant threatened repeatedly to kill victim, her parents and her children, that defendant screamed and used obscenities during phone messages, that defendant had propensity for violence, and that victim moved into battered women's shelter to avoid contact with defendant provided ample support for finding that victim suffered “substantial emotional distress” from defendant's actions as element of aggravated stalking offense); <i>State v. Graham</i>, 553 S.W.3d 411 (Mo. Ct. App. 2018) (Evidence was sufficient to support verdict that, in sending text messages to victim's son, defendant's conscious objective was to harass victim, as would support conviction for aggravated stalking of victim, in whose favor order of protection had been issued, where messages referred to defendant's apparent plan to set fire to victim's home or to kill persons at victim's home, and victim's son was an adult who did not live at victim's home).</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. Jurisdiction can rest in Missouri if “[c]onduct constituting any element of the offense or a result of such conduct occurs within Missouri.” Mo. Stat. § 541.191(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 in the first degree is a first is a class D or class E felony. Mo. Stat. § 565.225 (5).</p> <p>Stalking in the second degree is a class E felony or a class A misdemeanor. Mo. Stat. § 565.227(4).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking in the second degree becomes stalking in the first degree if:</p>

- The offender makes a threat with the intent to cause fear;
- The offender violates a protection order;
- The offender violates probation, parole, or pretrial release;
- The victim is under 17 years old and the offender is at least 21 years old;
- The offender has previously been found guilty of a specified crime; or
- The victim is part of an address confidentiality program.

Mo. Stat. § 565.225 (2)(1)-(6).

Stalking in the first degree is aggravated to a class D felony if: There is a prior conviction for stalking; Victim was targeted because they are a law enforcement officer or related to a law enforcement officer. Mo. Stat. § 565.225 (5).

Stalking in the second degree is aggravated to a class E felony if: There is a prior conviction for stalking; or the victim was targeted because they are a law enforcement officer or related to a law enforcement officer. Mo. Stat. § 565.227(4).

Statutes

Mo. ANN. STAT. § 455.085 (WEST 2023). ARREST FOR VIOLATION OF ORDER--PENALTIES--GOOD FAITH IMMUNITY FOR LAW ENFORCEMENT OFFICIALS

[...]

2. When a law enforcement officer has probable cause to believe that a party, against whom a protective order has been entered and who has notice of such order entered, has committed an act of abuse in violation of such order, the officer shall arrest the offending party-respondent whether or not the violation occurred in the presence of the arresting officer. Refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

[...]

4. In an arrest in which a law enforcement officer acted in good faith reliance on this section, the arresting and assisting law enforcement officers and their employing entities and superiors shall be immune from liability in any civil action alleging false arrest, false imprisonment or malicious prosecution.
5. When a person against whom an order of protection has been entered fails to surrender custody of minor children to the person to whom custody was awarded in an order of protection, the law enforcement officer shall arrest the respondent, and shall turn the minor children over to the care and custody of the party to whom such care and custody was awarded.
6. The same procedures, including those designed to protect constitutional rights, shall be applied to the respondent as those applied to any individual detained in police custody.
7. A violation of the terms and conditions, with regard to domestic violence, stalking, sexual assault, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit or place of employment or school, or being within a certain distance of the petitioner or a child of the petitioner, of an ex parte order of protection of which the respondent has notice, shall be a class A misdemeanor unless the respondent has previously pleaded guilty to or has been found guilty in any division of the circuit court of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class E felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of such prior pleas of guilty or finding of guilt beyond a reasonable doubt, the court shall decide the extent or duration of sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict.
8. A violation of the terms and conditions, with regard to domestic violence, stalking, sexual assault, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit or place of employment or school, or being within a certain distance of the petitioner or a child of the petitioner, of a full order of protection shall be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has been found guilty in any division of the circuit court of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class E felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of such prior plea of guilty or finding of guilt beyond a reasonable doubt, the court shall decide the extent or duration of the sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict. For the purposes of this subsection, in addition to the notice provided by actual service of the order, a party is deemed to have notice of an order of protection if:

- (1) The law enforcement officer responding to a call of a reported incident of domestic violence, stalking, sexual assault, or violation of an order of protection presented a copy of the order of protection to the respondent; or
 - (2) Notice is given by actual communication to the respondent in a manner reasonably likely to advise the respondent.
9. Good faith attempts to effect a reconciliation of a marriage shall not be deemed tampering with a witness or victim tampering under section 575.270.
10. Nothing in this section shall be interpreted as creating a private cause of action for damages to enforce the provisions set forth herein.

Mo. ANN. STAT. § 565.002 (WEST 2023). DEFINITIONS

As used in this chapter, unless a different meaning is otherwise plainly required the following terms mean:

- [...]
3. “Conduct”, includes any act or omission;
 4. “Course of conduct”, a pattern of conduct composed of two or more acts, which may include communication by any means, over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct. Such constitutionally protected activity includes picketing or other organized protests;
- [...]
6. “Domestic victim”, a household or family member as the term “family” or “household member” is defined in section 455.010, including any child who is a member of the household or family;
 7. “Emotional distress”, something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living;
- [...]

**Mo. ANN. STAT. § 565.090 (WEST 2023). HARASSMENT, FIRST DEGREE--PENALTY—
EXCEPTION**

1. A person commits the offense of harassment in the first degree if he or she, without good cause, engages in any act with the purpose to cause emotional distress to another person, and such act does cause such person to suffer emotional distress.
2. The offense of harassment in the first degree is a class E felony.
3. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.

Mo. ANN. STAT. § 565.091 (WEST 2023). HARASSMENT, SECOND DEGREE—PENALTY

1. A person commits the offense of harassment in the second degree if he or she, without good cause, engages in any act with the purpose to cause emotional distress to another person.
2. The offense of harassment in the second degree is a class A misdemeanor, unless the person has previously pleaded guilty to or been found guilty of a violation of this section, of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which if committed in this state would be chargeable or indictable as a violation of any offense listed in this subsection, in which case it is a class E felony.
3. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violations of federal, state, county, or municipal law.

Mo. ANN. STAT. § 565.225 (WEST 2023). STALKING, FIRST DEGREE, PENALTY

1. As used in this section and section 565.227, the term “disturbs” shall mean to engage in a course of conduct directed at a specific person that serves no legitimate purpose and that would cause a reasonable person under the circumstances to be frightened, intimidated, or emotionally distressed.
2. A person commits the offense of stalking in the first degree if he or she purposely, through his or her course of conduct, disturbs or follows with the intent of disturbing another person and:
 - (1) Makes a threat communicated with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety, the safety of his or her family or household member, or the safety of domestic animals or livestock as defined in section 276.606 kept at such person's residence or on such person's property. The threat shall be against the life of, or a threat to cause physical injury to, or the kidnapping of the person, the person's family or

household members, or the person's domestic animals or livestock as defined in section 276.606 kept at such person's residence or on such person's property; or

- (2) At least one of the acts constituting the course of conduct is in violation of an order of protection and the person has received actual notice of such order; or
 - (3) At least one of the actions constituting the course of conduct is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal; or
 - (4) At any time during the course of conduct, the other person is seventeen years of age or younger and the person disturbing the other person is twenty-one years of age or older; or
 - (5) He or she has previously been found guilty of domestic assault, violation of an order of protection, or any other crime where the other person was the victim; or
 - (6) At any time during the course of conduct, the other person is a participant of the address confidentiality program under sections 589.660 to 589.681, and the person disturbing the other person knowingly accesses or attempts to access the address of the other person.
3. Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section.
 4. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of any violation of federal, state, county, or municipal law.
 5. The offense of stalking in the first degree is a class E felony, unless the defendant has previously been found guilty of a violation of this section or section 565.227, or any offense committed in another jurisdiction which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this section or section 565.227, or unless the victim is intentionally targeted as a law enforcement officer, as defined in section 556.061, or the victim is targeted because he or she is a relative within the second degree of consanguinity or affinity to a law enforcement officer, in which case stalking in the first degree is a class D felony.

Mo. ANN. STAT. § 565.227 (WEST 2023). STALKING, SECOND DEGREE, PENALTY

1. A person commits the offense of stalking in the second degree if he or she purposely, through his or her course of conduct, disturbs, or follows with the intent to disturb another person.
2. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of any violation of federal, state, county, or municipal law.
3. Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section.

4. The offense of stalking in the second degree is a class A misdemeanor, unless the defendant has previously been found guilty of a violation of this section or section 565.225, or of any offense committed in another jurisdiction which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this section or section 565.225, or unless the victim is intentionally targeted as a law enforcement officer, as defined in section 556.061, or the victim is targeted because he or she is a relative within the second degree of consanguinity or affinity to a law enforcement officer, in which case stalking in the second degree is a class E felony.

Mo. ANN. STAT. § 565.240 (WEST 2023). UNLAWFUL POSTING OF CERTAIN INFORMATION OVER THE INTERNET, PENALTY

1. A person commits the offense of unlawful posting of certain information over the internet if he or she knowingly posts the name, home address, Social Security number, or telephone number of any person on the internet intending to cause great bodily harm or death, or threatening to cause great bodily harm or death to such person.
2. The offense of unlawful posting of certain information over the internet is a class C misdemeanor, unless the person knowingly posts on the internet the name, home address, Social Security number, telephone number, or any other personally identifiable information of any law enforcement officer, corrections officer, parole officer, judge, commissioner, or prosecuting attorney, or of any immediate family member of such law enforcement officer, corrections officer, parole officer, judge, commissioner, or prosecuting attorney, intending to cause great bodily harm or death, or threatening to cause great bodily harm or death, in which case it is a class E felony.

Relevant Case Law

***State v. Cartwright*, 17 S.W.3d 149 (Mo. Ct. App. 2000)**

Defendant was convicted of aggravated stalking and appealed. On appeal, the defendant argued, *inter alia*, that the evidence was sufficient to establish that defendant had threatened victim's life. Evidence presented at trial showed that the defendant began to repeatedly waken the victim in the middle of the night accusing her of extramarital affairs and demanding that she confess. One night the defendant told the victim that he was sick of the affairs and that he was "going to break [her] neck and...throw [her] down the basement stairs." The defendant also told the victim that "I can go in the City and get a gun for a hundred dollars" and that when the divorce was final he would destroy everyone that had anything to do with the divorce and then kill himself. The Court of Appeals held that there was sufficient evidence to support presented that the defendant made a credible threat against the life of victim or to cause physical injury to victim or that defendant acted with the intent to place victim in reasonable fear of death or serious physical injury, as required for aggravated stalking conviction, because defendant's communications with victim involved words like "kill" and

“destroy” that are frequently associated with severe physical harm, and victim testified that she was afraid defendant was going to kill her.

***State v. Magalif*, 131 S.W.3d 431 (Mo. Ct. App. 2004)**

Defendant was convicted of stalking and of multiple counts of violating a protection order. The Circuit Court found that the State did not present sufficient credible evidence and entered a judgment of acquittal notwithstanding the jury's guilty verdicts. The State appealed. The Court of Appeals held that the State presented sufficient evidence that the defendant engaged in a course of conduct with the intent to cause the victim fear where the defendant used his car to block the victim's car, shouted at her that he was looking forward to cross-examining her, took photographs of her and her car, stood near the victim as she worked on the restaurant's parking lot, and shouted at her while jumping up and down. Further, the victim suffered substantial emotional distress and her emotional distress was reasonable. For emotional distress to be substantial, thereby supporting charge of stalking, the conduct giving rise to it must be such as would produce a considerable or significant amount of emotional distress in a reasonable person, something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living. The victim testified that she was afraid of the defendant and would have co-workers walk her to her car, began carrying pepper spray for protection, and began taking sleeping pills because of continuing nightmares.

***State v. Starkey*, 380 S.W.3d 636 (Mo. Ct. App. 2012)**

Defendant was convicted of four counts of aggravated stalking and appealed, arguing, *inter alia*, the evidence presented was insufficient to support his conviction. Specifically, the defendant argued that the State failed to prove that he made a credible threat when he made a phone call, saying, “a whole lot of people are going to need to go to medical facilities” if Judge Bloodworth did not remove “his fraudulent warrants.” The harassment component of aggravated stalking, requiring conduct directed at a specific person which serves no legitimate purpose and which would cause a reasonable person to be frightened, intimidated, or cause emotional distress, punishes actions which by their very occurrence inflict injury or tend to incite an immediate breach of the peace. Additionally, a single threat is all that is need to satisfy the “credible threat” element of aggravated stalking. In this case, the evidence at trial established that the defendant engaged in a continuing, and arguably, escalating, course of conduct through his many acts of communication via phone, fax and letter. Several of the defendant's phone calls and faxes used vulgarities, including name-calling, warnings, such as to “buckle up,” and references to Judge Bloodworth's male anatomy and his wife. Some of the defendant's name-calling may have offended Judge Bloodworth, his clerks, and his family, but “it is highly doubtful that the government has much of a legitimate interest in punishment of ‘name-calling’ between private parties.” Therefore, the Court of Appeals found there was sufficient evidence to support the convictions.

Stalking, Harassment, & Related Offenses: Montana

Current as of June 2023

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and is being furnished strictly for informational purposes.

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MONTANA

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct” means two or more acts, including but not limited to acts in which the offender directly or indirectly, by any action, method, communication, or physical or electronic devices or means, follows, monitors, observes, surveils, threatens, harasses, or intimidates a person or interferes with a person's property. Mont. Code § 45-5-220 (2)(a).
What types of threats are required (credible, explicit, implicit, bodily injury?)	No threats are <i>per se</i> required but can be direct or indirect. Mont. Code § 45-5-220 (2)(a).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>Offender must knowingly and purposefully engage in a course of conduct directed at specific person. Mont. Code § 45-5-220 (1).</p> <p>A person acts knowingly when the person is aware of the person's own conduct or that the circumstance exists or when the person is aware that it is highly probable that the result will be caused by the person's conduct. Mont. Code § 45-2-101 (35).</p>
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, fear includes fear for the safety of a third person. Mont. Code § 45-5-220(1); <i>See also State v. McCarthy</i> , 980 P.2d 629, 632 (Mont. 1999) (“Communicating through a third party whom the stalker knows is likely to relay the fact of contact, and hence produce the desired effect of harassing or intimidating the victim, constitutes an ‘action, device or method’ of stalking. To hold otherwise would defeat the clear purpose of the stalking statute by permitting a stalker to intimidate and harass his intended victim simply by communicating his threats to third parties who the stalker knows and expects will inform the victim.”).

What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear for own safety or the safety of a third person or to suffer substantial emotional distress. Mont. Code § 45-5-220(1).
Does fear include emotional distress?	Yes. Emotional distress is defined as significant mental suffering or distress that may but does not necessarily require medical or other professional treatment or counseling. Mont. Code § 45-5-220(1)(b), (2)(c).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. A reasonable person “means a reasonable person under similar circumstances as the victim. This is an objective standard.” Mont. Code § 45-5-220 (2)(b)
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	<p>There is limited case law that addresses what constitutes reasonable fear.</p> <p><i>State v. Yuhas</i>, 243 P.3d 409 (Mont. 2010) (Evidence was sufficient to establish that son of defendant's recently divorced girlfriend suffered substantial emotional distress attributable to defendant's violation of no contact letter when defendant showed up at two football practices and school's homecoming bonfire, and that such distress was reasonable, as required in order to convict defendant of stalking; though girlfriend's son continued to perform well in school and extracurricular activities, girlfriend's son testified that he was really scared and intimidated, others who knew son described him as being beside himself, upset, panicked and distraught, and girlfriend's son knew that defendant was not supposed to contact him).</p>
Must the victim tell the defendant to stop in order to constitute stalking?	No, but the victim telling offender to stop is prima facie evidence that the offender acted purposefully or knowingly. Mont. Code § 45-5-220 (7).
Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)	Yes. Course of conduct includes “acts in which the offender directly or indirectly, by any action ...” Mont. Code § 45-5-220 (2)(a).

	<p><i>Seen also State v. McCarthy</i>, 980 P.2d 629, 632 (Mont. 1999) (“22 Section 45–5–220(b), MCA, states that stalking occurs when the stalker repeatedly harasses, threatens, or intimidates the stalked person “in person, or by phone, by mail, or by other action, device or method.’ (emphasis added). Communicating through a third party whom the stalker knows is likely to relay the fact of contact, and hence produce the desired effect of harassing or intimidating the victim, constitutes an ‘action, device or method’ of stalking. To hold otherwise would defeat the clear purpose of the stalking statute by permitting a stalker to intimidate and harass his intended victim simply by communicating his threats to third parties who (the stalker knows and expects) will inform the victim.”).</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 statute. “Course of conduct” specifically includes use of electronic devices to stalk the victim. Mont. Code § 45-5-220 (2)(a).</p> <p>Another statute criminalizes similar conduct such as violating privacy in communications. Mont. Code § 45-8-213.</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. Sufficient jurisdiction exists for Montana to have jurisdiction if at least one of the acts making up stalking occur wholly or partially in Montana. Mont. Code § 46-2-101(1)(a). <i>See also Jordan v. Kalin</i>, 256 P.3d 909 (Mont. 2011) (Petition by forum state resident for an order of protection alleged acts committed partly within forum state and, therefore, was sufficient to confer jurisdiction on forum state court; petition alleged that former co-worker, who was a resident of another state, committed multiple acts of stalking and harassment against petitioner in that state, and that a collage of photographs and word/phrase cut-outs that encouraged petitioner to break up with her husband was sent, anonymously, to petitioner's place of employment in forum state).</p>

	<p><i>See also State v. Cooney</i>, 894 P.2d 303 (Mont. 1995)(Criminal action for violating antistalking statute could be brought in county in which college student victim's mother lived, even though defendant claimed that alleged conduct occurred in county in which he lived and result if any occurred in another state where victim was living; defendant had sent letters to victim at her mother's residence and had left an offensive telephone message at that location).</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 not graded as a misdemeanor or a felony but the punishment increases based on aggravating factors.</p> <ul style="list-style-type: none"> - The first offense of stalking is punishable by up to one year in jail; - A first offense of stalking in which the offender violated any order of protection; used force or a weapon; or the victim was a minor and the offender was at least 5 years older than the victim, is punishable by up to 5 years imprisonment; - A second or subsequent offense of stalking within 20 years is punishable by up to 5 years imprisonment. <p>Mont. Code § 45-5-220(4).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>See above</p>

Statutes

MONT. CODE ANN. § 45-5-220 (WEST 2023). STALKING -- EXEMPTION – PENALTY

(1) A person commits the offense of stalking if the person purposely or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

(a) fear for the person's own safety or the safety of a third person; or

(b) suffer other substantial emotional distress.

(2) For the purposes of this section, the following definitions apply:

(a) “Course of conduct” means two or more acts, including but not limited to acts in which the offender directly or indirectly, by any action, method, communication, or physical or electronic devices or means, follows, monitors, observes, surveils, threatens, harasses, or intimidates a person or interferes with a person's property.

(b) “Reasonable person” means a reasonable person under similar circumstances as the victim. This is an objective standard.

(c) “Substantial emotional distress” means significant mental suffering or distress that may but does not necessarily require medical or other professional treatment or counseling.

(3) This section does not apply to a constitutionally protected activity.

(4) (a) Except as provided in subsection (4)(b), for the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both.

(b) For a second or subsequent offense within 20 years or for a first offense when the offender violated any order of protection, when the offender used force or a weapon or threatened to use force or a weapon, or when the victim is a minor and the offender is at least 5 years older than the victim, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both.

(c) A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(5) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

(6) For the purpose of determining the number of convictions under this section, “conviction” means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

- (7) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

MONT. CODE ANN. § 45-5-203 (WEST 2023). INTIMIDATION

- (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, the person communicates to another, under circumstances that reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:
- (a) inflict physical harm on the person threatened or any other person;
 - (b) subject any person to physical confinement or restraint; or
 - (c) commit any felony.
- (2) A person commits the offense of intimidation if the person knowingly communicates a threat or false report of a pending fire, explosion, or disaster that would endanger life or property.
- (3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

MONT. CODE ANN. § 45-5-626 (WEST 2023). VIOLATION OF ORDER OF PROTECTION

- (1) Except as provided in 50-32-609, a person commits the offense of violation of an order of protection if the person, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection under Title 40, chapter 15. It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.
- (2) Only the respondent under an order of protection may be cited for a violation of the order. The petitioner who filed for an order of protection may not be cited for a violation of that order of protection.
- (3) An offender convicted of violation of an order of protection shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. Upon conviction for a second offense, an offender shall be fined not less than \$200 and not more than \$500 and be imprisoned in the county jail not less than 24 hours and not more than 6 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less

than \$500 and not more than \$2,000 and be imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years.

MONT. CODE ANN. § 45-8-213 (WEST 2023). PRIVACY IN COMMUNICATIONS

- (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:
- (a) with the purpose to terrify, intimidate, threaten, harass, or injure, communicates with a person by electronic communication and threatens to inflict injury or physical harm to the person or property of the person or makes repeated use of obscene, lewd, or profane language or repeated lewd or lascivious suggestions;
 - (b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;
 - (c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation; or
 - (d) with the purpose to terrify, intimidate, threaten, harass, or injure, publishes or distributes printed or electronic photographs, pictures, images, or films of an identifiable person without the consent of the person depicted that show:
 - (i) the visible genitals, anus, buttocks, or female breast if the nipple is exposed; or
 - (ii) the person depicted engaged in a real or simulated sexual act.
- (2) (a) Subsection (1)(c) does not apply to:
- (i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;
 - (ii) persons speaking at public meetings;
 - (iii) persons given warning of the transcription or recording. If one person provides the warning, either party may record.
 - (iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.

(b) Subsection (1)(d) does not apply to:

- (i) images involving the voluntary exposure of a person's genitals or intimate parts in public or commercial settings;
- (ii) disclosures made in the public interest, including but not limited to the reporting of unlawful conduct;
- (iii) disclosures made in the course of performing duties related to law enforcement, including reporting to authorities, criminal or news reporting, legal proceedings, or medical treatment; or
- (iv) disclosures concerning historic, artistic, scientific, or educational materials.

(3) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(4) (a) A person convicted of the offense of violating privacy in communications shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a), (1)(b), or (1)(d), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a), (1)(b), or (1)(d), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(5) Nothing in this section may be construed to impose liability on an interactive computer service for content provided by another person.

(6) As used in this section, the following definitions apply:

(a) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and this type of service or system as operated or offered by a library or educational institution.

Relevant Case Law

State v. Yuhas, 243 P.3d 409 (Mont. 2010)

Defendant was convicted of stalking his ex-girlfriend's son and appealed arguing that the State failed to prove that the victim suffered emotional distress and failed to prove that the defendant repeatedly harassed and intimidated the victim. Evidence was presented that the defendant showed up at the victim's two football practices and the school's homecoming bonfire when he was told to not contact the victim. The victim testified that he was really scared and intimidated by the defendant. Further, others who knew the victim described him as being beside himself, upset, panicked and distraught. The Supreme Court of Montana affirmed the conviction, stating that the victim need not have exhibited physical symptoms or experienced substantial changes in his life, such as decreased performances in school or extracurricular activities, in order to establish substantial emotional distress. A stalked person need not manifest physical symptoms.

Stalking, Harassment, & Related Offenses: Native Nations

Current as of June 2023

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NATIVE NATIONS

Summary

There are 574 federally recognized American Indian and Alaska Native tribes and villages, and hundreds without federal recognition. Some tribes have adopted laws and codes specifically addressing stalking and many of those include a requirement of fear, emotional distress, or reasonable apprehension of death, bodily harm, sexual assault, confinement, or restraint.

For information about a specific law or code, the National Indian Law Library of the Native American Rights Fund (NARF) is a law library devoted to federal Indian and tribal law and assists people with their Indian law-related research needs (<https://narf.org/nill/>).

The Tribal Law and Policy Institute offers a discussion of stalking statutes in Native Nations in its [Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking](#), last updated in 2017 (<https://www.home.tlpi.org/>).

Stalking, Harassment, & Related Offenses: Nebraska

Current as of June 2023

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NEBRASKA

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning, contacting, or otherwise communicating with the person.” Neb. Rev. Stat. § 28-311.02(b).
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>Threat is not required but can be used to establish course of conduct. <i>See Hawkins v. Delgado</i>, 953 N.W.2d 765, 769–70 (Neb. 2021) (“[T]he definition of ‘[h]arass’ in § 28-311.02(2)(a) is not limited to threats of physical violence—it also includes conduct that ‘seriously terrifies’ or ‘intimidates.’ In fact, physical violence is only implicitly referenced in the definition of the word ‘harass,’ via the term ‘threatens.’”).</p> <p>Threatening to “out” the sexuality of another is a threat for purposes of harassment. <i>See Diedra T. v. Justina R.</i>, 984 N.W.2d 312 (Neb. 2023) (“viewed objectively, Justina’s statements—and in particular, her statements about disclosing the details of her sexual relationship with Diedra and Diedra’s husband to Diedra’s employer—could be read as threatening nonphysical harm to Diedra, as well as being intimidating.”)</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>The offender must willfully engage in a course of conduct and also must intend to injure, terrify, threaten, or intimidate the victim. Neb. Rev. Stat. § 28-311.03.</p> <p><i>See also In re Int. of Jeffrey K.</i>, 728 N.W.2d 606, 611 (Neb. 2007) (“In addition to requiring that the perpetrator’s actions be intentional, § 28-311.03 requires that the perpetrator intend to</p>

	either ‘injure, terrify, threaten, or intimidate’ the victim.”).
Do offender actions toward persons <i>other than the victim</i> help establish course of conduct?	Yes, if towards “a family or household member.” Neb. Rev. Stat. § 28-311.03.
What type of victim fear is required? (for safety, of bodily injury, etc.)?	The type of fear is not defined but the offender must intend to injure, terrify, threaten, or intimidate the victim. Neb. Rev. Stat. § 28-311.03.
Does fear include emotional distress?	No. There is no published case law that addresses this and the statutory law is silent.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard, per case law. <i>In re Int. of Jeffrey K.</i> , 728 N.W.2d 606, 611 (Neb. 2007) (“Giving the entire statute a sensible construction, we conclude that the Legislature intended to ‘protect victims’ and that to achieve this purpose, the language ‘seriously terrifies, threatens, or intimidates’ ought to be applied objectively and that the evidence should therefore be assessed on the basis of what a reasonable person under the circumstances would experience.”). <i>See Diedra T. v. Justina R.</i> , 984 N.W.2d 312, 319 (Neb. 2023); <i>See also Hawkins v. Delgado</i> , 953 N.W.2d 765, 769 (Neb. 2021).
If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)	There is limited case law that addresses what constitutes reasonable fear. <i>Amy E. on behalf of Gracen E. v. Patrick D.</i> , No. A-20-127, 2020 WL 3723007, at *5 (Neb. Ct. App. July 7, 2020) (“The evidence established that 41-year-old Patrick was engaged in a course of conduct of texting sexually explicit and otherwise inappropriate content to 12- and 14-year-old girls including, but not limited to, talking about a ‘rape van,’ ‘happy endings,’ ‘blue ballers,’ and inviting the minors to parties where alcohol would be served. Each of those girls testified that they did not provide Patrick with their phone numbers and did not know how he obtained their numbers... We find that

	Patrick engaged in a knowing and willful course of conduct directed at Gracen, Samantha, Emerson, and Ellie, and that a reasonable person would be, at a minimum, seriously threatened and intimidated by such conduct.”).
Must the victim tell the defendant to stop in order to constitute stalking?	There is no published case law that addresses this and the statutory law is silent.
Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)	There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	<p>Technology-facilitated stalking is not explicitly included or excluded in the stalking statute. However, it is addressed by case law. <i>See Hawkins v. Delgado</i>, 953 N.W.2d 765 (Neb. 2021) (“Evidence was sufficient to support continuation of ex parte harassment restraining order in favor of former girlfriend; there was evidence that former boyfriend had threatened suicide prior to her ending their relationship, that, thereafter, he texted, emailed, or called every few days, that after she attempted to block communications, he managed to contact her via an older email account and a ‘burner’ phone, and that she then obtained a no-contact order through the military and that his response was to email her to say ‘Nice try’ and threaten to come to where she lived.”).</p> <p>Further, other statutes criminalize similar conduct such as intimidation via telephone. Neb. Rev. Stat. § 28-1310.</p>
Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)	No, and for crimes committed through electronic means, the crime can be prosecuted either where the communication was sent or where it was received. Neb. Rev. Stat. Ann. § 29-1301.04. Further, crimes can be prosecuted based on where an element of the crime occurred. Neb. Rev. Stat. § 29-1301.01.
Any unique provisions, elements, or requirements?	No.

<p>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)</p>	<p>Stalking is either a Class I misdemeanor or a Class IIIA felony. Neb. Rev. Stat. § 28-311.04(1)(2).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a felony if:</p> <ul style="list-style-type: none"> - The offender has a prior conviction within the last 7 years; - The victim is under 16 years of age; - the offender possessed a deadly weapon; - The offender violated a protection order; or - The offender has been convicted of a felony against the same victim or the same victim's family. <p>Neb. Rev. Stat. § 28-311.04(2).</p>

Statutes

NEB. REV. STAT. ANN. § 28-311.02 (WEST 2023). STALKING AND HARASSMENT; LEGISLATIVE INTENT; TERMS, DEFINED

- (1) It is the intent of the Legislature to enact laws dealing with stalking offenses which will protect victims from being willfully harassed, intentionally terrified, threatened, or intimidated by individuals who intentionally follow, detain, stalk, or harass them or impose any restraint on their personal liberty and which will not prohibit constitutionally protected activities.
- (2) For purposes of sections 28-311.02 to 28-311.05, 28-311.09, and 28-311.10:
- (a) Harass means to engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose;
 - (b) Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning, contacting, or otherwise communicating with the person;
 - (c) Family or household member means a spouse or former spouse of the victim, children of the victim, a person presently residing with the victim or who has resided with the victim in the past, a person who had a child in common with the victim, other persons related to the victim by consanguinity or affinity, or any person presently involved in a dating relationship with the victim or who has been involved in a dating relationship with the victim. For purposes of this subdivision, dating relationship means frequent, intimate associations primarily characterized

by the expectation of affectional or sexual involvement but does not include a causal relationship or an ordinary association between persons in a business or social context; and

- (d) Substantially conforming criminal violation means a guilty plea, a nolo contendere plea, or a conviction for a violation of any federal law or law of another state or any county, city, or village ordinance of this state or another state substantially similar to section 28-311.03. Substantially conforming is a question of law to be determined by the court.

NEB. REV. STAT. ANN. § 28-311.03 (WEST 2023). STALKING

Any person who willfully harasses another person or a family or household member of such person with the intent to injure, terrify, threaten, or intimidate commits the offense of stalking.

NEB. REV. STAT. ANN. § 28-311.04 (WEST 2023). STALKING; VIOLATIONS; PENALTIES

- (1) Except as provided in subsection (2) of this section, any person convicted of violating section 28-311.03 is guilty of a Class I misdemeanor.
- (2) Any person convicted of violating section 28-311.03 is guilty of a Class IIIA felony if:
- (a) The person has a prior conviction under such section or a substantially conforming criminal violation within the last seven years;
 - (b) The victim is under sixteen years of age;
 - (c) The person possessed a deadly weapon at any time during the violation;
 - (d) The person was also in violation of section 28-311.09, 28-311.11, 42-924, or 42-925, or in violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 or a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 at any time during the violation; or
 - (e) The person has been convicted of any felony in this state or has been convicted of a crime in another jurisdiction which, if committed in this state, would constitute a felony and the victim or a family or household member of the victim was also the victim of such previous felony.

NEB. REV. STAT. ANN. § 28-311.05 (WEST 2023). STALKING; NOT APPLICABLE TO CERTAIN CONDUCT

Sections 28-311.02 to 28-311.04, 28-311.09, and 28-311.10 shall not apply to conduct which occurs during labor picketing.

NEB. REV. STAT. ANN. § 28-311.09 (WEST 2023). HARASSMENT PROTECTION ORDER; VIOLATION; PENALTY; PROCEDURE; COSTS; ENFORCEMENT

- (1) Any victim who has been harassed as defined by section 28-311.02 may file a petition and affidavit for a harassment protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a harassment protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner. The harassment protection order shall specify to whom relief under this section was granted.
- (2) The petition for a harassment protection order shall state the events and dates or approximate dates of acts constituting the alleged harassment, including the most recent and most severe incident or incidents.
- (3) A petition for a harassment protection order shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740.
- (4) A petition for a harassment protection order filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year unless otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates an order issued pursuant to subsection (1) of this section after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class II misdemeanor.
- (5) (a) Fees to cover costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the harassment protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section against the respondent.
- (6) The clerk of the district court shall make available standard application and affidavit forms for a harassment protection order with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the incidents that are the basis for the application for a harassment protection order, including the most severe incident, and the date or approximate date of such incidents. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided

for in this section as well as the standard temporary ex parte and final harassment protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary ex parte and final harassment protection order forms shall be the only such forms used in this state.

- (7) Any order issued under subsection (1) of this section may be issued ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If the specific facts included in the affidavit (a) do not show that the petitioner will suffer irreparable harm, loss, or damage or (b) show that, for any other compelling reason, an ex parte order should not be issued, the court may forthwith cause notice of the application to be given to the respondent stating that he or she may show cause, not more than fourteen days after service, why such order should not be entered. Any notice provided to the respondent shall include notification that a court may treat a petition for a harassment protection order as a petition for a sexual assault protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If such ex parte order is issued without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. If a petition is dismissed without a hearing, it shall be dismissed without prejudice. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.
- (8) A court may treat a petition for a harassment protection order as a petition for a sexual assault protection order or a domestic abuse protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:
- (a) The court makes specific findings that such other order is more appropriate; or
 - (b) The petitioner has requested the court to so treat the petition.
- (9) (a) Upon the issuance of any temporary ex parte or final harassment protection order, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy

each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the harassment protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the harassment protection order upon the respondent and file its return thereon with the clerk of the court which issued the harassment protection order within fourteen days of the issuance of the harassment protection order. If any harassment protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

- (b) If the respondent is present at a hearing convened pursuant to this section and the harassment protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the harassment protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section.
- (c) A temporary ex parte harassment protection order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the ex parte order and:
 - (i) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;
 - (ii) The respondent has been properly served with notice of any hearing requested by the respondent or petitioner or upon the court's own motion and the respondent fails to appear at such hearing; or
 - (iii) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(10) A peace officer may, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a harassment protection order issued pursuant to this section or a violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 and (b) a petitioner under this section provides the peace officer with a copy of a harassment protection order or the peace officer determines that such an order exists after communicating with the local law enforcement agency or a person protected under a valid foreign harassment protection order recognized pursuant to section 28-311.10 provides the peace officer with a copy of such order.

(11) A peace officer making an arrest pursuant to subsection (10) of this section shall take such person into custody and take such person before the county court or the court which issued the harassment protection order within a reasonable time. At such time the court shall establish the

conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the harassment.

(12) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information except for entry into state and federal databases for protection order enforcement.

NEB. REV. STAT. ANN. § 28-1310 (WEST 2023). INTIMIDATION BY TELEPHONE CALL OR ELECTRONIC COMMUNICATION; PENALTY

- (1) A person commits the offense of intimidation by telephone call or electronic communication if, with intent to intimidate, threaten, or harass an individual, the person telephones such individual or transmits an electronic communication directly to such individual, whether or not conversation or an electronic response ensues, and the person:
- (a) Uses obscene language or suggests any obscene act;
 - (b) Threatens to inflict physical or mental injury to such individual or any other person or physical injury to the property of such individual or any other person; or
 - (c) Attempts to extort property, money, or other thing of value from such individual or any other person.
- (2) The offense shall be deemed to have been committed either at the place where the call or electronic communication was initiated or where it was received.
- (3) Intimidation by telephone call or electronic communication is a Class III misdemeanor.
- (4) For purposes of this section, electronic communication means any writing, sound, visual image, or data of any nature that is received or transmitted by an electronic communication device as defined in section 28-833.

Relevant Case Law

In re Int. of Jeffrey K., 728 N.W.2d 606 (Neb. 2007)

Juvenile was adjudicated delinquent of stalking and appealed. The Court of Appeals reversed the adjudication finding that there was insufficient evidence to support the adjudication. The State sought review. At trial, the victim testified that the juvenile had carried out a continuing pattern of calling her names at school, such as “fat ass,” “fat penguin,” “whore,” and “fat bitch.” As the

months passed, the frequency of the name-calling incidences increased, and juvenile began to do it “on a daily basis when [she] came into school or when [she] just passed [him] in the hallway.” In addition to name calling, the juvenile also threw food at the victim on about 10 separate occasions. The Supreme Court of Nebraska noted that the stalking statute requires that the offender’s conduct be such that it “seriously terrifies, threatens, or intimidates” the person at whom it is directed. In examining this statutory requirement, the Court of Appeals assumed this provision was a subjective standard, and because the victim testified at one point that juvenile’s tone of voice was “mean but not really—like, a threatening voice,” the Court of Appeals concluded that the evidence was insufficient to support a finding. In reversing the Court of Appeals, the Supreme Court stated that the victim’s experience resulting from the offender’s conduct should be assessed on an objective basis under stalking statute. When enacting stalking statute, the legislature intended to protect victims, and to achieve this purpose, the language “seriously terrifies, threatens, or intimidates” ought to be applied objectively, and the evidence should therefore be assessed on the basis of what a reasonable person under the circumstances would experience.

***Hawkins v. Delgado*, 953 N.W.2d 765 (Neb. 2021)**

After ending their relationship Hawkins requested that Delgado no longer contact her. Delgado continued to contact her, including statements of threats to harm himself or warnings like, “Time has come. Karma.” Hawkins was granted an ex-parte harassment protection order and, after a hearing, an extended no contact order for one year. Delgado appealed the court’s issuance of the extension, arguing that his behavior did not constitute a “course of conduct” nor did his message threaten physical violence. The court found that the messages occurred every few days and continued even after Hawkins told him to stop, thereby establishing a course of conduct. The court also determined that the content of the communication was sufficient to meet the definition of harassment- conduct which terrifies, threatens, or intimidates the person and serves no legitimate purpose. The extension of the harassment protection order was upheld.

***Diedra T. v. Justina R.*, 313 Neb. 417, 984 N.W.2d 312 (Neb. 2023)**

Diedra sought a harassment protection order after Justina continued to contact Diedra and had to be escorted from Diedra’s home by law enforcement. At the hearing for the protection order, Diedra asked that a domestic abuse protection order be granted in lieu of the harassment order, or, in the alternative, the harassment order be extended. Justina appealed the lower court’s decision to extend the harassment protection order on the grounds that there was insufficient evidence presented to meet the burden of proof and the request for a domestic abuse protection order had infringed upon Justina’s right of due process. Justina claimed that the contacts were only repeated, unwanted communications, not rising to the level of harassment, but the court found that the threats to “out” Diedra to her employer and the threats made Justina to harm herself were seriously threatening and intimidating and served no legitimate purpose. The court did not, however, find there was sufficient evidence to uphold the order on behalf of Diedra’s children.

***Amy E. on behalf of Gracen E. v. Patrick D.*, No. A-20-127, 2020 WL 3723007 (Neb. Ct. App. July 7, 2020)**

Parents Amy E., Brandon E., and Rachel M. sought to obtain a protective order against Patrick D., a 41-year-old man, on behalf of their respective children, Gracen (14), Samantha (14), Emerson (14),

and Ellie (12). The texts sent to the minors were introduced as evidence during the hearing and included messages with overt sexual content, including the Respondent's desire to purchase a "rape van" and the offer of alcohol to the minors. The children testified at the hearing that they were not frightened by the Respondent but some of the children found the messages to be inappropriate. The order was extended in relation to all the children and Respondent appealed the decision. Among other issues, Respondent claimst that there was insufficient evidence to justify the extension of the protection order. The appellate court reviewed the evidence and found, objectively, that the communication and the context of the ages of the parties was enough to be threatening and intimidating to a reasonable person.

Koch v. Susan S., No. A-22-824, 2023 WL 3185075 (Neb. Ct. App. May 2, 2023)

Petitioner mailed Respondent unsolicited communication about his beliefs regarding issues like marriage and women's health. Respondent replied to Petitioner, informing him that his communication had motivated her to donate to Planned Parenthood. The court denied Petitioner's request for a harassment protection order on this basis. Petitioner appealed, claiming that Respondent's support of Planned Parenthood causes his extreme distress and fear. The appellate court found that Petitioner did not submit sufficient facts in his petition to satisfy the requirements for a harassment protection order.

Stalking, Harassment, & Related Offenses: Nevada

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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NEVADA

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct” means a pattern of conduct which consists of two or more acts over a period of time that evidences a continuity of purpose directed at a specific person. Nev. Rev. Stat. § 200.575 (11)(a)
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat that would cause fear of death or serious bodily injury is required for aggravated stalking. Nev. Rev. Stat. Ann. § 200.575(3); <i>See also Pigeon v. State</i> , 408 P.3d 160 (Nev. 2017) (Evidence was insufficient to support conviction for aggravated stalking; while evidence was sufficient for juror to find that defendant committed stalking, as he followed victim on bus and to school three days in a row, stepped in her path, touched her arm, and told her she was pretty, and followed her even after she told him to leave her alone, State presented no evidence that defendant threatened victim with intent to cause her to be placed in reasonable fear of death or substantial bodily harm).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>For regular stalking, the offender must willfully and maliciously engage in a course of conduct. Nev. Rev. Stat. § 200.575(1). Malice and maliciously are defined as “an evil intent, wish or design to vex, annoy or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.” Nev. Rev. Stat. § 193.0175.</p> <p>For aggravated stalking, offender must threaten with intent to cause fear. Nev. Rev. Stat. § 200.575(3).</p>

<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes, when the course of conduct would cause a reasonable person to be fearful for his or her immediate safety or the immediate safety of a family or household member. Nev. Rev. Stat. § 200.575(1).</p> <p>“Family or household member means a spouse, a former spouse, a parent or other person who is related by blood or marriage or is or was actually residing with the person.” Nev. Rev. Stat. § 200.575 (11)(b).</p> <p><i>See also Gonzales v. State</i>, 492 P.3d 556, 559 (Nev. 2021) (“The stalking counts arose from disturbing and threatening text messages he sent to his ex-wife and her parents.”).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Stalking requires a fear for the victim’s immediate safety or the immediate safety of a family or household member. Nev. Rev. Stat. § 200.575(1).</p> <p>Aggravated stalking requires a reasonable fear of death or serious bodily injury. Nev. Rev. Stat. § 200.575(3).</p>
<p>Does fear include emotional distress?</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. Nev. Rev. Stat. § 200.575 (1), (3).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is fact specific.</p> <p><i>Wilson v. State</i>, 468 P.3d 381 (Nev. App. 2020)(“After viewing the evidence in the light most favorable to the State, we conclude that a rational jury could have concluded that Wilson committed aggravated stalking. Wilson confessed that he intended to scare Haddix because he was angry with her due to her ending their relationship and ignoring him. He then sent multiple detailed text messages,</p>

	<p>using a fictitious number and name, stating that she was going to die, he was coming for her, he was going to kill her by cutting her throat while she performed fellatio on him, cutting her car's brake lines, or by possibly placing an improvised explosive device in her car. Based on the direct and circumstantial evidence, a rational trier of fact could reasonably infer that Wilson intended for Haddix to fear death or substantial bodily harm.”).</p> <p><i>Konops v. State</i>, 472 P.3d 192 (Nev. 2020) (the evidence introduced at trial showed that appellant repeatedly called and texted the victim despite a temporary protective order against domestic violence. In those calls and messages, appellant explicitly stated that he was ‘homicidal,’ lamented about not engaging in physical abuse in the past, and threatened to kill the victim's parents. The messages increased in frequency and severity on the day before appellant s arrest [...] Based on this evidence, a rational juror could have found that appellant maliciously engaged in a course of conduct including objectively threatening behavior that was intended to place the victim in ‘reasonable fear of death or substantial bodily harm.’”).</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>No. There is no published case law that addresses this and the statutory law is silent.</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 is considered an aggravating factor. Nev. Rev. Stat. § 200.575 (4).</p> <p>Other statutes criminalize similar conduct such as cyberbullying and making obscene or annoying telephone calls. Nev. Rev. Stat. §§ 200.900, 201.255.</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>There is no residency requirement and a person can be charged with stalking if conduct initiated in the state or has an effect on a victim within the state. Nev. Rev. Stat. §§ 200.575(5), 200.581.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>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)</p>	<p>Stalking is classified as either a Class B felony, a Class C felony, a gross misdemeanor, or a misdemeanor. Nev. Rev. Stat. § 200.575 (1)-(4).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a gross misdemeanor if:</p> <ul style="list-style-type: none"> - Second offense; or - The victim is under the age of 16 and the person is 5 or more years older than the victim. <p>Stalking becomes a category C felony if:</p> <ul style="list-style-type: none"> - Third or subsequent offense; - Second offense where the victim is under the age of 16 and the person is 5 or more years older than the victim; or - Stalking is committed using electronic means. <p>Stalking becomes a category B felony if:</p> <ul style="list-style-type: none"> - Third or subsequent offense where the victim is under the age of 16 and the person is 5 or more years older than the victim; or - Stalking is aggravated (threats). <p>Nev. Rev. Stat. § 200.575 (1)-(4).</p>

Statutes

NEV. REV. STAT. ANN. § 200.571 (WEST 2023). HARASSMENT: DEFINITION; PENALTIES

1. A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

- (1) To cause bodily injury in the future to the person threatened or to any other person;
- (2) To cause physical damage to the property of another person;

- (3) To subject the person threatened or any other person to physical confinement or restraint;
or
 - (4) To do any act which is intended to substantially harm the person threatened or any other person with respect to his or her physical or mental health or safety; and
- (b) The person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.
2. Except where the provisions of subsection 2, 3 or 4 of NRS 200.575 are applicable, a person who is guilty of harassment:
- (a) For the first offense, is guilty of a misdemeanor.
 - (b) For the second or any subsequent offense, is guilty of a gross misdemeanor.
3. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.

NEV. REV. STAT. ANN. § 200.575 (WEST 2023). STALKING: DEFINITIONS; PENALTIES; ENTRY OF FINDING IN JUDGMENT OF CONVICTION OR ADMONISHMENT OF RIGHTS

1. A person who, without lawful authority, willfully or maliciously engages in a course of conduct directed towards a victim that would cause a reasonable person under similar circumstances to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety or the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety or the immediate safety of a family or household member, commits the crime of stalking. Except where the provisions of subsection 2, 3 or 4 are applicable, a person who commits the crime of stalking:
- (a) For the first offense, is guilty of a misdemeanor.
 - (b) For the second offense, is guilty of a gross misdemeanor.
 - (c) For the third or any subsequent offense, is guilty of a category C felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years, and may be further punished by a fine of not more than \$5,000.
2. Except as otherwise provided in subsection 3 or 4 and unless a more severe penalty is prescribed by law, a person who commits the crime of stalking where the victim is under the age of 16 and the person is 5 or more years older than the victim:

- (a) For the first offense, is guilty of a gross misdemeanor.
 - (b) For the second offense, is guilty of a category C felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 5 years, and may be further punished by a fine of not more than \$5,000.
 - (c) For the third or any subsequent offense, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$5,000.
3. A person who commits the crime of stalking and in conjunction therewith threatens the person with the intent to cause the person to be placed in reasonable fear of death or substantial bodily harm commits the crime of aggravated stalking. A person who commits the crime of aggravated stalking shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$5,000.
 4. A person who commits the crime of stalking with the use of an Internet or network site, electronic mail, text messaging or any other similar means of communication to publish, display or distribute information in a manner that substantially increases the risk of harm or violence to the victim shall be punished for a category C felony as provided in NRS 193.130.
 5. If any act engaged in by a person was part of the course of conduct that constitutes the crime of stalking and was initiated or had an effect on the victim in this State, the person may be prosecuted in this State.
 6. Except as otherwise provided in subsection 2 of NRS 200.571, a criminal penalty provided for in this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.
 7. If the court finds that a person convicted of stalking pursuant to this section committed the crime against a person listed in subsection 1 of NRS 33.018 and that the victim has an ongoing, reasonable fear of physical harm, the court shall enter the finding in its judgment of conviction or admonishment of rights.
 8. If the court includes such a finding in a judgment of conviction or admonishment of rights issued pursuant to this section, the court shall:
 - (a) Inform the person convicted that he or she is prohibited from owning, possessing or having under his or her control or custody any firearm pursuant to NRS 202.360; and

(b) Order the person convicted to permanently surrender, sell or transfer any firearm that he or she owns or that is in his or her possession or under his or her custody or control in the manner set forth in NRS 202.361.

9. A person who violates any provision included in a judgment of conviction or admonishment of rights issued pursuant to this section concerning the surrender, sale, transfer, ownership, possession, custody or control of a firearm is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000. The court must include in the judgment of conviction or admonishment of rights a statement that a violation of such a provision in the judgment or admonishment is a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

10. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.

11. As used in this section:

(a) "Course of conduct" means a pattern of conduct which consists of two or more acts over a period of time that evidences a continuity of purpose directed at a specific person.

(b) "Family or household member" means a spouse, a former spouse, a parent or other person who is related by blood or marriage or is or was actually residing with the person.

(c) "Internet or network site" has the meaning ascribed to it in NRS 205.4744.

(d) "Network" has the meaning ascribed to it in NRS 205.4745.

(e) "Offense" includes, without limitation, a violation of the law of any other jurisdiction that prohibits the same or similar conduct set forth in this section.

(f) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(g) "Without lawful authority" includes acts which are initiated or continued without the victim's consent. The term does not include acts which are otherwise protected or authorized by constitutional or statutory law, regulation or order of a court of competent jurisdiction, including, but not limited to:

(1) Picketing which occurs during a strike, work stoppage or any other labor dispute.

- (2) The activities of a reporter, photographer, camera operator or other person while gathering information for communication to the public if that person is employed or engaged by or has contracted with a newspaper, periodical, press association or radio or television station and is acting solely within that professional capacity.
- (3) The activities of a person that are carried out in the normal course of his or her lawful employment.
- (4) Any activities carried out in the exercise of the constitutionally protected rights of freedom of speech and assembly.

NEV. REV. STAT. ANN. § 200.581 (WEST 2023). WHERE OFFENSE COMMITTED

Harassment, stalking or aggravated stalking shall be deemed to have been committed where the conduct occurred or where the person who was affected by the conduct was located at the time that the conduct occurred.

NEV. REV. STAT. ANN. § 200.591 (WEST 2023). COURT MAY IMPOSE TEMPORARY OR EXTENDED ORDER TO RESTRICT CONDUCT OF ALLEGED PERPETRATOR, DEFENDANT OR CONVICTED PERSON; PENALTY FOR VIOLATION OF ORDER; DISSEMINATION OF ORDER; NOTICE PROVIDED IN ORDER

1. In addition to any other remedy provided by law, a person who reasonably believes that the crime of stalking, aggravated stalking or harassment is being committed against him or her by another person may petition any court of competent jurisdiction for a temporary or extended order directing the person who is allegedly committing the crime to:
 - (a) Stay away from the home, school, business or place of employment of the victim of the alleged crime and any other location specifically named by the court.
 - (b) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged crime and any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.
 - (c) Comply with any other restriction which the court deems necessary to protect the victim of the alleged crime or to protect any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.
2. If a defendant charged with a crime involving harassment, stalking or aggravated stalking is released from custody before trial or is found guilty at the trial, the court may issue a temporary or extended order or provide as a condition of the release or sentence that the defendant:

- (a) Stay away from the home, school, business or place of employment of the victim of the alleged crime and any other location specifically named by the court.
 - (b) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged crime and any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.
 - (c) Comply with any other restriction which the court deems necessary to protect the victim of the alleged crime or to protect any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.
3. A temporary order may be granted with or without notice to the adverse party. An extended order may be granted only after:
 - (a) Notice of the petition for the order and of the hearing thereon is served upon the adverse party pursuant to the Nevada Rules of Civil Procedure; and
 - (b) A hearing is held on the petition.
4. If an extended order is issued by a justice court, an interlocutory appeal lies to the district court, which may affirm, modify or vacate the order in question. The appeal may be taken without bond, but its taking does not stay the effect or enforcement of the order.
5. Unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order, any person who intentionally violates:
 - (a) A temporary order is guilty of a gross misdemeanor.
 - (b) An extended order is guilty of a category C felony and shall be punished as provided in NRS 193.130.
6. Any court order issued pursuant to this section must:
 - (a) Be in writing;
 - (b) Be personally served on the person to whom it is directed; and
 - (c) Contain the warning that violation of the order:
 - (1) Subjects the person to immediate arrest.
 - (2) Is a gross misdemeanor if the order is a temporary order.
 - (3) Is a category C felony if the order is an extended order.

7. A temporary or extended order issued pursuant to this section must provide notice that a person who is arrested for violating the order will not be admitted to bail sooner than 12 hours after the person's arrest if:
 - (a) The arresting officer determines that such a violation is accompanied by a direct or indirect threat of harm;
 - (b) The person has previously violated a temporary or extended order for protection; or
 - (c) At the time of the violation or within 2 hours after the violation, the person has:
 - (1) A concentration of alcohol of 0.08 or more in his or her blood or breath; or
 - (2) An amount of a prohibited substance in his or her blood or urine, as applicable, that is equal to or greater than the amount set forth in subsection 3 or 4 of NRS 484C.110.

NEV. REV. STAT. ANN. § 200.900 (WEST 2023). PENALTIES; DEFINITIONS

1. A minor shall not knowingly and willfully use an electronic communication device to transmit or distribute, or otherwise knowingly and willfully transmit or distribute, an image of bullying committed against a minor to another person with the intent to encourage, further or promote bullying and to cause harm to the minor.
2. A minor who violates subsection 1:
 - (a) For the first violation, is a child in need of supervision, as that term is used in title 5 of NRS, and is not a delinquent child; and
 - (b) For the second or a subsequent violation, commits a delinquent act, and the court may order the detention of the minor in the same manner as if the minor had committed an act that would have been a misdemeanor if committed by an adult.
3. For the purposes of this section, to determine whether a person who is depicted in an image of bullying is a minor, the court may:
 - (a) Inspect the person in question;
 - (b) View the image;
 - (c) Consider the opinion of a witness to the image regarding the person's age;
 - (d) Consider the opinion of a medical expert who viewed the image; or

(e) Use any other method authorized by the rules of evidence at common law.

4. As used in this section:

(a) “Bullying” means a willful act which is written, verbal or physical, or a course of conduct on the part of one or more persons which is not otherwise authorized by law and which exposes a person one time or repeatedly and over time to one or more negative actions which is highly offensive to a reasonable person and:

(1) Is intended to cause or actually causes the person to suffer harm or serious emotional distress;

(2) Poses a threat of immediate harm or actually inflicts harm to another person or to the property of another person;

(3) Places the person in reasonable fear of harm or serious emotional distress; or

(4) Creates an environment which is hostile to a pupil by interfering with the education of the pupil.

(b) “Electronic communication device” means any electronic device that is capable of transmitting or distributing an image of bullying, including, without limitation, a cellular telephone, personal digital assistant, computer, computer network and computer system.

(c) “Image of bullying” means any visual depiction, including, without limitation, any photograph or video, of a minor bullying another minor.

(d) “Minor” means a person who is under 18 years of age.

NEV. REV. STAT. ANN. § 201.255 (WEST 2023). PENALTIES

1. Any person who willfully makes a telephone call and addresses any obscene language, representation or suggestion to or about any person receiving such call or addresses to such other person any threat to inflict injury to the person or property of the person addressed or any member of the person’s family is guilty of a misdemeanor.
2. Every person who makes a telephone call with intent to annoy another is, whether or not conversation ensues from making the telephone call, guilty of a misdemeanor.
3. Any violation of subsections 1 and 2 is committed at the place at which the telephone call or calls were made and at the place where the telephone call or calls were received, and may be prosecuted at either place.

Relevant Case Law

***Rosales v. State*, 381 P.3d 657 (Nev. 2012)**

Defendant was convicted of aggravated stalking and other crimes and appealed arguing, *inter alia*, that the evidence was insufficient to prove that the defendant intended to place the District Attorney in reasonable fear of death or substantial bodily harm. Evidence was presented that the defendant stalked the District Attorney by writing in graffiti that “DA Dick Gam will die soon,” “kill Gammick now,” “Dick Gammick must be killed now,” “Dick Gammick drives a sport-utility kill him now,” and threatening phone calls to District Attorney at home and at work, telling him, among other things, to “get a haircut,” to “have a heart attack,” and to “have a good fucking weekend.” The District Attorney testified that, as a result of the defendant’s conduct, he felt harassed and, at some times, thought he was being watched because the caller seemed to know his schedule. The victim also testified that started carrying a gun and, at times, wearing a bulletproof vest because he was frightened, intimidated, harassed, and feared substantial bodily harm. The Supreme Court of Nevada held that the evidence was sufficient to conviction.

***Pigeon v. State*, No. 67083, 2017 WL 6043408 (Nev. Dec. 1, 2017)**

The defendant was convicted of aggravated stalking and other crimes and appealed arguing, *inter alia*, that there was insufficient evidence to support his conviction. Supreme Court of Nevada agreed. The Court noted that while evidence was sufficient for juror to find that defendant committed stalking, as he followed victim on a bus and to school three days in a row, stepped in her path, touched her arm, told her she was pretty, and followed her even after she told him to leave her alone, the State presented no evidence that defendant threatened victim with intent to cause her to be placed in reasonable fear of death or substantial bodily harm as required for the stalking to be aggravated.

Stalking, Harassment, & Related Offenses: New Hampshire

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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NEW HAMPSHIRE

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>(a) "Course of conduct" means 2 or more acts over a period of time, however short, which evidences a continuity of purpose. A course of conduct shall not include constitutionally protected activity, nor shall it include conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person.</p> <p>A course of conduct may include, but not be limited to, any of the following acts or a combination thereof:</p> <ul style="list-style-type: none">- Threatening the safety of the targeted person or an immediate family member;- Following, approaching, or confronting that person, or a member of that person's immediate family;- Appearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found, or the residence, place of employment or school of a member of that person's immediate family;- Causing damage to the person's residence or property or that of a member of the person's immediate family;- Placing an object on the person's property, either directly or through a third person, or that of an immediate family member;- Causing injury to that person's pet, or to a pet belonging to a member of that person's immediate family; or- Any act of communication, as defined in RSA 644:4, II. <p>N.H. Rev. Stat. § 633:3-a (II)(a).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threat is not required but can be considered as part of a course of conduct. N.H. Rev. Stat. § 633:3-a (II)(a)(1).</p>

	<p>Criminal threatening requires the use of a deadly weapon, as opposed to felony domestic violence criminal threatening which only requires the threat of a deadly weapon. See <i>State v. Roy</i>, 273 A.3d 388, 392 (N.H. 2021).</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>-</p>	<p>The required intent differs based on the section of the statute.</p> <p>The offender must purposefully, knowingly, or recklessly engage in course of conduct that would cause reasonable fear. N.H. Rev. Stat. § 633:3-a (I)(a).</p> <p>or</p> <p>The offender must purposefully or knowingly engage in course of conduct that would cause specific individual fear. N.H. Rev. Stat. § 633:3-a (I)(b).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes, course of conduct for stalking includes fear of safety of a member of the victim’s immediate family. N.H. Rev. Stat. § 633:3-a(I).</p> <p>“Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person. N.H. Rev. Stat. § 633:3-a (II)(b).</p> <p>However, case law expands this to conduct towards <i>any</i> third party. See <i>Fisher v. Minichiello</i>, 921 A.2d 385 (N.H. 2007)(Evidence that defendant threatened to retaliate against administrator for assisted living facility where defendant's mother resided, that defendant entered facility and was threatening and abusive towards facility staff on multiple occasions in which police were called, constituted two or more acts in support of finding of pattern of intimidation, as required to support stalking order ... Stalking statute did not</p>

	limit prohibited offending conduct to that directed against family or household member).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear for personal safety or safety of immediate family. N.H. Rev. Stat. § 633:3-a(I).
Does fear include emotional distress?	No. There is no published case law that addresses this and the statutory law is silent.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Both. The fear for personal safety is an objective requirement under N.H. Rev. Stat. § 633:3-a(I)(a) and a subjective threshold under N.H. Rev. Stat. § 633:3-a(I)(b).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	<p>What constitutes reasonable fear is case specific.</p> <p><i>State v. Gubitosi</i>, 886 A.2d 1029, 1037–38 (N.H. 2005) (Court affirmed finding that the defendant engaged in a course of conduct targeted at Rubin that would cause a reasonable person to fear for his or her personal safety when the defendant drove to the restaurant where the victim was eating, parked three car lengths away from the victim, and that she had seen the defendant's car on several prior occasions).</p> <p><i>Miller v. Blackden</i>, 913 A.2d 742 (N.H. 2006) (Evidence was sufficient to support findings that private detective engaged in conduct constituting stalking and that his conduct would have caused a reasonable person to fear for his or her personal safety; evidence included testimony that private detective was hired by client to conduct surveillance of client's former girlfriend after the couple ended their relationship and that surveillance began after a complaint by the girlfriend caused client to be arrested, and girlfriend testified that the police told her to take precautions and lock all of her doors and windows because the detective was watching her).</p>

Must the victim tell the defendant to stop in order to constitute stalking?	No. There is no published case law that addresses this and the statutory law is silent.
Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)	Yes. Course of conduct includes “placing an object on the person's property, either directly or through a third person, or that of an immediate family member” and communication which includes imparting a message by any method of transmission or personally delivering or sending or having delivered any information. See N.H. Rev. Stat. § 644:4 (II).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered by the regular stalking statute. See N.H. Rev. Stat. §§ 644:4 (II), 633:3-a (II)(a)(5), (7).
Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)	No residency requirement. Jurisdiction rests in New Hampshire if any of the course conduct occurs in NH or the result of the stalking occurs in NH. N.H. Rev. Stat. § 625:4(a)
Any unique provisions, elements, or requirements?	No.
Gradation of crimes (<i>list out statues in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)	Stalking is a class B felony if certain aggravating factors exist. N.H. Rev. Stat. § 633:3-a (VI)(a) Otherwise, stalking is a class A misdemeanor. N.H. Rev. Stat. § 633:3-a (VI)(b).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking becomes a felony if the offender had a prior stalking conviction within 7 years. N.H. Rev. Stat. § 633:3-a (VI)(a)

Statutes

N.H. REV. STAT. ANN. § 631:4 (WEST 2023). CRIMINAL THREATENING

I. A person is guilty of criminal threatening when:

- (a) By physical conduct, the person purposely places or attempts to place another in fear of imminent bodily injury or physical contact; or
- (b) The person places any object or graffiti on the property of another with a purpose to coerce or terrorize any person; or
- (c) The person threatens to commit any crime against the property of another with a purpose to coerce or terrorize any person; or
- (d) The person threatens to commit any crime against the person of another with a purpose to terrorize any person; or
- (e) The person threatens to commit any crime of violence, or threatens the delivery or use of a biological or chemical substance, with a purpose to cause evacuation of a building, place of assembly, facility of public transportation or otherwise to cause serious public inconvenience, or in reckless disregard of causing such fear, terror or inconvenience; or
- (f) The person delivers, threatens to deliver, or causes the delivery of any substance the actor knows could be perceived as a biological or chemical substance, to another person with the purpose of causing fear or terror, or in reckless disregard of causing such fear or terror.

II. (a) Criminal threatening is a class B felony if the person:

(1) Violates the provisions of subparagraph I(e); or

(2) Uses a deadly weapon as defined in RSA 625:11, V in the violation of the provisions of subparagraph I(a), I(b), I(c), or I(d).

(b) All other criminal threatening is a misdemeanor.

III.(a) As used in this section, “property” has the same meaning as in RSA 637:2, I; “property of another” has the same meaning as in RSA 637:2, IV.

(b) As used in this section, “terrorize” means to cause alarm, fright, or dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation.

IV. A person who responds to a threat which would be considered by a reasonable person as likely to cause serious bodily injury or death to the person or to another by displaying a firearm or other means of self-defense with the intent to warn away the person making the threat shall not have committed a criminal act under this section.

N.H. REV. STAT. ANN. § 633:3-A (WEST 2023). STALKING

I. A person commits the offense of stalking if such person:

- (a) Purposely, knowingly, or recklessly engages in a course of conduct targeted at a specific person which would cause a reasonable person to fear for his or her personal safety or the safety of a member of that person's immediate family, and the person is actually placed in such fear;
- (b) Purposely or knowingly engages in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family; or
- (c) After being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section, or an order pursuant to RSA 597:2 that prohibits contact with a specific individual, purposely, knowingly, or recklessly engages in a single act of conduct that both violates the provisions of the order and is listed in paragraph II(a).

II. As used in this section:

- (a) "Course of conduct" means 2 or more acts over a period of time, however short, which evidences a continuity of purpose. A course of conduct shall not include constitutionally protected activity, nor shall it include conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct may include, but not be limited to, any of the following acts or a combination thereof:
 - (1) Threatening the safety of the targeted person or an immediate family member.
 - (2) Following, approaching, or confronting that person, or a member of that person's immediate family.
 - (3) Appearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found, or the residence, place of employment or school of a member of that person's immediate family.
 - (4) Causing damage to the person's residence or property or that of a member of the person's immediate family.
 - (5) Placing an object on the person's property, either directly or through a third person, or that of an immediate family member.
 - (6) Causing injury to that person's pet, or to a pet belonging to a member of that person's immediate family.

(7) Any act of communication, as defined in RSA 644:4, II.

(b) “Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

III.[Repealed.]

III-a. A person who has been the victim of stalking as defined in this section may seek relief by filing a civil petition in the district court in the district where the plaintiff or defendant resides. Upon a showing of stalking by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of stalking. The types of relief that may be granted, the procedures and burdens of proof to be applied in such proceedings, the methods of notice, service, and enforcement of such orders, and the penalties for violation thereof shall be the same as those set forth in RSA 173-B.

III-b. The minority of a plaintiff or defendant shall not preclude the court from issuing protective orders under this section.

III-c. Any order under this section shall be for a fixed period of time not to exceed one year, but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with notice to the defendant, for one year after the expiration of the first order and thereafter each extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the court. The court shall review the order, and each renewal thereof and shall grant such relief as may be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the right to a hearing on the extension of any order under this paragraph to be held within 30 days of the extension. The court shall state in writing, at the respondent's request, its reason or reasons for granting the extension. The court shall retain jurisdiction to enforce and collect the financial support obligation which accrued prior to the expiration of the protective order.

III-d. (a) A protective order issued pursuant to this section, RSA 173-B:4, or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; and ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the court has modified the protective order to permit such contact.

(b) A no-contact provision in a protective order issued pursuant to this section shall not be construed to:

- (1) Prevent contact between counsel for represented parties; or
- (2) Prevent a party from appearing at a scheduled court or administrative hearing; or
- (3) Prevent a defendant or defendant's counsel from sending the plaintiff copies of any legal pleadings filed in court relating to the domestic violence petition or related civil or criminal matters.

(c) A violation of this paragraph may result in a finding of contempt of court.

IV. In any complaint, information, or indictment brought for the enforcement of any provision of this statute, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained herein and the burden of proof of any exception, excuse, proviso, or exemption shall be upon the defendant.

V. Any law enforcement officer may arrest, without a warrant, any person that the officer has probable cause to believe has violated the provisions of this section when the offense occurred within 12 hours, regardless of whether the crime occurred in the presence of the officer. A law enforcement officer shall arrest a person when he has probable cause to believe a violation of the provisions of this section has occurred within the last 12 hours when the offense involves a violation of a protective order issued pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section.

VI. (a) Any person convicted of a violation of this section and who has one or more prior stalking convictions in this state or another state when the second or subsequent offense occurs within 7 years following the date of the first or prior offense shall be guilty of a class B felony.

(b) In all other cases, any person who is convicted of a violation of this section shall be guilty of a class A misdemeanor.

VII. If any provision or application of this section or the application thereof to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

VIII. (a) Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "stalking-domestic violence."

(b) In addition to any other penalty authorized by law, the court shall levy a fine of \$50 for each conviction recorded as "stalking-domestic violence" under this paragraph. The court shall not reduce or suspend any sentence or the payment of any fine imposed under this paragraph and no fine imposed under this paragraph shall be subject to an additional penalty assessment. If the court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments thereof. The clerk shall

forward all fines collected under this paragraph to the department of health and human services for the purposes of RSA 173-B:15. The provisions of RSA 618:8 and RSA 618:9 shall not apply to a fine imposed under this paragraph.

N.H. REV. STAT. ANN. § 644:4 (WEST 2023). HARASSMENT

- I. A person is guilty of a misdemeanor, and subject to prosecution in the jurisdiction where the communication originated or was received, if such person:
 - (a) Makes a telephone call, whether or not a conversation ensues, with no legitimate communicative purpose or without disclosing his or her identity and with a purpose to annoy, abuse, threaten, or alarm another; or
 - (b) Makes repeated communications at extremely inconvenient hours or in offensively coarse language with a purpose to annoy or alarm another; or
 - (c) Insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response; or
 - (d) Knowingly communicates any matter of a character tending to incite murder, assault, or arson; or
 - (e) With the purpose to annoy or alarm another, communicates any matter containing any threat to kidnap any person or to commit a violation of RSA 633:4; or a threat to the life or safety of another.
 - (f) [Repealed.]
- II. As used in paragraph I, “communicates” means to impart a message by any method of transmission, including but not limited to telephoning or personally delivering or sending or having delivered any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer. For purposes of this section, “computer” means a programmable, electronic device capable of accepting and processing data.
- III. [Repealed.]
- IV. A person shall be guilty of a class B felony if the person violates RSA 644:4, I(a) under circumstances involving making telephone calls to a telephone number that he or she knows is being used, at the time of the calls, to facilitate the transportation of voters to polling places or otherwise to support voting or registering to vote.

Relevant Case Law

***State v. Gubitosi*, 886 A.2d 1029 (N.H. 2005)**

Defendant was convicted of stalking and appealed, arguing, *inter alia*, that the evidence presented at trial was insufficient to support his conviction because he was improperly charged with an inchoate act as part of a course of conduct. The indictment alleged two acts to prove a course of conduct: (1) the defendant drove to a restaurant where the victim was; and (2) the defendant attempted to telephone her there after being told by police not to contact her. The defendant argued that the allegation that he attempted to telephone the victim at the restaurant is an attempted act and thus cannot be part of the course of conduct upon which the indictment was based. The Supreme Court of New Hampshire disagreed and affirmed the conviction, stating that the defendant's attempt to make conduct could form part of "course of conduct" necessary to obtain conviction under stalking statute. The State was not required to prove that a communication took place between defendant and victim, but only that defendant had telephoned restaurant with intent to impart message to victim, and that telephone call was part of course of conduct that reasonably made victim fear for her safety.

***State v. Craig*, 112 A.3d 559 (N.H. 2015)**

The defendant was convicted of stalking and appealed arguing there was insufficient evidence to support his conviction. Evidence was presented that the defendant was served with a domestic violence restraining order and after receiving the order he posted statements concerning the victim on his public social media account. The nature of the posts suggested that they were a communication specifically directed at the victim in a public forum. The statute listed electronic communication as a means to communicate which reflects the legislature's awareness that technological advances in communication — including e-mail and social media websites — provide a "fertile environment for criminal behavior and that sometimes, particularly in stalking and harassment cases, social media facilitates the crime." The Supreme Court of New Hampshire affirmed the conviction and held that the victim's act of finding and reading defendant's posts on his social media account did not bar defendant's conduct from constituting contact.

Stalking, Harassment, & Related Offenses: New Jersey

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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NEW JERSEY

Summary

What constitutes a "course of conduct" / pattern of behavior?	“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).
What types of threats are required (credible, explicit, implicit, bodily injury?)	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).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<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.

Stalking, Harassment, & Related Offenses: New Mexico

Current as of June 2023

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and is being furnished strictly for informational purposes.

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NEW MEXICO

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>“Pattern of conduct” means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person. N.M. Stat. § 30-3A-3(B)(2).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threat is not required but can be part of a pattern of conduct. Threat can be direct, indirect, or through a third party. N.M. Stat. § 30-3A-3(B)(2).</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 intend that the pattern of conduct place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual. N.M. Stat. § 30-3A-3(A).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes. N.M. Stat. § 30-3A-3(A).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear (apprehension) of death, bodily harm, sexual assault, confinements or restraint of victim or another. N.M. Stat. § 30-3A-3(A).</p>
<p>Does fear include emotional distress?</p>	<p>No.</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. N.M. Stat. § 30-3A-3(A).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>State v. Gutierrez</i>, 263 P.3d 282 (N.M. Ct. App. 2011) (“We conclude that the district court did not abuse its discretion in admitting</p>

	<p>Defendant's 2003 judgment and sentence and the stipulated restraining order. The State made a sufficient showing at trial that the evidence served the legitimate purpose of proving the requisite elements of aggravated stalking. The judgment and sentence go to the issue of whether a reasonable person in Olivas's position would have felt 'frightened, intimidated or threatened' by Defendant. The judgment and sentence provide evidence as to why Olivas might have been intimidated or frightened by Defendant because it shows that Defendant and Olivas had some prior incident and that he was to have no contact with Olivas as a condition of his sentence.”).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>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. See N.M. Stat. § 30-3A-3(B)(2).</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 implicitly covered under the regular stalking statute and accompanying case law. N.M. Stat. § 30-3A-3(B)(2)</p>
<p>Do the stalking laws have a resident requirement?</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</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>Aggravated stalking is either a fourth degree felony or a third degree felony. N.M. Stat. § 30-3A-3.1(B).</p> <p>Stalking is either a misdemeanor or a fourth degree felony. N.M. Stat. § 30-3A-3(C).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a felony upon a second or subsequent conviction. N.M. Stat. § 30-3A-3(C).</p>

<p>Stalking becomes aggravated if the offender:</p> <ul style="list-style-type: none"> - Violated a protection order; - Violated conditions or release and bond; - Possessed a deadly weapon; or - Stalked a victim less than 16 years old. <p>N.M. Stat. § 30-3A-3.1(A).</p>

<p>Aggravated stalking is enhanced to a third degree felony upon the second or subsequent conviction. N.M. Stat. § 30-3A-3.1(B).</p>
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Statutes

N.M. STAT. ANN. § 30-3A-3 (WEST 2023). STALKING; PENALTIES

- A. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.
- B. As used in this section:
 - (1) “lawful authority” means within the scope of lawful employment or constitutionally protected activity; and
 - (2) “pattern of conduct” means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.
- C. Whoever commits stalking is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth degree felony.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person's own expense or a domestic violence offender treatment or intervention program.

N.M. STAT. ANN. § 30-3A-3.1 (WEST 2023). AGGRAVATED STALKING; PENALTIES

- A. Aggravated stalking consists of stalking perpetrated by a person:

- (1) who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
- (2) in violation of a court order setting conditions of release and bond;
- (3) when the person is in possession of a deadly weapon; or
- (4) when the victim is less than sixteen years of age.

- B. Whoever commits aggravated stalking is guilty of a fourth degree felony. Upon a second or subsequent conviction, the offender is guilty of a third degree felony.
- C. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of aggravated stalking to participate in and complete a program of professional counseling at his own expense.

N.M. STAT. ANN. § 30-3A-4 (WEST 2023). EXCEPTIONS

The provisions of the Stalking Act¹ do not apply to:

- A. picketing or public demonstrations that are lawful or that arise out of a bona fide labor dispute;
or
- B. a peace officer in the performance of his duties.

N.M. STAT. ANN. § 30-3A-2 (WEST 2023). HARASSMENT; PENALTIES

- A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.
- B. Whoever commits harassment is guilty of a misdemeanor.

N.M. STAT. ANN. § 40-13-6 (WEST 2023). SERVICE OF ORDER; DURATION; PENALTY; REMEDIES NOT EXCLUSIVE

- A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court, and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the restrained party, unless the restrained party or the restrained party's attorney was present at the time the order was issued. The order shall be filed and served without cost to the protected party.

- B. A local law enforcement agency receiving an order of protection from the clerk of the court that was issued under the Family Violence Protection Act shall have the order entered in the national crime information center's order of protection file within seventy-two hours of receipt. This does not include temporary orders of protection entered pursuant to the provisions of Section 40-13-4 NMSA 1978.
- C. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the protected party for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the parties.
- D. A peace officer may arrest without a warrant and take into custody a restrained party whom the peace officer has probable cause to believe has violated an order of protection that is issued pursuant to the Family Violence Protection Act or entitled to full faith and credit.
- E. A restrained party convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.
- F. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and shall order the person convicted to participate in and complete a program of professional counseling, at the person's own expense, if possible.
- G. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.
- H. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the protected party or the state.

Relevant Case Law

***State v. Gutierrez*, 263 P.3d 282 (N.M. Ct. App. 2011)**

Defendant was convicted of violating an order of protection, aggravated stalking, and other charges. The defendant appealed arguing, *inter alia*, that the trial court improperly admitted a 2003 judgment and sentence entered against him for previous crimes, as well as a prior stipulated restraining order against him concerning one of the victims in this case. The Court of Appeals affirmed the convictions and held that the evidence of defendant's earlier conviction and sentence for false imprisonment and battery on an household member, and a prior stipulated restraining order, did not constitute

improper character evidence at his trial for aggravated stalking, even though the fact of conviction may have looked more like evidence of being a criminal than pattern of conduct evidence. The state made a sufficient showing that the evidence served the legitimate purpose of proving the elements of aggravated stalking. One of the conditions of the defendant's sentence for the prior conviction was that the defendant was to have no contact with the victim. The no contact provision was necessary to prove the aggravated stalking charge at issue in the present case. Further, the prior stipulated protection order was relevant to the issue of whether a reasonable person in the victim's position would have felt "frightened, intimidated or threatened" by the defendant.

Best v. Marino, 404 P.3d 450 (N.M. Ct. App. 2017)

Petitioner filed for a Family Violence Protective Order (FVPO) against the Respondent, his former friend, after the Respondent sent threatening emails, phone calls, and text messages. At the hearing, the Court found the Respondent engaged in stalking behavior and granted the FVPO. Respondent continued to contact the Petitioner and make social medial posts concerning the Petitioner. Respondent was found in violation of the FVPO, and appealed the ruling arguing that the violation should not be upheld as the FVPO infringed upon their constitutional rights to free speech. The appellate court found that there was no universal right to free speech and the Respondent's prior behavior and the finding of stalking supported the limited restriction the FVPO had on the Respondent's speech.

Stalking, Harassment, & Related Offenses: New York

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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NEW YORK

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct is not defined by statute but is interpreted by case law. <i>See Wandersee v. Pretto</i> , 183 A.D.3d 1245 (N.Y. App. Div. 2020) (Defining course of conduct for harassment as “[A] series of acts over a period of time, however short, evidencing a continuity of purpose[.]”); <i>People v. Dickson</i> , 82 A.D.3d 1289, 1291 (N.Y. App. Div. 2011) (There is no statutory definition of the term “course of conduct.”).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required but “no legitimate purpose” includes conduct that is threatening N.Y. Penal Law § 120.45. <i>See also People v. Stuart</i> , 797 N.E.2d 28 (N.Y. App. Div. 2003) (Phrase “no legitimate purpose” in anti-stalking statute was not unconstitutionally vague as applied to defendant; ordinary understanding of phrase meant absence of reason or justification to engage someone, other than to hound, frighten, intimidate or threaten). <i>See also</i> N.Y. Crim. Jury Instr. 2d Penal Law § 120.45(1) (“NO LEGITIMATE PURPOSE means there is no reason or justification to engage in a course of conduct directed at a person, other than to hound, frighten, intimidate or threaten the person.”).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Intentionally engaging in a course of conduct. N.Y. Penal Law § 120.45; <i>See also People v. Stuart</i> , 797 N.E.2d 28 (N.Y. App. Div. 2003) (Stalking requires an intent to commit a particular course of conduct as opposed to intending a particular result).
Do offender actions toward persons other than the victim help establish course of conduct?	Yes. Certain conduct towards a victim’s immediate family or a third party with whom the victim is acquainted can establish a course of conduct. N.Y. Penal Law § 120.45(1),(2).

	<p><i>See also</i> N.Y. Crim. Jury Instr. 2d Penal Law § 120.45(1) (“Under our law, a person is guilty of Stalking in the Fourth Degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct is likely to cause reasonable fear of material harm to the physical health, safety or property of a member of such person's immediate family [or] a third party with whom such person is acquainted”).”.</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>For stalking in the fourth degree: fear of material harm victim or third party’s physical health, safety, or property; or, fear that victim’s employment, business, or career is threatened. N.Y. Penal Law § 120.45 (1)(3).</p> <p>For stalking in the third degree: fear of physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person’s immediate family N.Y. Penal Law § 120.50(3).</p>
<p>Does fear include emotional distress?</p>	<p>Yes. Emotional distress is defined as “causes material harm to the mental or emotional health of such person.” N.Y. Penal Law § 120.45(2).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. N.Y. Penal Law § 120.45(1)(3).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is fact specific.</p> <p><i>People v. Coveney</i>, 21 N.Y.S.3d 523, 527 (N.Y. App. Term. 2015) (Evidence was sufficient to support conviction for stalking in the fourth degree where defendant sent more than 20 letters to her former employer and her former employer's father, and sheer volume of defendant's attempts at communicating with former employer made defendant's course of conduct one which was likely to have caused</p>

reasonable fear of material harm to former employer's safety).

People v. Stuart, 797 N.E.2d 28, 40 (N.Y. App. Div. 2003) (“The fear must be reasonable and not idiosyncratic; the harm (or likely harm) must be material.”).

People v. Lewis, 909 N.Y.S.2d 321 (N.Y. Crim. Ct. 2010) (Defendant did not know or have reason to know that her conduct in repeatedly blocking doorway to complainant's bedroom, grabbing complainant's arm as she was moving her personal property, striking complainant's hand when she moved to adjust her radio, and suggesting that complainant would need to be nicer to defendant if she wanted defendant to take care of her personal property was likely to cause reasonable fear of material harm to complainant's physical health, safety, or property, as element of stalking in the fourth degree; it was not reasonable that defendant's relatively mild though hostile conduct would cause complainant to fear for her physical safety and that of her possessions and to lose sleep as a result).

Must the victim tell the defendant to stop in order to constitute stalking?

The victim must ask the offender to cease conduct if charged with under sections (2) and (3) of stalking in the fourth degree. N.Y. Penal Law § 120.45(2)(3). For all other types of stalking, the victim does not need to ask defendant to stop.

See also N.Y. Crim. Jury Instr. 2d Penal Law § 120.45(2) (“Under our law, a person is guilty of Stalking in the Fourth Degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person,

	[or] a member of such person's immediate family [or] a third party with whom such person is acquainted], and the actor was previously clearly informed to cease that conduct.”).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	No. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is implicitly covered under the regular stalking statute. N.Y. Penal Law § 120.45 (2)(3). The statute defines following as “shall include the unauthorized tracking of such person's movements or location through the use of a global positioning system or other device.” <i>Id.</i> Other statutes criminalize similar such as aggravated harassment through electronic communications and eavesdropping. N.Y. Penal Law § 240.30; N.Y. Penal Law § 250.05.
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?)	No. There is no published case law that addresses this and the statutory law is silent.
Any unique provisions, elements, or requirements?	No.
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)	Stalking in the first degree is a class D felony. N.Y. Penal Law § 120.60. Stalking in the second degree is a class E felony. N.Y. Penal Law § 120.55. Stalking in the third degree is a class A misdemeanor. N.Y. Penal Law § 120.50. Stalking in the fourth degree is a class B misdemeanor. N.Y. Penal Law § 120.45.
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking in the fourth degree becomes stalking in the third degree if the offender:

- Commits stalking in the fourth degree against 3 or more persons;
- There was a conviction in the prior 10 years; or
- A course of conduct that places a person in reasonable fear of physical injury/ serious physical injury.

N.Y. Penal Law § 120.50.

Stalking in the third degree becomes stalking in the second degree if the offender:

- Committed stalking in the third degree with a weapon; has a prior conviction for stalking in the third degree;
- The victim is under 14 years of age or under and the offender is 21 years of age or older; or
- Committed third degree stalking against 10 or more people.

N.Y. Penal Law § 120.55.

Stalking in in the third or second degree becomes stalking in the first degree if a victim intentionally or recklessly suffers physical injury or an enumerated crime is committed by the offender. N.Y. Penal Law § 120.60.

Statutes

N.Y. PENAL LAW § 120.40 (McKINNEY 2023). DEFINITIONS

For purposes of sections 120.45, 120.50, 120.55 and 120.60 of this article:

1. “Kidnapping” shall mean a kidnapping crime defined in article one hundred thirty-five of this chapter.
2. “Unlawful imprisonment” shall mean an unlawful imprisonment felony crime defined in article one hundred thirty-five of this chapter.
3. “Sex offense” shall mean a felony defined in article one hundred thirty of this chapter, sexual misconduct, as defined in section 130.20 of this chapter, sexual abuse in the third degree as defined in section 130.55 of this chapter or sexual abuse in the second degree as defined in section 130.60 of this chapter.

4. "Immediate family" means the spouse, former spouse, parent, child, sibling, or any other person who regularly resides or has regularly resided in the household of a person.
5. "Specified predicate crime" means:
 - a. a violent felony offense;
 - b. a crime defined in section 130.20, 130.25, 130.30, 130.40, 130.45, 130.55, 130.60, 130.70, 255.25, 255.26 or 255.27;
 - c. assault in the third degree, as defined in section 120.00; menacing in the first degree, as defined in section 120.13; menacing in the second degree, as defined in section 120.14; coercion in the first degree, as defined in section 135.65; coercion in the second degree, as defined in section 135.60; aggravated harassment in the second degree, as defined in section 240.30; harassment in the first degree, as defined in section 240.25; menacing in the third degree, as defined in section 120.15; criminal mischief in the third degree, as defined in section 145.05; criminal mischief in the second degree, as defined in section 145.10, criminal mischief in the first degree, as defined in section 145.12; criminal tampering in the first degree, as defined in section 145.20; arson in the fourth degree, as defined in section 150.05; arson in the third degree, as defined in section 150.10; criminal contempt in the first degree, as defined in section 215.51; endangering the welfare of a child, as defined in section 260.10; or
 - d. stalking in the fourth degree, as defined in section 120.45; stalking in the third degree, as defined in section 120.50; stalking in the second degree, as defined in section 120.55; or
 - e. an offense in any other jurisdiction which includes all of the essential elements of any such crime for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed.

N.Y. PENAL LAW § 120.45 (McKINNEY 2023). STALKING IN THE FOURTH DEGREE

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

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

2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

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

Stalking in the fourth degree is a class B misdemeanor.

N.Y. PENAL LAW § 120.50 (McKINNEY 2023). STALKING IN THE THIRD DEGREE

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

1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or
2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or
4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

N.Y. PENAL LAW § 120.55 (McKINNEY 2023). STALKING IN THE SECOND DEGREE

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

1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shirken, “Kung Fu Star”, dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or
4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or
5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

N.Y. PENAL LAW § 120.60 (McKINNEY 2023). STALKING IN THE FIRST DEGREE

A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

1. intentionally or recklessly causes physical injury to the victim of such crime; or

2. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.

N.Y. PENAL LAW § 240.25 (McKINNEY 2023). HARASSMENT IN THE FIRST DEGREE

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury. This section shall not apply to activities regulated by the national labor relations act,¹ as amended, the railway labor act,² as amended, or the federal employment labor management act,³ as amended.

Harassment in the first degree is a class B misdemeanor.

N.Y. PENAL LAW § 240.26 (McKINNEY 2023). HARASSMENT IN THE SECOND DEGREE

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

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

Subdivisions two and three of this section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Harassment in the second degree is a violation.

N.Y. PENAL LAW § 240.30 (McKINNEY 2023). AGGRAVATED HARASSMENT IN THE SECOND DEGREE

A person is guilty of aggravated harassment in the second degree when:

1. With intent to harass another person, the actor either:
 - a. communicates, anonymously or otherwise, by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication, a threat to cause physical harm to, or unlawful harm to the property of, such person, or a member of such person's same family or household as defined in subdivision one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household; or
 - b. causes a communication to be initiated anonymously or otherwise, by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication, a threat to cause physical harm to, or unlawful harm to the property of, such person, a member of such person's same family or household as defined in subdivision one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household; or
2. With intent to harass or threaten another person, he or she makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or
3. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or
4. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks or otherwise subjects another person to physical contact thereby causing physical injury to such person or to a family or household member of such person as defined in section 530.11 of the criminal procedure law; or
5. He or she commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years.

Aggravated harassment in the second degree is a class A misdemeanor.

N.Y. PENAL LAW § 240.31 (McKINNEY 2023). AGGRAVATED HARASSMENT IN THE FIRST DEGREE

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises exceeds fifty dollars; or
2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he or she has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years; or
3. Etches, paints, draws upon or otherwise places a swastika, commonly exhibited as the emblem of Nazi Germany, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property;
4. Sets on fire a cross in public view; or
5. Etches, paints, draws upon or otherwise places or displays a noose, commonly exhibited as a symbol of racism and intimidation, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property.

Aggravated harassment in the first degree is a class E felony.

N.Y. PENAL LAW § 250.00 (McKINNEY 2023). EAVESDROPPING; DEFINITIONS OF TERMS

The following definitions are applicable to this article:

1. "Wiretapping" means the intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment. The normal operation of a telephone or telegraph corporation and the normal use of the services and facilities

furnished by such corporation pursuant to its tariffs or necessary to protect the rights or property of said corporation shall not be deemed “wiretapping.”

2. “Mechanical overhearing of a conversation” means the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.
3. “Telephonic communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications and such term includes any electronic storage of such communications.
4. “Aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
5. “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system, but does not include:
 - a. any telephonic or telegraphic communication; or
 - b. any communication made through a tone only paging device; or
 - c. any communication made through a tracking device consisting of an electronic or mechanical device which permits the tracking of the movement of a person or object; or
 - d. any communication that is disseminated by the sender through a method of transmission that is configured so that such communication is readily accessible to the general public.
6. “Intercepting or accessing of an electronic communication” and “intentionally intercepted or accessed” mean the intentional acquiring, receiving, collecting, overhearing, or recording of an electronic communication, without the consent of the sender or intended receiver thereof, by means of any instrument, device or equipment, except when used by a telephone company in the ordinary course of its business or when necessary to protect the rights or property of such company.
7. “Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications.
8. “Unlawfully” means not specifically authorized pursuant to article seven hundred or seven hundred five of the criminal procedure law for the purposes of this section and sections 250.05, 250.10, 250.15, 250.20, 250.25, 250.30 and 250.35 of this article.

N.Y. PENAL LAW § 250.05 (McKINNEY 2023). EAVESDROPPING

A person is guilty of eavesdropping when he unlawfully engages in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication.

Eavesdropping is a class E felony.

N.Y. PENAL LAW § 250.10 (McKINNEY 2023). POSSESSION OF EAVESDROPPING DEVICES

A person is guilty of possession of eavesdropping devices when, under circumstances evincing an intent to use or to permit the same to be used in violation of section 250.05, he possesses any instrument, device or equipment designed for, adapted to or commonly used in wiretapping or mechanical overhearing of a conversation.

Possession of eavesdropping devices is a class A misdemeanor.

N.Y. PENAL LAW § 250.40 (McKINNEY 2023). UNLAWFUL SURVEILLANCE; DEFINITIONS.

The following definitions shall apply to sections 250.45, 250.50, 250.55 and 250.60 of this article:

1. "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy.
2. "Imaging device" means any mechanical, digital or electronic viewing device, camera, cellular phone or any other instrument capable of recording, storing or transmitting visual images that can be utilized to observe a person.
3. "Sexual or other intimate parts" means the human male or female genitals, pubic area or buttocks, or the female breast below the top of the nipple, and shall include such part or parts which are covered only by an undergarment.
4. "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by a person.
5. "Disseminate" means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person.
6. "Publish" means to (a) disseminate, as defined in subdivision five of this section, with the intent that such image or images be disseminated to ten or more persons; or (b) disseminate with the intent that such images be sold by another person; or (c) post, present, display, exhibit, circulate, advertise or allows access, electronically or otherwise, so as to make an image or images available to the public; or (d) disseminate with the intent that an image or images be posted,

presented, displayed, exhibited, circulated, advertised or made accessible, electronically or otherwise and to make such image or images available to the public.

7. “Sell” means to disseminate to another person, as defined in subdivision five of this section, or to publish, as defined in subdivision six of this section, in exchange for something of value.

Relevant Case Law

People v. Starkes, 712 N.Y.S.2d 843 (N.Y. Crim. Ct. 2000)

Defendant was charged with several harassment and stalking offenses and filed motion to dismiss the stalking charge on grounds that the accusatory instrument was facially insufficient. The Criminal Court denied the motion to dismiss and held that the accusatory instrument, based upon the defendant’s alleged conduct of placing numerous offensive phone calls to complainant was facially sufficient with respect to the charge of stalking in the third degree. The defendant was alleged to have persistently called the victim over a six-month period. The Court held that this was a deliberate act. Further, the victim told the defendant to stop and he continued to call. The defendant's alleged repetitive acts constituted a course of conduct, and his alleged telephone communications with the victim were uniformly angry, abusive, and obscene, which was likely to have caused complainant reasonable fear of physical harm.

People v. Wong, 776 N.Y.S.2d 194 (N.Y. Crim. Ct. 2004)

Defendant was charged with stalking in the fourth degree and filed a motion to dismiss, arguing that the charging document was facially insufficient. The Criminal Court held there was sufficient evidence to support the charge for fourth degree stalking. Although the defendant was not alleged to have made any verbal threats, the sheer number of communications, both verbal and non-verbal, and their context, including those made to the complainant at out of town hotels, made the defendant’s course of conduct one which was likely to cause reasonable fear of material harm to the victim. The statute does not require an allegation of a threat of immediate and real danger.

Stalking, Harassment, & Related Offenses: North Carolina

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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NORTH CAROLINA

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. N.C. Gen. Stat. § 14-277.3A(b)(1).</p> <p><i>But see State v. Shackelford</i>, 825 S.E.2d 689 (N.C. App. 2019) (Holding that the stalking statute <i>as applied</i> to defendant's Facebook posts violated the First Amendment because determination of whether a reasonable person would be fearful could not be made without reference to the content of the posts).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threats are not required but can be part of a course of conduct. N.C. Gen. Stat. § 14-277.3A(b)(1).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must willfully harass or willfully engage in the course of conduct and know or should know that the conduct/harassment would cause fear for safety or emotional distress to a reasonable person. N.C. Gen. Stat. § 14-277.3A (c)(1),(2).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes. If directed to the victim's immediate family or close personal associates. N.C. Gen. Stat. § 14-277.3A (c)(1).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear for victim's safety or safety of immediate family/close personal associates. N.C. Gen. Stat. § 14-277.3A (c)(1); or the victim must suffer substantial emotional distress from fear of death, bodily injury, or continued harassment. N.C. Gen. Stat. § 14-277.3A (c)(2).

<p>Does fear include emotional distress?</p>	<p>Yes. N.C. Gen. Stat. § 14-277.3A (c)(2).</p> <p>Substantial emotional distress is defined as “significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.” N.C. Gen. Stat. § 14-277.3A(b)(4).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. A reasonable person is “a reasonable person in the victim's circumstances. N.C. Gen. Stat. § 14-277.3A (c),(b)(3).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes a reasonable fear is determined by case law and jury instructions.</p> <p>“One is placed in reasonable fear when a person of reasonable firmness, under the same or similar circumstances, would fear [death] [bodily injury].” NC Pattern Jury Inst. Crim. 235.19.</p> <p><i>State v. Ferebee</i>, 529 S.E.2d 686, 690 (N.C. Ct. App. 2000) (“For alleged violations of G.S. § 14–277.3(a), we encourage the trial courts to instruct the jury as to the definition of ‘reasonable fear’ to ensure that an objective standard, based on what frightens an ordinary, prudent person under the same or similar circumstances, is applied rather than a subjective standard which focuses on the individual victim's fears and apprehensions.”).</p> <p><i>State v. Hobson</i>, 819 S.E.2d 397, 402 (N.C. Ct. App. 2018) (Prior Domestic Violence Protection Orders and testimony of the defendant's former girlfriend concerning her relationship with defendant, including alleged past assault, was relevant to show that the victim was in reasonable fear of defendant).</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 includes “acts in which the stalker directly, indirectly, or through third parties.” N.C. Gen. Stat. § 14-277.3A (b)(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 by the regular stalking statute and under the cyberstalking statute. See N.C. Gen. Stat. § 14-277.3A(b)(2) where a person can be stalked via harassment and harassment includes conduct via “telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions.”; See also N.C. Gen. Stat. § 14-196.3 (Cyberstalking). <i>But see State v. Shackelford</i>, 825 S.E.2d 689 (N.C. App. 2019) (Holding that the stalking statute <i>as applied</i> to defendant’s Facebook posts violated the First Amendment because determination of whether a reasonable person would be fearful could not be made without reference to the content of the posts).</p> <p>Other statutes criminalize similar conduct such as cyberbullying and harassing via telephone. N.C. Gen. Stat. §§ 14-458.1, 14-196; <i>But see State v. Bishop</i>, 787 S.E.2d 814 (N.C. 2016) (Holding that N.C. Gen. Stat. § 14-458.1(a)(1)(d) (cyberbullying) is an unconstitutional content based restriction under the First Amendment).</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. See N.C. Gen. Stat. § 14-277.3A(e)(defining jurisdiction).</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>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)</p>	<p>Stalking is classified as a Class H felony, a Class F felony, or a Class A1 misdemeanor. N.C. Gen. Stat. § 14-277.3A(d).</p>

What aggravating circumstances elevate the gradation of a stalking offense?	Stalking becomes a felony if the offender has previously been convicted of stalking or violates a court order. N.C. Gen. Stat. § 14-277.3A(d).
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Statutes

N.C. GEN. STAT. ANN. § 14-196.3 (WEST 2023). CYBERSTALKING

(a) The following definitions apply in this section:

- (1) Electronic communication.-- Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.
- (2) Electronic mail.--The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.
- (3) Electronic tracking device.--An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.
- (4) Fleet vehicle.--Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

(b) It is unlawful for a person to:

- (1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.
- (2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.
- (3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

- (4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.
- (5) Knowingly install, place, or use an electronic tracking device without consent, or cause an electronic tracking device to be installed, placed, or used without consent, to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:
- a. A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.
 - b. The owner or lessee of any vehicle on which the owner or lessee installs, places, or uses an electronic tracking device, unless the owner or lessee is subject to (i) a domestic violence protective order under Chapter 50B of the General Statutes or (ii) any court order that orders the owner or lessee not to assault, threaten, harass, follow, or contact a driver or occupant of the vehicle.
 - c. A legal guardian for a disabled adult, as defined in G.S. 108A-101(d), or a legally authorized individual or organization designated to provide protective services to a disabled adult pursuant to G.S. 108A-105(c), when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services.
 - d. The owner of fleet vehicles, when tracking such vehicles.
 - e. A creditor or other secured party under a retail installment agreement involving the sale of a motor vehicle or the lessor under a retail lease of a motor vehicle, and any assignee or successor in interest to that creditor, secured party, or lessor, when tracking a motor vehicle identified as security under the retail installment sales agreement or leased pursuant to a retail lease agreement, including the installation, placement, or use of an electronic tracking device to locate and remotely disable the motor vehicle, with the express written consent of the purchaser, borrower, or lessee of the motor vehicle.
 - f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.
 - g. A motor vehicle manufacturer, its subsidiary, or its affiliate that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided that the customer subscribes or consents to that service.

- h. A parent or legal guardian of a minor when the electronic tracking device is installed, placed, or used to track the location of that minor unless the parent or legal guardian is subject to a domestic violence protective order under Chapter 50B of the General Statutes or any court order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor or that minor's parent, legal guardian, custodian, or caretaker as defined in G.S. 7B-101.
 - i. An employer, when providing a communication device to an employee or contractor for use in connection with his or her work for the employer.
 - j. A business, if the tracking is incident to the provision of a product or service requested by the person, except as limited in sub-subdivision k. of this subdivision.
 - k. A private detective or private investigator licensed under Chapter 74C of the General Statutes, provided that (i) the tracking is pursuant to authority under G.S. 74C-3(a)(8), (ii) the tracking is not otherwise contrary to law, and (iii) the person being tracked is not under the protection of a domestic violence protective order under Chapter 50B of the General Statutes or any other court order that protects against assault, threat, harassment, following, or contact.
- (c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.
- (d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.
- (e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly.

N.C. GEN. STAT. ANN. § 14-196 (WEST 2023). USING PROFANE, INDECENT OR THREATENING LANGUAGE TO ANY PERSON OVER TELEPHONE; ANNOYING OR HARASSING BY REPEATED TELEPHONING OR MAKING FALSE STATEMENTS OVER TELEPHONE

- (a) It shall be unlawful for any person:
- (1) To use in telephonic communications any words or language of a profane, vulgar, lewd, lascivious or indecent character, nature or connotation;
 - (2) To use in telephonic communications any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent or physical injury to the

property of any person, or for the purpose of extorting money or other things of value from any person;

- (3) To telephone another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person at the called number;
- (4) To make a telephone call and fail to hang up or disengage the connection with the intent to disrupt the service of another;
- (5) To telephone another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct or criminal conduct of the person telephoned or of any member of his family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass;
- (6) To knowingly permit any telephone under his control to be used for any purpose prohibited by this section.

- (b) Any of the above offenses may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received. For purposes of this section, the term “telephonic communications” shall include communications made or received by way of a telephone answering machine or recorder, telefacsimile machine, or computer modem.
- (c) Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

N.C. GEN. STAT. ANN. § 14-277.1 (WEST 2023). COMMUNICATING THREATS

- (a) A person is guilty of a Class 1 misdemeanor if without lawful authority:
 - (1) He willfully threatens to physically injure the person or that person's child, sibling, spouse, or dependent or willfully threatens to damage the property of another;
 - (2) The threat is communicated to the other person, orally, in writing, or by any other means;
 - (3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and
 - (4) The person threatened believes that the threat will be carried out.
- (b) A violation of this section is a Class 1 misdemeanor.

N.C. GEN. STAT. ANN. § 14-277.3A (WEST 2023). STALKING.

*** Unconstitutional *as applied* to *State v. Shackelford*, 825 S.E.2d 689 (N.C. Ct. App. 2019) ***

- (a) Legislative Intent.--The General Assembly finds that stalking is a serious problem in this State and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time.

The General Assembly recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The General Assembly recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

- (b) Definitions.--The following definitions apply in this section:

- (1) Course of conduct.--Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (2) Harasses or harassment.--Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.
- (3) Reasonable person.-- A reasonable person in the victim's circumstances.
- (4) Substantial emotional distress.-- Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

- (c) Offense.-- A defendant is guilty of stalking if the defendant willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

(d) Classification.-- A violation of this section is a Class A1 misdemeanor. A defendant convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking when there is a court order in effect prohibiting the conduct described under this section by the defendant against the victim is guilty of a Class H felony.

(e) Jurisdiction.-- Pursuant to G.S. 15A-134, if any part of the offense occurred within North Carolina, including the defendant's course of conduct or the effect on the victim, then the defendant may be prosecuted in this State.

N.C. GEN. STAT. ANN. § 14-458.1 (WEST 2023). CYBER-BULLYING; PENALTY

*** Section (a)(1)(d) held unconstitutional by *State v. Bishop*, 787 S.E.2d 814 (N.C. 2016) ***

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) With the intent to intimidate or torment a minor:

a. Build a fake profile or Web site;

b. Pose as a minor in:

1. An Internet chat room;

2. An electronic mail message; or

3. An instant message;

c. Follow a minor online or into an Internet chat room; or

d. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.

(2) With the intent to intimidate or torment a minor or the minor's parent or guardian:

- a. Post a real or doctored image of a minor on the Internet;
 - b. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords; or
 - c. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor.
- (3) Make any statement, whether true or false, intending to immediately provoke, and that is likely to provoke, any third party to stalk or harass a minor.
- (4) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).
- (5) Sign up a minor for a pornographic Internet site with the intent to intimidate or torment the minor.
- (6) Without authorization of the minor or the minor's parent or guardian, sign up a minor for electronic mailing lists or to receive junk electronic messages and instant messages, with the intent to intimidate or torment the minor.
- (b) Any person who violates this section shall be guilty of cyber-bullying, which offense shall be punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the defendant is under the age of 18 at the time the offense is committed, the offense shall be punishable as a Class 2 misdemeanor.
- (c) Whenever any person pleads guilty to or is guilty of an offense under this section, and the offense was committed before the person attained the age of 18 years, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require. Upon fulfillment of the terms and conditions of the probation provided for in this subsection, the court shall discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Upon discharge and dismissal pursuant to this subsection, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 15A-146.

N.C. GEN. STAT. ANN. § 50B-4.1 (WEST 2023). VIOLATION OF VALID PROTECTIVE ORDER

- (a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.
- (b) A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).
- (c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.
- (d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to convictions of a Class A or B1 felony or to convictions of the offenses set forth in subsection (f) or subsection (g) of this section.
- (e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.
- (f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of two offenses under this Chapter, shall be guilty of a Class H felony.
- (g) Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about his or her person or within close proximity to his or her person, knowingly violates a valid protective order as provided in subsection (a) of this section by failing to stay away from a place, or a person, as so directed under the terms of the order, shall be guilty of a Class H felony.

- (g1) Unless covered under some other provision of law providing greater punishment, any person who is subject to a valid protective order, as provided in subsection (a) of this section, who enters property operated as a safe house or haven for victims of domestic violence, where a person protected under the order is residing, shall be guilty of a Class H felony. A person violates this subsection regardless of whether the person protected under the order is present on the property.
- (h) For the purposes of this section, the term “valid protective order” shall include an emergency or ex parte order entered under this Chapter.

Relevant Case Law

***Jarrett v. Jarrett*, 790 S.E.2d 883 (N.C. Ct. App. 2016)**

Wife filed for a domestic violence protection order against her husband. The order was granted and the husband appealed arguing *inter alia*, that the wife had failed to prove that the husband committed acts of domestic violence. The Appellate Court disagreed and held that the evidence presented was sufficient to support finding that former husband committed acts of stalking. The wife and her older son testified that on at least three occasions former husband followed former wife's vehicle on the highway, pulled in front of her, and slammed on his brakes, causing her to suddenly veer in order to avoid an accident. The wife also testified that she suffered heart issues that required medical attention due to the incidents.

***State v. Shackelford*, 825 S.E.2d 689 (N.C. Ct. App. 2019)**

Defendant appealed his conviction of stalking, arguing that prosecution based on the content of his Google Plus posts infringed his right to free speech under the First Amendment. Because the challenge to the constitutionality of the stalking statute was under an *as applied* standard, the court did not consider the facial validity of the statute as a whole. In this case, the defendant was subject to prosecution if he knew or should have known that his Google Plus posts “would cause a reasonable person to ... [s]uffer substantial emotional distress.” The stalking statute, as applied to the defendant, constituted a content-based restriction on speech. The court vacated the defendant’s conviction, hold that his Google Plus posts about the victim — while understandably offensive to her — constituted protected speech that could not constitutionally be prohibited by the State.

Stalking, Harassment, & Related Offenses: North Dakota

Current as of June 2023

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NORTH DAKOTA

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>“Course of conduct” means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity. N.D. Cent. Code § 12.1-17-07.1 (1)(a).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threats are not required.</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 engage in an intentional course of conduct. N.D. Cent. Code § 12.1-17-07.1(1)(c)(1).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes, if directed to a member of the victim’s immediate family. “Immediate family” means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household. N.D. Cent. Code § 12.1-17-07.1(1)(b).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>The type of fear required is not explicitly defined but the offender must engage in a course of conduct that would cause a person to experience fear, intimidation, or harassment. N.D. Cent. Code § 12.1-17-07.1(1)(c)(1).</p>
<p>Does fear include emotional distress?</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. N.D. Cent. Code § 12.1-17-07.1(1)(c)(1).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>There is no published case law that addresses this and the statutory law is silent.</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, the statute explicitly states that the victim not telling the offender to stop is not a defense</p>

	to stalking. N.D. Cent. Code Ann. § 12.1-17-07.1(3)
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	No. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered under the regular stalking statute which includes “unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means.” N.D. Cent. Code § 12.1-17-07.1(c)(2) Other statutes criminalize similar conduct such as harassment through electronic means and eavesdropping. N.D. Cent. Code §§ 12.1-17-07(1)(a), 12.1-15-02.
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?)	No. There is no published case law that addresses this and the statutory law is silent.
Any unique provisions, elements, or requirements?	No.
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)	Stalking is a class A misdemeanor. N.D. Cent. Code § 12.1-17-07.1 (6)(b). Stalking under certain circumstances is a class C felony. N.D. Cent. Code § 12.1-17-07.1 (6)(a).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking becomes a felony is the offender: <ul style="list-style-type: none"> - Has been convicted of an enumerated offense with the same victim; - Violates a court order; or - Has previously been convicted of stalking. N.D. Cent. Code § 12.1-17-07.1(6)(a).

Statutes

N.D. CENT. CODE ANN. § 12.1-15-02 (WEST 2023). INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS—EAVESDROPPING

1. A person is guilty of a class C felony if he:
 - a. Intentionally intercepts any wire or oral communication by use of any electronic, mechanical, or other device; or
 - b. Intentionally discloses to any other person or intentionally uses the contents of any wire or oral communication, knowing that the information was obtained through the interception of a wire or oral communication.
2. A person is guilty of a class A misdemeanor if he secretly loiters about any building with intent to overhear discourse or conversation therein and to repeat or publish the same with intent to vex, annoy, or injure others.
3. It is a defense to a prosecution under subsection 1 that:
 - a. The actor was authorized by law to intercept, disclose, or use, as the case may be, the wire or oral communication.
 - b. The actor was (1) a person acting under color of law to intercept a wire or oral communication, and (2) he was a party to the communication or one of the parties to the communication had given prior consent to such interception.
 - c. (1) The actor was a party to the communication or one of the parties to the communication had given prior consent to such interception, and (2) such communication was not intercepted for the purpose of committing a crime or other unlawful harm.

N.D. CENT. CODE ANN. § 12.1-17-07.1 (WEST 2023). STALKING

1. As used in this section:
 - a. “Course of conduct” means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
 - b. “Immediate family” means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
 - c. “Stalk” means :

- (1) To engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or
 - (2) The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose.
2. A person may not intentionally stalk another person.
3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.
4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.
5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.
6. a. A person who violates this section is guilty of a class C felony if:
 - (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;
 - (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
 - (3) The person previously has been convicted of violating this section.
- b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

N.D. CENT. CODE ANN. § 12.1-17-07 (WEST 2023). HARASSMENT

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:
 - a. Communicates in writing or by electronic communication a threat to inflict injury on any person, to any person's reputation, or to any property;
 - b. Makes a telephone call anonymously or in offensively coarse language;
 - c. Makes repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
 - d. Communicates a falsehood in writing or by electronic communication and causes mental anguish.
2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.
3. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic communication was made or at the place where the electronic communication was received.
4. A person is guilty of an offense if the person initiates communication with a 911 emergency line, public safety answering point, or an emergency responder communication system with the intent to annoy or harass another person or a public safety agency or who makes a false report to a public safety agency.
 - a. Intent to annoy or harass is established by proof of one or more calls with no legitimate emergency purpose.
 - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.
5. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.

N.D. CENT. CODE ANN. § 14-07.1-06 (WEST 2023). PENALTY FOR VIOLATION OF A PROTECTION ORDER

Whenever a protection order is granted under section 14-07.1-02 or 14-07.1-03 and the respondent or individual to be restrained has been served a copy of the order, the first violation of

any order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of any protection order is a class C felony. For purposes of this section, “first violation” means the first time any order is violated and a second or subsequent violation of any protection order includes two or more violations of protection orders.

Relevant Case Law

***State v. Holbach*, 763 N.W.2d 761 (N.D. 2009)**

Defendant was convicted of stalking and violating a judicial order and appealed arguing, *inter alia*, that the district court erred in denying his motion to exclude evidence of conduct that was constitutionally protected activity. The Supreme Court of North Dakota affirmed the defendant’s convictions and held that his conduct of intentionally following victim around city in his vehicle and contacting her, knowing his conduct would cause her fear, was not constitutionally protected, and, thus, was not excluded from prosecution under stalking statute. The defendant's travel had been restricted through proper process by conditions of his probation, arising from defendant having previously pled guilty to stalking the same victim, and as part of probation, the court prohibited him from going within 500 feet of victim, her residence, and her children's schools. The defendant had notice to stay away from victim and not to contact her, and he had notice that victim did not want any contact with him.

Stalking, Harassment, & Related Offenses: Northern Mariana Islands

Current as of June 2023

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NORTHERN MARIANA ISLANDS

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property. 6 N. Mar. I. Code § 1471 (a).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required but can be a part of the course of conduct where the offender threatens the victim directly, indirectly, or through a third party. 6 N. Mar. I. Code § 1471(a).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must purposefully engage in a course of conduct. The offender does not need to intend to cause fear or emotional distress but rather knows, or should have known, that the conduct would cause fear/emotional distress. 6 N. Mar. I. Code § 1472 (a)(1)-(2), (b)(2).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, under the definition of course of conduct which includes communicating “to or about a person.” 6 N. Mar. I. Code § 1471(a). Stalking also includes course of conduct that would cause fear for safety of a third person. 6 N. Mar. I. Code § 1472 (a)(1).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear for safety of oneself or a third person or to suffer emotional distress. 6 N. Mar. I. Code § 1472 (a)(1)-(2).
Does fear include emotional distress?	Yes. 6 N. Mar. I. Code § 1472(a)(2). Emotional distress means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling. 6 N. Mar. I. Code § 1471(b).

Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. Reasonable person means a reasonable person in the victim's circumstances. 6 N. Mar. I. Code § 1471(c).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	There is no published case law that addresses this and the statutory law is silent.
Must the victim tell the defendant to stop in order to constitute stalking?	No. Further, it is not a defense to stalking that the victim did not give actual notice that the course of conduct was unwanted. 6 N. Mar. I. Code § 1472 (b)(1).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Yes, under the definition of course of conduct which includes conduct through third parties. N. Mar. I. Code § 1471(a).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered by the regular stalking statute which includes actions by any method or device. N. Mar. I. Code § 1471(a).
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?)	No. There is no published case law that addresses this and the statutory law is silent.
Any unique provisions, elements, or requirements?	No.
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)	Stalking is a first degree felony under 6 N. Mar. I. Code § 1472(c) and a felony in the second degree under 6 N. Mar. I. Code § 1472(d).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking in the second degree becomes stalking in the first degree if the offender: <ul style="list-style-type: none"> - Violated any order prohibiting contact with the victim; - Was convicted of stalking any person within the previous 10 years; - Used force or a weapon or threatened to use force or a weapon; or - Stalked a someone who was a minor. 6 N. Mar. I. Code § 1472 (c).

Statutes

6 N. MAR. I. CODE § 1471 (2023). DEFINITIONS

As used in this article:

- (a) “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.
- (b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
- (c) “Reasonable person” means a reasonable person in the victim’s circumstances.

6 N. MAR. I. CODE § 1472 (2023). STALKING

- (a) Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:
 - (1) fear for his or her safety or the safety of a third person; or
 - (2) suffer other emotional distress is guilty of stalking.
- (b) In any prosecution under this law, it shall not be a defense that:
 - (1) the actor was not given actual notice that the course of conduct was unwanted; or
 - (2) the actor did not intend to cause the victim fear or other emotional distress.
- (c) A person commits the crime of stalking in the first degree if the person violates subsection (a) and:
 - (1) the defendant violated any order prohibiting contact with the victim; or
 - (2) the defendant was convicted of stalking any person within the previous 10 years; or
 - (3) the defendant used force or a weapon or threatened to use force or a weapon; or
 - (4) the victim is a minor.

- (d) All acts of stalking not described in subsection (c) constitute the crime of stalking in the second degree.
- (e) Stalking in the first degree is a felony punishable by imprisonment of up to four years, by a fine of up to \$2,000, or both.
- (f) Stalking in the second degree is a felony punishable by imprisonment of up to one year, by a fine of up to \$1,000, or both.

8 N. MAR. I. CODE § 1926 (2023). PENALTIES

- (a) Whenever an order for protection is issued pursuant to this Chapter, and the respondent has been served with, or otherwise notified of the order, violation of the order shall constitute contempt of court, punishable by up to six months in jail, a \$100 fine, or both.
- (b) A peace officer may arrest, without warrant, and take into custody any person whom the peace officer has probable cause to believe has violated any order issued pursuant to this Chapter, provided the existence of the order has been verified by the officer.
- (c) Any person filing a false petition under this Act, or otherwise using this Act in a manner that constitutes abuse of process, or for purposes other than those specifically enumerated herein shall be in contempt of court and punished by a fine not to exceed \$100 or 6 months in jail, or both. Such filing will also render the petitioner liable to the respondent for damages which include, but are not limited to lost wages, attorney's fees, and other expenses that are directly related to the false filing.

Relevant Case Law

No relevant case law.

Stalking, Harassment, & Related Offenses: Ohio

Current as of June 2023

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OHIO

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>“Pattern of conduct” means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a “pattern of conduct.”</p> <p>Ohio Rev. Code § 2903.211 (D)(1).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threat is required for felony stalking only and must be a threat of physical harm against the victim. Ohio Rev. Code § 2903.211 (2)(b); <i>See also State v. Beckwith</i>, 82 N.E.3d 1198 (Ohio Ct. App. 2017) (Menacing by stalking does not require making a threat to the victim, although a threat of physical harm to the victim would elevate the offense from a first-degree misdemeanor to a fourth-degree felony).</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>The offender must knowingly cause the victim to believe that the defendant would cause physical harm or mental distress to herself or family member. Ohio Rev. Code § 2903.211 (A)(1).</p>
<p>Do offender actions toward persons <i>other than the victim</i> help establish course of conduct?</p>	<p>Yes, fear includes fear of harm to oneself or a family member. Ohio Rev. Code § 2903.211 (A)(1). Further, pattern of conduct includes acts directed at one or more persons employed by or belonging to the same corporation, association, or other organization [...]. Ohio Rev. Code § 2903.211 (A)(1), (D)(1).</p> <p>Communicating threats to a 3rd party if there is knowledge that the threats will make it to the intended party can constitute aggravated menacing. See <i>State v. Stutz</i>, 2020-Ohio-6959, 165 N.E.3d 821 (A threat “may be made indirectly if there is evidence to support the conclusion that the offender knew the threat would probably reach the victim.”)</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear of physical harm to oneself or to a family member. Ohio Rev. Code § 2903.211 (A)(1).</p>
<p>Does fear include emotional distress?</p>	<p>Yes, in the form of mental distress which means “any mental illness or condition that involves some temporary substantial incapacity; or any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.” Ohio Rev. Code § 2903.211(2)(a)(b).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Subjective standard. Ohio Rev. Code § 2903.211 (A)(1); see also <i>Lane v. Brewster</i>, No. CA2011–08–060, 2012 WL 1029503 (Ohio Ct. App. Mar. 26, 2012) (Trial court, in determining whether man's conduct toward woman caused her mental distress or fear of physical harm, so as to constitute menacing by stalking, as prerequisite to obtaining a civil stalking</p>

	protection order (CPO), was not required to use an objective, reasonable person test, but, rather, to determine the effect of the man's conduct only specifically as to those involved, i.e., the woman and her family members; plain language of menacing by stalking statute simply referred to conduct that would affect “the other person.”).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	Not applicable.
Must the victim tell the defendant to stop in order to constitute stalking?	No. There is no published case law that addresses this and the statutory law is silent.
Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)	Yes. See Ohio Rev. Code § 2903.211 (A)(1)(2)
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered under the regular stalking statute. Ohio Rev. Code § 2903.211 (A)(1)(2). Other statutes criminalize similar conduct such as telecommunications harassment. Ohio Rev. Code § 2917.21.
Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)	No. Jurisdiction for menacing by stalking can rest in Ohio if any element of the crime takes place in Ohio. Ohio Rev. Code § 2901.11 (A)(1).
Any unique provisions, elements, or requirements?	Yes. Pattern of conduct includes acts directed at one or more persons employed by or belonging to the same corporation, association, or other organization. Ohio Rev. Code § 2903.211 (A)(1), (D)(1).
Gradation of crimes (<i>list out statutes in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)	Menacing by stalking is a misdemeanor of the first degree under Ohio Rev. Code § 2903.211 (B)(1), a felony in the fifth degree, under Ohio Rev. Code § 2903.211 (B)(3), or a felony of the fourth degree under Ohio Rev. Code § 2903.211(B)(2).

<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is a felony in the fifth degree if the victim is an employee of a public children services agency or a private child placing agency and the offense relates to the employee's official responsibilities or duties. Ohio Rev. Code § 2903.211 (B)(3).</p> <p>Stalking becomes a felony in the fourth degree if the offender:</p> <ul style="list-style-type: none"> - Has previously been convicted of stalking victim is an employee of a public children services agency or a private child placing agency and the offense relates to the employee's official responsibilities or duties; - Has previously been convicted of aggravated trespass; - Made threats of physical harm; - Trespassed on victim's home, employment, or school; - Stalked a minor; - Has a history of violence; - Uses a deadly weapon; - Violated a protection order; or - Causes property damage; <p>Ohio Rev. Code § 2903.211(B)(2).</p>
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Statutes

OHIO REV. CODE ANN. § 2903.211 (WEST 2023). MENACING BY STALKING

(A) (1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's family or household member or mental distress to the other person or the other person's family or household member, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(2) No person, through the use of any form of written communication or any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, computer system, or telecommunication device shall post a message or use any intentionally written or verbal graphic gesture with purpose to do either of the following:

(a) Violate division (A)(1) of this section;

(b) Urge or incite another to commit a violation of division (A)(1) of this section.

(3) No person, with a sexual motivation, shall violate division (A)(1) or (2) of this section.

(B) Whoever violates this section is guilty of menacing by stalking.

(1) Except as otherwise provided in divisions (B)(2) and (3) of this section, menacing by stalking is a misdemeanor of the first degree.

(2) Menacing by stalking is a felony of the fourth degree if any of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of this section or a violation of section 2911.211 of the Revised Code.

(b) In committing the offense under division (A)(1), (2), or (3) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (A)(2) or (3) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

(c) In committing the offense under division (A)(1), (2), or (3) of this section, the offender trespassed on the land or premises where the victim lives, is employed, or attends school, or as a result of an offense committed under division (A)(2) or (3) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

(d) The victim of the offense is a minor.

(e) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(f) While committing the offense under division (A)(1) of this section or a violation of division (A) (3) of this section based on conduct in violation of division (A)(1) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (B)(2)(f) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(2) of this section.

(g) At the time of the commission of the offense, the offender was the subject of a protection order issued under section 2903.213 or 2903.214 of the Revised Code, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(h) In committing the offense under division (A)(1), (2), or (3) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or, as a result of an offense committed under division (A)(2) of this section or an offense committed under division (A)(3) of this section based on a violation of division (A)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

(i) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

(3) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing by stalking is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(C) Section 2919.271 of the Revised Code applies in relation to a defendant charged with a violation of this section.

(D) As used in this section:

(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or an electronic method of remotely transferring

information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a “pattern of conduct.”

- (2) “Mental distress” means any of the following:
 - (a) Any mental illness or condition that involves some temporary substantial incapacity;
 - (b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.
- (3) “Emergency medical services person” is the singular of “emergency medical services personnel” as defined in section 2133.21 of the Revised Code.
- (4) “Emergency facility person” is the singular of “emergency facility personnel” as defined in section 2909.04 of the Revised Code.
- (5) “Public official” has the same meaning as in section 2921.01 of the Revised Code.
- (6) “Computer,” “computer network,” “computer program,” “computer system,” and “telecommunications device” have the same meanings as in section 2913.01 of the Revised Code.
- (7) “Post a message” means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.
- (8) “Third person” means, in relation to conduct as described in division (A)(2) of this section, an individual who is neither the offender nor the victim of the conduct.
- (9) “Sexual motivation” has the same meaning as in section 2971.01 of the Revised Code.
- (10) “Organization” includes an entity that is a governmental employer.
- (11) “Family or household member” means any of the following:
 - (a) Any of the following who is residing or has resided with the person against whom the act prohibited in division (A)(1) of this section is committed:
 - (i) A spouse, a person living as a spouse, or a former spouse of the person;

- (ii) A parent, a foster parent, or a child of the person, or another person related by consanguinity or affinity to the person;
- (iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the person, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person.

(b) The natural parent of any child of whom the person against whom the act prohibited in division (A)(1) of this section is committed is the other natural parent or is the putative other natural parent.

(12) “Person living as a spouse” means a person who is living or has lived with the person against whom the act prohibited in division (A)(1) of this section is committed in a common law marital relationship, who otherwise is cohabiting with that person, or who otherwise has cohabited with the person within five years prior to the date of the alleged commission of the act in question.

(E) The state does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (D)(2)(b) of this section.

(F) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section.

(2) Division (F)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Division (F)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

OHIO REV. CODE ANN. § 2903.21 (WEST 2023). AGGRAVATED MENACING

- (A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.
- (B) Whoever violates this section is guilty of aggravated menacing. Except as otherwise provided in this division, aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.
- (C) As used in this section, "organization" includes an entity that is a governmental employer.

OHIO REV. CODE ANN. § 2903.22 (WEST 2023). MENACING

- (A) (1) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.
- (2) No person shall knowingly place or attempt to place another in reasonable fear of physical harm or death by displaying a deadly weapon, regardless of whether the deadly weapon displayed is operable or inoperable, if either of the following applies:
- (a) The other person is an emergency service responder, the person knows or reasonably should know that the other person is an emergency service responder, and it is the person's specific purpose to engage in the specified conduct against an emergency service responder.

(b) The other person is a family or household member or co-worker of an emergency service responder, the person knows or reasonably should know that the other person is a family or household member or co-worker of an emergency service responder, and it is the person's specific purpose to engage in the specified conduct against a family or household member or co-worker of an emergency service responder.

(B) Whoever violates this section is guilty of menacing.

- (1) Except as otherwise provided in this division, menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties or if the victim of the offense is an emergency service responder in the performance of the responder's official duties, menacing is one of the following:
- (2) Except as otherwise provided in division (B)(2) of this section, a misdemeanor of the first degree;
- (3) If the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency or an emergency service responder, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties or to the responder's performance of the responder's official duties, a felony of the fourth degree.

(C) A prosecution for a violation of this section does not preclude a prosecution of a violation of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Revised Code may be prosecuted under this section, the other section of the Revised Code, or both sections. However, if an offender is convicted of or pleads guilty to a violation of this section and also is convicted of or pleads guilty to a violation of [section 2903.13 of the Revised Code](#) based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar import under [section 2941.25 of the Revised Code](#).

(D) As used in this section:

- (1) "Emergency service responder," "family or household member," and "co-worker" have the same meanings as in [section 2903.13 of the Revised Code](#).
- (2) "Organization" includes an entity that is a governmental employer.

OHIO REV. CODE ANN. § 2919.27 (WEST 2023). VIOLATING A PROTECTION ORDER, CONSENT AGREEMENT, OR ANTI-STALKING PROTECTION ORDER; PROTECTION ORDER ISSUED BY COURT OF ANOTHER STATE

(A) No person shall recklessly violate the terms of any of the following:

- (1) A protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code;
- (2) A protection order issued pursuant to section 2151.34, 2903.213, or 2903.214 of the Revised Code;
- (3) A protection order issued by a court of another state.

(B) (1) Whoever violates this section is guilty of violating a protection order.

- (2) Except as otherwise provided in division (B)(3) or (4) of this section, violating a protection order is a misdemeanor of the first degree.
- (3) Violating a protection order is a felony of the fifth degree if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for any of the following:
 - (a) A violation of a protection order issued or consent agreement approved pursuant to section 2151.34, 2903.213, 2903.214, 2919.26, or 3113.31 of the Revised Code;
 - (b) Two or more violations of section 2903.21, 2903.211, 2903.22, or 2911.211 of the Revised Code, or any combination of those offenses, that involved the same person who is the subject of the protection order or consent agreement;
 - (c) One or more violations of this section.
- (4) If the offender violates a protection order or consent agreement while committing a felony offense, violating a protection order is a felony of the third degree.
- (5) If the protection order violated by the offender was an order issued pursuant to section 2151.34 or 2903.214 of the Revised Code that required electronic monitoring of the offender pursuant to that section, the court may require in addition to any other sentence imposed upon the offender that the offender be electronically monitored for a period not exceeding five years by a law enforcement agency designated by the court. If the court requires under this division that the offender be electronically monitored, unless the court determines that the offender is indigent, the court shall order that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device.

- (C) It is an affirmative defense to a charge under division (A)(3) of this section that the protection order issued by a court of another state does not comply with the requirements specified in 18 U.S.C. 2265(b) for a protection order that must be accorded full faith and credit by a court of this state or that it is not entitled to full faith and credit under 18 U.S.C. 2265(c).
- (D) In a prosecution for a violation of this section, it is not necessary for the prosecution to prove that the protection order or consent agreement was served on the defendant if the prosecution proves that the defendant was shown the protection order or consent agreement or a copy of either or a judge, magistrate, or law enforcement officer informed the defendant that a protection order or consent agreement had been issued, and proves that the defendant recklessly violated the terms of the order or agreement.
- (E) As used in this section, “protection order issued by a court of another state” means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person, including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a pendente lite order in a proceeding for other relief, if the court issued it in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. “Protection order issued by a court of another state” does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.

OHIO REV. CODE ANN. § 2917.21 (WEST 2021). TELECOMMUNICATIONS HARASSMENT

- (A) No person shall knowingly make or cause to be made a telecommunication, or knowingly permit a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:
- (1) Makes the telecommunication with purpose to harass, intimidate, or abuse any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient;
 - (2) Describes, suggests, requests, or proposes that the caller, the recipient of the telecommunication, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested, in a previous telecommunication or in the immediate telecommunication, that the caller not make a telecommunication to the recipient or to the premises to which the telecommunication is made;
 - (3) During the telecommunication, violates section 2903.21 of the Revised Code;

- (4) Knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged;
 - (5) Knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises;
 - (6) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is threatening, intimidating, menacing, coercive, or obscene with the intent to abuse, threaten, or harass the recipient;
 - (7) Without a lawful business purpose, knowingly interrupts the telecommunication service of any person;
 - (8) Without a lawful business purpose, knowingly transmits to any person, regardless of whether the telecommunication is heard in its entirety, any file, document, or other communication that prevents that person from using the person's telephone service or electronic communication device;
 - (9) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of the recipient of the telecommunication or family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the recipient;
 - (10) Knowingly incites another person through a telecommunication or other means to harass or participate in the harassment of a person;
 - (11) Knowingly alarms the recipient by making a telecommunication without a lawful purpose at an hour or hours known to be inconvenient to the recipient and in an offensive or repetitive manner.
- (B) (1) No person shall make or cause to be made a telecommunication, or permit a telecommunication to be made from a telecommunications device under the person's control, with purpose to abuse, threaten, or harass another person.
- (2) No person shall knowingly post a text or audio statement or an image on an internet web site or web page for the purpose of abusing, threatening, or harassing another person.
- (C) (1) Whoever violates this section is guilty of telecommunications harassment.

(2) A violation of division (A)(1), (2), (3), (5), (6), (7), (8), (9), (10), or (11) or (B) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(4) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. If a violation of division (A)(4) of this section results in economic harm of one thousand dollars or more but less than seven thousand five hundred dollars, telecommunications harassment is a felony of the fifth degree. If a violation of division (A)(4) of this section results in economic harm of seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars, telecommunications harassment is a felony of the fourth degree. If a violation of division (A)(4) of this section results in economic harm of one hundred fifty thousand dollars or more, telecommunications harassment is a felony of the third degree.

(D) No cause of action may be asserted in any court of this state against any provider of a telecommunications service, interactive computer service as defined in section 230 of Title 47 of the United States Code, or information service, or against any officer, employee, or agent of a telecommunication service, interactive computer service as defined in section 230 of Title 47 of the United States Code, or information service, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section. A provider of a telecommunications service, interactive computer service as defined in section 230 of Title 47 of the United States Code, or information service, or an officer, employee, or agent of a telecommunications service, interactive computer service as defined in section 230 of Title 47 of the United States Code, or information service, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section.

(E) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that the person believes is, or will be sent, in violation of this section.

(2) Division (E)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not

under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Division (E)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

(4) A provider or user of an interactive computer service, as defined in section 230 of Title 47 of the United States Code, shall neither be treated as the publisher or speaker of any information provided by another information content provider, as defined in section 230 of Title 47 of the United States Code, nor held civilly or criminally liable for the creation or development of information provided by another information content provider, as defined in section 230 of Title 47 of the United States Code. Nothing in this division shall be construed to protect a person from liability to the extent that the person developed or created any content in violation of this section.

(F) Divisions (A)(5) to (11) and (B)(2) of this section do not apply to a person who, while employed or contracted by a newspaper, magazine, press association, news agency, news wire service, cable channel or cable operator, or radio or television station, is gathering, processing, transmitting, compiling, editing, or disseminating information for the general public within the scope of the person's employment in that capacity or the person's contractual authority in that capacity.

(G) As used in this section:

(1) "Economic harm" means all direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct. "Economic harm" includes, but is not limited to, all of the following:

(a) All wages, salaries, or other compensation lost as a result of the criminal conduct;

(b) The cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(c) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;

(d) The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

(2) "Caller" means the person described in division (A) of this section who makes or causes to be made a telecommunication or who permits a telecommunication to be made from a telecommunications device under that person's control.

(3) “Telecommunication” and “telecommunications device” have the same meanings as in section 2913.01 of the Revised Code.

(4) “Sexual activity” has the same meaning as in section 2907.01 of the Revised Code.

(5) “Family or household member” means any of the following:

(a) Any of the following who is residing or has resided with the recipient of the telecommunication against whom the act prohibited in division (A)(9) of this section is committed:

(i) A spouse, a person living as a spouse, or a former spouse of the recipient;

(ii) A parent, a foster parent, or a child of the recipient, or another person related by consanguinity or affinity to the recipient;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the recipient, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the recipient.

(b) The natural parent of any child of whom the recipient of the telecommunication against whom the act prohibited in division (A)(9) of this section is committed is the other natural parent or is the putative other natural parent.

(6) “Person living as a spouse” means a person who is living or has lived with the recipient of the telecommunication against whom the act prohibited in division (A)(9) of this section is committed in a common law marital relationship, who otherwise is cohabiting with the recipient, or who otherwise has cohabited with the recipient within five years prior to the date of the alleged commission of the act in question.

(7) “Cable operator” has the same meaning as in section 1332.21 of the Revised Code.

(H) Nothing in this section prohibits a person from making a telecommunication to a debtor that is in compliance with the “Fair Debt Collection Practices Act,” 91 Stat. 874 (1977), 15 U.S.C. 1692, as amended, or the “Telephone Consumer Protection Act,” 105 Stat. 2395 (1991), 47 U.S.C. 227, as amended.

Relevant Case Law

***Dupal v. Sommer*, No. 2009CA00032, 2009 WL 3600358 (Ohio Ct. App. Nov. 2, 2009)**

Petitioner was granted a civil stalking protection order against her former supervisor and the supervisor appealed arguing, *inter alia*, there was insufficient evidence to prove that he stalked the petitioner. The Court of Appeals reversed the issuance of the protection order finding that there was no evidence presented at the hearing to establish a “pattern of conduct” by means of contact or threatening behavior. While the petitioner testified to receiving constant phone calls and text messages, there were no timelines indicated in the petition and there is nothing in the record to establish any contact or threatening behavior from appellant between June 22, 2008 and the time of the filing of the petition, November 24, 2008.

***Lane v. Brewster*, No. CA2011-08-060, 2012 WL 1029503 (Ohio Ct. App. 2012)**

Petitioner, on behalf of herself and her family, was granted a civil protection order against respondent. Respondent appealed arguing *inter alia*, that the trial court applied an incorrect standard of law in determining whether his actions constituted menacing by stalking. Specifically the respondent argued that the petitioner was not only required to prove that she suffered mental distress or fear of physical harm. Rather, he argues that the trial court was required to determine whether a reasonable person in the “same or similar circumstances” would suffer mental distress or fear of physical harm. The Court of Appeals disagreed and held that the trial court was not required to use an objective “reasonable person” test in determining whether respondent’s conduct caused mental distress or fear of physical harm under R.C. 2903.211(A)(1) because the plain language of the statute simply referred to conduct that would affect “the other person.”

***State v. Daylong*, 166 Ohio St. 3d 1449, 2021-Ohio-4192, 181 N.E.3d 1245.**

A.M. broke up with Daylong. In reaction he “repeatedly called her after she blocked his phone number, sent her hundreds of emails, left beer cans by her porch, drove by her home, parked near her backyard, contacted her employer, made phone calls impersonating the police department's non-emergency line, removed light bulbs from her home's exterior light fixtures, disturbed her home's circuit breaker, removed one of the windows to her basement, broke into her home and poured water on her bed, removed and disabled her security camera, attempted to drill the locks out of her front door.” Daylong argued that this behavior is not menacing and thus was not a course of conduct. The court held they must take everything into consideration, “even if some of the person's actions may not, in isolation, seem particularly threatening.”

***In re R.K.*, 2020-Ohio-35, 150 N.E.3d 1247**

This case involved two minors, D.W. (defendant) and Sa.W. they were in the same grade at school and Sa.W. was 11. Additionally, D.W. and Sa.W. were neighbors. D.W. was found to be menacing by stalking. D.W. would constantly whistle at her at the bus stop and would whistle and flirt with her during classes. Additionally, on one occasion, Sa.W. and her family returned from a trip to find a snow mound blocking their drive way, they testified they believed D.W. was responsible, D.W. testified his friends had done it. Additionally, D.W. built a snowman with male genitalia on it facing Sa.W.'s house. D.W. also posted a photo of Sa.W. in the bathroom and stated that she was stalking him, and on another occasion posted that Sa.W. and her family were trying to "get him thrown in

juvie." D.W. and his friends also blocked Sa.W.'s path while she was trying to walk to the bus stop. Finally, D.W. threw sticks into Sa.W.'s yard one day while she was standing in it, though they were not aimed at her. Sa.W. testified that these incidents made her feel intimidated and scared. The court ruled that a juvenile protective order was warranted. The court said that though anyone of these incidents individually might not be menacing the totality of the circumstances analysis rises to Menacing by Stalking. The court did express concern that not every school yard fight end up in court, but noted that D.W. had not stopped even when confronted with authority.

State v. Stutz, 2020-Ohio-6959, 165 N.E.3d 821

Stutz was a former police officer. She called her son, Sean, one night and informed told him that she thought Rick Biehl (the police chief) and the police department were corrupt. She said if she had a gun on her she would "shoot Rick right fucking now." Stutz was being emotional on the phone and had a history of erratic behavior. Sean, called a friend at the police department and informed him of what was happening with his mother. Biehl testified that Stutz had a history of obsessive concerning behavior; she had attempted to engage with him in a personal manner in the past and was ordered to not contact him. She would also call him and send him text messages and on one occasion left a voice mail about the two of them getting married. Stutz did not own a gun but she did carry a firearm when she was an officer and was not prevented from procuring one. The court held this constituted aggravated menacing and that a threat "may be made indirectly if there is evidence to support the conclusion that the offender knew the threat would probably reach the victim." The Court held that Stutz was aware the comments made to her son would reach Rick Biehl and thus constituted threats made to him.

State v. Beckwith, 2017-Ohio-4298, 82 N.E.3d 1198

The defendant, Beckwith, was convicted of menacing by stalking and related offenses. The victim worked in a hospital, for several months the defendant would sit on a bench, from which he could see the victim's office and stare at her while she was working. On one occasion he exposed himself and masturbated. The defendant argued that his actions were not "knowingly" meant to intimidate. The court held that because a reasonable person would conclude that his behavior would intimidate and because he fled on two occasion, implying he knew his behavior was intimidating he met the element. The court said "Sufficient evidence supports the 'knowingly' element of menacing by stalking if the evidence allows the trier of fact to reasonably conclude that the defendant was aware that his conduct would probably cause the victim to believe that the defendant will cause physical harm or mental distress to the victim." The court also held in this case that the Victim does not have to seek mental health services to prove the mental distress element of menacing by stalking.

Stalking, Harassment, & Related Offenses: Oklahoma

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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OKLAHOMA

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct means a pattern of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct. Okla. Stat. tit. 21, § 1173 (F)(2).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required but can be a part of the course of conduct. Okla. Stat. tit. 21, § 1173(A)(1),(2).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Offender must willfully and maliciously follow or harass the victim. Okla. Stat. tit. 21, § 1173(A).
Do offender actions toward persons <i>other than the victim</i> help establish course of conduct?	Yes, if conduct is towards a member of the victim's immediate family. Okla. Stat. tit. 21, § 1173(A)(1).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	The type of fear required is not explicitly defined but the victim must feel frightened, intimidated, threatened, harassed, or molested. Okla. Stat. tit. 21, § 1173(A)(1).
Does fear include emotional distress?	Yes, if the stalking is based on harassment. Okla. Stat. tit. 21, § 1173 (F)(2). Emotional distress means "means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling." Okla. Stat. tit. 21, § 1173 (F)(3).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Both. The statute refers to conduct that "would cause a reasonable person to ..." and "actually cause" to feel frightened, intimidated, threatened, harassed, or molested. Okla. Stat. tit. 21, § 1173(A)(1),(2).

<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>There is no published case law that addresses this and the statutory law is silent.</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, but evidence that the offender was told to stop creates a rebuttable presumption that the conduct caused fear. Okla. Stat. tit. 21, § 1173 (E).</p>
<p>Is stalking by proxy included? (<i>i.e., getting a third person to stalk the victim</i>)</p>	<p>Yes. The definition of following includes “the tracking of the movement or location of an individual through the use of a Global Positioning System (GPS) device or other monitoring device by a person, or person who acts on behalf of another.” Okla. Stat. tit. 21, § 1173 (6).</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 under the harassment definition and the unconsented contact definition. Okla. Stat. tit. 21, § 1173 (F)(1),(4).</p> <p>Other statutes criminalize similar conduct such as harassment by telephone or electronic means and using a computer to annoy or place in fear. Okla. Stat. tit. 21, § 1172; Okla. Stat. tit. 21, § 1953.</p>
<p>Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>Gradation of crimes (<i>list out statutes in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)</p>	<p>Stalking is either a misdemeanor or a felony. Okla. Stat. tit. 21, § 1173 (A)(2).</p> <p>Stalking can be a felony with punishments increasing with aggravating factors. Stalking is punished by either a maximum of 1 year in jail, a maximum of 5 years in prison, or a maximum</p>

	of 10 years in prison. Okla. Stat. tit. 21, § 1173(B)(C)(D).
What aggravating circumstances elevate the gradation of a stalking offense?	<p>Stalking is a felony punishable by up to 5 years in prison if the offender:</p> <ul style="list-style-type: none"> - Has previously been convicted of stalking within 10 years; or - Has previously been convicted of stalking and there is a protective order in place <p>Okla. Stat. tit. 21, § 1173(B)</p> <p>Stalking is a felony punishable by up to 10 years in prison if the offender commits an act of stalking within 10 years of the completion of execution of sentence for a prior conviction. Okla. Stat. tit. 21, § 1173(C)(D).</p>

Statutes

OKLA. STAT. ANN. TIT. 21, § 1172 (WEST 2023) OBSCENE, THREATENING OR HARASSING TELECOMMUNICATION OR OTHER ELECTRONIC COMMUNICATIONS--PENALTY

- A. It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either:
1. Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent;
 2. Makes a telecommunication or other electronic communication including text, sound, or images with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person;
 3. Makes a telecommunication or other electronic communication, whether or not conversation ensues, with intent to put the party called in fear of physical harm or death;
 4. Makes a telecommunication or other electronic communication, including text, sound, or images whether or not conversation ensues, without disclosing the identity of the person making the call or communication and with intent to annoy, abuse, threaten, or harass any person at the called number;
 5. Knowingly permits any telecommunication or other electronic communication under the control of the person to be used for any purpose prohibited by this section; and

6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s).
- B. As used in this section, “telecommunication” and “electronic communication” mean any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet. The term includes:
1. A communication initiated by electronic mail, instant message, network call, or facsimile machine including text, sound, or images;
 2. A communication made to a pager; or
 3. A communication including text, sound or images posted to a social media or other public media source.
- C. Use of a telephone or other electronic communications facility under this section shall include all use made of such a facility between the points of origin and reception. Any offense under this section is a continuing offense and shall be deemed to have been committed at either the place of origin or the place of reception.
- D. Except as provided in subsection E of this section, any person who is convicted of the provisions of subsection A of this section, shall be guilty of a misdemeanor.
- E. Any person who is convicted of a second offense under this section shall be guilty of a felony.

OKLA. STAT. ANN. TIT. 21, § 1173 (WEST 2023). STALKING-PENALTIES

- A. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:
1. Would cause a reasonable person or a member of the immediate family of that person as defined in subsection F of this section to feel frightened, intimidated, threatened, harassed, or molested; and
 2. Actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested, shall, upon conviction, be guilty of the crime of stalking, which is a felony punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed three (3) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any person convicted of a

second violation of the provisions of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for a term not to exceed six (6) years, or by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Any person convicted of a third or subsequent violation of the provisions of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for a term not to exceed twelve (12) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

B. Any person who violates the provisions of subsection A of this section when:

1. There is a permanent or temporary restraining order, a protective order, an emergency ex parte protective order, or an injunction in effect prohibiting the behavior described in subsection A of this section against the same party, when the person violating the provisions of subsection A of this section has actual notice of the issuance of such order or injunction;
2. Said person is on probation or parole, a condition of which prohibits the behavior described in subsection A of this section against the same party or under the conditions of a community or alternative punishment; or
3. Said person, within ten (10) years preceding the violation of subsection A of this section, completed the execution of sentence for a conviction of a crime involving the use or threat of violence against the same party, or against any member of the immediate family of such party, shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed fifteen (15) years, or by a fine to exceed Twenty Thousand Dollars (\$20,000.00), or by both such fine and imprisonment.

C. Any person who:

1. Commits a second act of stalking within ten (10) years of the completion of sentence for a prior conviction of stalking; or
2. Has a prior conviction of stalking and, after being served with a protective order that prohibits contact with an individual, knowingly makes unconsented contact with the same individual, shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed twenty (20) years, or by a fine not to exceed Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment.

D. Any person who commits an act of stalking within ten (10) years of the completion of execution of sentence for a prior conviction under subsection B or C of this section shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed twenty-five (25) years, or by a fine not to exceed Thirty Thousand Dollars (\$30,000.00), or by both such fine and imprisonment.

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact, as defined in subsection F of this section, with the victim after having been

requested by the victim to discontinue the same or any other form of unconsented contact, and to refrain from any further unconsented contact with the victim, shall give rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

F. For purposes of this section:

1. “Harasses” means a pattern or course of conduct directed toward another individual that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Harassment shall include harassing or obscene phone calls as prohibited by Section 1172 of this title and conduct prohibited by Section 850 of this title. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;
2. “Course of conduct” means a series of two or more separate acts over a period of time, however short or long, evidencing a continuity of purpose, including any of the following:
 - a. maintaining a visual or physical proximity to the victim,
 - b. approaching or confronting the victim in a public place or on private property,
 - c. appearing at the workplace of the victim or contacting the employer or coworkers of the victim,
 - d. appearing at the home of the victim or contacting the neighbors of the victim,
 - e. entering onto or remaining on property owned, leased, or occupied by the victim,
 - f. contacting the victim by telephone, text message, electronic message, electronic mail, or other means of electronic communication or causing the telephone or electronic device of the victim or the telephone or electronic device of any other person to ring or generate notifications repeatedly or continuously, regardless of whether a conversation ensues,
 - g. photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the victim. This subparagraph applies regardless of where the act occurs,
 - h. sending to the victim any physical or electronic material or contacting the victim by any means, including any message, comment, or other content posted on any Internet site or web application,
 - i. sending to a family member or member of the household of the victim, or any current or former employer of the victim, or any current or former coworker of the victim, or any friend of the victim, any physical or electronic material or contacting such person by any

means, including any message, comment, or other content posted on any Internet site or web application, for the purpose of obtaining information about, disseminating information about, or communicating with the victim,

- j. placing an object on or delivering an object to property owned, leased, or occupied by the victim,
- k. delivering an object to a family member or member of the household of the victim, or an employer, coworker, or friend of the victim, or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the victim, or
- l. causing a person to engage in any of the acts described in subparagraphs a through k of this paragraph.

Constitutionally protected activity is not included within the meaning of “course of conduct”;

- 3. “Emotional distress” means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling;
- 4. “Unconsented contact” means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the following:
 - a. following or appearing within the sight of that individual,
 - b. approaching or confronting that individual in a public place or on private property,
 - c. appearing at the workplace or residence of that individual,
 - d. entering onto or remaining on property owned, leased, or occupied by that individual,
 - e. contacting that individual by telephone,
 - f. sending mail or electronic communications to that individual, and
 - g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual; and
- 5. “Member of the immediate family”, for the purposes of this section, means any spouse, parent, child, person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who regularly resided in the household within the prior six (6) months.

OKLA. STAT. ANN. TIT. 21, § 1202 (WEST 2023). EAVESDROPPING

Every person guilty of secretly loitering about any building, with intent to overhear discourse therein, and to repeat or publish the same to vex, annoy, or injure others, is guilty of a misdemeanor.

OKLA. STAT. ANN. TIT. 21, § 1304 (WEST 2023). LETTERS--MAILING THREATENING OR INTIMIDATING LETTERS

Any person who shall send, deliver, mail or otherwise transmit to any person, or persons, in this state any letter, document or other written or printed matter, anonymous or otherwise, designed to threaten or intimidate such person or persons, or designed to put him or them in fear of life, bodily harm or the destruction of his or their property, shall be deemed guilty of committing a felony, and upon conviction thereof shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in the county jail or State Penitentiary for a period of not less than ninety (90) days nor more than one (1) year.

OKLA. STAT. ANN. TIT. 21, § 1953 (WEST 2023). PROHIBITED ACTS

A. It shall be unlawful to:

1. Willfully, and without authorization, gain or attempt to gain access to and damage, modify, alter, delete, destroy, copy, make use of, use malicious computer programs on, disclose or take possession of a computer, computer system, computer network, data or any other property;
2. Use a computer, computer system, computer network or any other property as hereinbefore defined for the purpose of devising or executing a scheme or artifice with the intent to defraud, deceive, extort or for the purpose of controlling or obtaining money, property, data, services or other thing of value by means of a false or fraudulent pretense or representation;
3. Willfully exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network, data or any other property;
4. Willfully and without authorization, gain or attempt to gain access to a computer, computer system, computer network, data or any other property;
5. Willfully and without authorization use or cause to be used computer services;
6. Willfully and without authorization disrupt or cause the disruption of computer services or deny or cause the denial of access or other computer services to an authorized user of a

computer, computer system or computer network, other than an authorized entity acting for a legitimate business purpose without the effective consent of the owner;

7. Willfully and without authorization provide or assist in providing a means of accessing a computer, computer system, data or computer network in violation of this section;
8. Willfully use a computer, computer system, or computer network to annoy, abuse, threaten, or harass another person;
9. Willfully use a computer, computer system, or computer network to put another person in fear of physical harm or death; and
10. Willfully solicit another, regardless of any financial consideration or exchange of property, of any acts described in paragraphs 1 through 9 of this subsection.

- B. Any person convicted of violating paragraph 1, 2, 3, 6, 7, 9 or 10 of subsection A of this section shall be guilty of a felony punishable as provided in Section 1955 of this title.
- C. Any person convicted of violating paragraph 4, 5 or 8 of subsection A of this section shall be guilty of a misdemeanor.
- D. Nothing in the Oklahoma Computer Crimes Act shall be construed to prohibit the monitoring of computer usage of, or the denial of computer or Internet access to, a child by a parent, legal guardian, legal custodian, or foster parent. As used in this subsection, "child" shall mean any person less than eighteen (18) years of age.
- E. Nothing in the Oklahoma Computer Crimes Act shall be construed to prohibit testing by an authorized entity, the purpose of which is to provide to the owner or operator of the computer, computer system or computer network an evaluation of the security of the computer, computer system or computer network against real or imagined threats or harms.

OKLA. STAT. ANN. TIT. 22, § 60.6 (WEST 2023). VIOLATION OF EMERGENCY TEMPORARY, EX PARTE OR FINAL PROTECTIVE ORDER—PENALTIES

- A. Except as otherwise provided by this section, any person who:
 1. Has been served with an emergency temporary, ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or by both such fine and imprisonment; and

2. After a previous conviction of a violation of a protective order, is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction, be guilty of a felony and shall be punished by a term of imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than three (3) years, or by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.
- B.
1. Any person who has been served with an emergency temporary, ex parte or final protective order or foreign protective order who violates the protective order and causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).
 2. Any person who is convicted of a second or subsequent violation of a protective order which causes physical injury or physical impairment to a plaintiff or to any other person named in the protective order shall be guilty of a felony and shall be punished by a term of imprisonment in the custody of the Department of Corrections of not less than one (1) year nor more than five (5) years, or by a fine of not less than Three Thousand Dollars (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.
 3. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.
 4. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.
- C.
- The minimum sentence of imprisonment issued pursuant to the provisions of paragraph 2 of subsection A and paragraph 2 of subsection B of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.
- D.
- In addition to any other penalty specified by this section, the court shall require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:
1. The court shall specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2. a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program certified by the Attorney General. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.
- b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;
3. a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.
- b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program certified by the Attorney General and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;
4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of this title and subject the defendant to any or all remaining portions of the original sentence;
 6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and
 7. If funding is available, a referee may be appointed and assigned by the presiding judge of the district court to hear designated cases set for review under this subsection. Reasonable compensation for the referees shall be fixed by the presiding judge. The referee shall meet the requirements and perform all duties in the same manner and procedure as set forth in Sections 1-8-103 and 2-2-702 of Title 10A of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.
- E. Emergency temporary, ex parte and final protective orders shall include notice of these penalties.
- F. When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.
- G. Any district court of this state and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:
1. Attend a treatment program for domestic abusers certified by the Attorney General;
 2. Attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order; and
 3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers certified by the Attorney General.
- H. At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

- I. In addition to any other penalty specified by this section, the court may order a defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device as a condition of a sentence. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

Relevant Case Law

State v. Saunders, 886 P.2d 496 (Okla. Crim. App. 1994)

Defendant was charged with stalking and filed a motion to dismiss the indictment, arguing that the stalking statute was unconstitutional. The District Court found the statute to be unconstitutional and the State appealed. The Court of Criminal Appeals reversed and held that stalking statute gave fair notice of prescribed activity and was not void for vagueness on its face. The word “repeatedly” in Oklahoma's stalking statute adds to the specific intent required to commit the offense as well as the restraint law enforcement officers and prosecutors must follow. Not until a perpetrator follows or harasses a victim more than once does the conduct rise to a criminal level; additionally, by using the words “willfully and maliciously” the legislature has provided that it is the perpetrator’s intent which triggers the statute.

Stalking, Harassment, & Related Offenses: Oregon

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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OREGON

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct is not defined but rather offender must engage in “repeated contacts.” Or. Rev. Stat. § 163.732(1)(a). “Repeated” means two or more times. Or. Rev. Stat. § 163.730 (7) .
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>Threat is interpreted by case law rather than statute. Threat is only required if the contact is expressive and then the threat must be a credible threat that causes fear of imminent and personal violence.</p> <p><i>J.C.R. v. McNulty</i>, 467 P.3d 48, 50 (Or. Ct. App. 2020)(if the contact is expressive contact, then it must present a ‘credible threat’ of imminent serious physical harm).</p> <p><i>State v. Jackson</i>, 313 P.3d 383 (Or. Ct. App. 2013)(For purposes of a prosecution for stalking, a “threat” is a communication that instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal, and is objectively likely to be followed by unlawful acts).</p> <p><i>State v. Shields</i>, 184 Or. App. 505, 56 P.3d 937 (Or. Ct. App. 2002)(For purposes of finding of stalking based on expression, a “contact” must consist of a threat of imminent and serious physical violence that convincingly expresses to the addressee the intention that it will be carried out, and that the actor has the ability to do so; stalking based on expression does not require establishment of “actual or substantive threat.”).</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must knowingly alarm or coerce. Or. Rev. Stat. § 163.732 (1)(a); <i>See also State v. Rangel</i> , 934 P.2d 1128 (Or. Ct. App. 1997)

	(Term “knowing” as used in stalking statute is subsumed in meaning of “intentional.”).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes. The definition of contact includes communicating with a third person. See Or. Rev. Stat. §§ 163.730 (3), 163.732 (1)(a)-(c).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	<p>“Reasonable apprehension” rather than fear and includes reasonable apprehension of personal safety or safety of family or household member. Or. Rev. Stat. § 163.732 (1)(c).</p> <p>Expressive conduct is held to a higher standard as to not interfere with First Amendment rights. Expressive conduct has to constitute a threat that can be imminently acted upon. Threatening is a “standard [that] requires ... defendant's words instilled in R a fear of imminent and serious personal violence, were unequivocal, and were objectively likely to be followed by unlawful acts.” <i>State v. Hejazi</i>, 524 P.3d 534, 540 (2023).</p>
Does fear include emotional distress?	No. There is no published case law that addresses this and the statutory law is silent.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Both. See <i>J.C.R. v. McNulty</i> , 467 P.3d 48 (Or. Ct. App. 2020) (The requirements of “alarm,” “coercion,” and “reasonable apprehension” have both subjective and objective components. The subjective component means that the contact must have caused actual alarm or coercion and actual apprehension regarding the person's physical safety. The objective component means that the contacted person's alarm or coercion and reasonable apprehension of physical danger must have been objectively reasonable. Each of the unwanted contacts, individually, must give rise to both subjective and objectively reasonable alarm or coercion).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	What constitutes reasonable fear is case specific.

	<p><i>J.C.R. v. McNulty</i>, 467 P.3d 48, 50 (Or. Ct. App. 2020) (“[T]he type of ‘danger’ that must be perceived by the contacted person to experience ‘alarm’ is a threat of physical injury, not merely a threat of annoyance or harassment).</p> <p><i>D.A. v. White</i>, 292 P.3d 587 (Or. Ct. App. 2012) (Sufficient evidence supported trial court’s finding that petitioner’s alarm was objectively reasonable, in an incident in which a former coworker at the Drug Enforcement Agency (DEA) stopped his motorcycle in front of petitioner’s house and tried to get petitioner to come outside, in relying on the incident as a qualifying contact for a stalking protective order (SPO), including evidence that coworker was armed or, at least, intended to be perceived as being armed).</p>
Must the victim tell the defendant to stop in order to constitute stalking?	No. There is no published case law that addresses this and the statutory law is silent.
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Yes. See Or. Rev. Stat. § 163.730 (3)(f),(h),(i),(k).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	<p>Technology-facilitated stalking is covered under regular stalking statute through the definition of contact. Or. Rev. Stat. § 163.730 (3)(d)(e).</p> <p>Other statutes criminalize similar conduct such as harassment through electronic means, telephone harassment, and unlawful use of a GPS. Or. Rev. Stat. § 166.065 (c); Or. Rev. Stat. § 166.090; Or. Rev. Stat. § 163.715.</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?)	No. See Or. Rev. Stat. § 131.215 (1).
Any unique provisions, elements, or requirements?	No.

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)	Stalking is either a Class A misdemeanor under Or. Rev. Stat. § 163.732(2)(a), or a Class C felony under Or. Rev. Stat. § 163.732(b).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking becomes a felony if the offender has a prior conviction for stalking or for violating a stalking protective order. Or. Rev. Stat. § 163.732(b).

Statutes

OR. REV. STAT. ANN. § 163.730 (WEST 2023). DEFINITIONS

As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

- (1) “Alarm” means to cause apprehension or fear resulting from the perception of danger.
- (2) “Coerce” means to restrain, compel or dominate by force or threat.
- (3) “Contact” includes but is not limited to:
 - (a) Coming into the visual or physical presence of the other person;
 - (b) Following the other person;
 - (c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;
 - (d) Sending or making written or electronic communications in any form to the other person;
 - (e) Speaking with the other person by any means;
 - (f) Communicating with the other person through a third person;
 - (g) Committing a crime against the other person;
 - (h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
 - (i) Communicating with business entities with the intent of affecting some right or interest of the other person;

- (j) Damaging the other person's home, property, place of work or school;
 - (k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or
 - (l) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.
- (4) "Household member" means any person residing in the same residence as the victim.
- (5) "Immediate family" means father, mother, child, sibling, spouse, grandparent, stepparent and stepchild.
- (6) "Law enforcement officer" means:
- (a) A person employed in this state as a police officer by:
 - (A) A county sheriff, constable or marshal;
 - (B) A police department established by a university under ORS 352.121 or 353.125; or
 - (C) A municipal or state police agency; or
 - (b) An authorized tribal police officer as defined in ORS 181A.680.
- (7) "Repeated" means two or more times.
- (8) "School" means a public or private institution of learning or a child care facility.

OR. REV. STAT. ANN. § 163.732 (WEST 2023). STALKING

- (1) A person commits the crime of stalking if:
- (a) The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person;
 - (b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and
 - (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

- (2) (a) Stalking is a Class A misdemeanor.
- (b) Notwithstanding paragraph (a) of this subsection, stalking is a Class C felony if the person has a prior conviction for:
- (A) Stalking; or
- (B) Violating a court's stalking protective order.
- (c) When stalking is a Class C felony pursuant to paragraph (b) of this subsection, stalking shall be classified as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

OR. REV. STAT. ANN. § 163.750 (WEST 2023). VIOLATING COURT'S STALKING PROTECTIVE ORDER

- (1) A person commits the crime of violating a court's stalking protective order when:
- (a) The person has been served with a court's stalking protective order as provided in ORS 30.866 or 163.738 or if further service was waived under ORS 163.741 because the person appeared before the court;
- (b) The person, subsequent to the service of the order, has engaged intentionally, knowingly or recklessly in conduct prohibited by the order; and
- (c) If the conduct is prohibited contact as defined in ORS 163.730 (3)(d), (e), (f), (h) or (i), the subsequent conduct has created reasonable apprehension regarding the personal safety of a person protected by the order.
- (2) (a) Violating a court's stalking protective order is a Class A misdemeanor.
- (b) Notwithstanding paragraph (a) of this subsection, violating a court's stalking protective order is a Class C felony if the person has a prior conviction for:
- (A) Stalking; or
- (B) Violating a court's stalking protective order.
- (c) When violating a court's stalking protective order is a Class C felony pursuant to paragraph (b) of this subsection, violating a court's stalking protective order shall be classified as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

OR. REV. STAT. ANN. § 166.065 (WEST 2023). HARASSMENT

- (1) A person commits the crime of harassment if the person intentionally:
 - (a) Harasses or annoys another person by:
 - (A) Subjecting such other person to offensive physical contact; or
 - (B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;
 - (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or
 - (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.
- (2) (a) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.
 - (b) Harassment that is committed under the circumstances described in subsection (1)(c) of this section is committed in either the county in which the communication originated or the county in which the communication was received.
- (3) Harassment is a Class B misdemeanor.
- (4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates:
 - (a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact and:
 - (A) The offensive physical contact consists of touching the sexual or other intimate parts of the other person; or
 - (B) (i) The victim of the offense is a family or household member of the person; and
 - (ii) The offense is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim; or

(b) Subsection (1)(c) of this section and:

- (A) The person has a previous conviction under subsection (1)(c) of this section and the victim of the current offense was the victim or a member of the family of the victim of the previous offense;
- (B) At the time the offense was committed, the victim was protected by a stalking protective order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person from contacting the victim;
- (C) At the time the offense was committed, the person reasonably believed the victim to be under 18 years of age and more than three years younger than the person; or
- (D) (i) The person conveyed a threat to kill the other person or any member of the family of the other person;
- (ii) The person expressed the intent to carry out the threat; and
- (iii) A reasonable person would believe that the threat was likely to be followed by action.

(c) Subsection (1)(a)(A), (b) or (c) of this section by committing the crime of harassment against:

- (A) An election worker who is performing the election worker's official duties at the time the harassment occurs; or
- (B) An election worker because of an action taken or decision made by the election worker during the performance of the election worker's official duties.

(5) The Oregon Criminal Justice Commission shall classify harassment as described in subsection (4)(a)(B) of this section as a person Class A misdemeanor under the rules of the commission.

(6) (a) As used in this section:

- (A) "Election worker" has the meaning given that term in ORS 247.965.
- (B) "Electronic threat" means a threat conveyed by electronic mail, the Internet, a telephone text message or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means.
- (C) "Family or household member" has the meaning given that term in ORS 135.230.

(b) For purposes of subsection (4) of this section, an offense is witnessed if the offense is seen or directly perceived in any other manner by the minor child.

OR. REV. STAT. ANN. § 166.090 (WEST 2023). TELEPHONIC HARASSMENT

- (1) A telephone caller commits the crime of telephonic harassment if the caller intentionally harasses or annoys another person:
 - (a) By causing the telephone of the other person to ring, such caller having no communicative purpose;
 - (b) By causing such other person's telephone to ring, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone; or
 - (c) By sending to, or leaving at, the other person's telephone a text message, voice mail or any other message, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone.
- (2) Telephonic harassment is a Class B misdemeanor.
- (3) It is an affirmative defense to a charge of violating subsection (1) of this section that the caller is a debt collector, as defined in ORS 646.639, who engaged in the conduct proscribed by subsection (1) of this section while attempting to collect a debt. The affirmative defense created by this subsection does not apply if the debt collector committed the unlawful collection practice described in ORS 646.639 (2)(a) while engaged in the conduct proscribed by subsection (1) of this section.

OR. REV. STAT. ANN. § 163.715 (WEST 2023). UNLAWFUL USE OF A GLOBAL POSITIONING SYSTEM DEVICE

- (1) A person commits the crime of unlawful use of a global positioning system device if the person knowingly affixes a global positioning system device to a motor vehicle without consent of the owner of the motor vehicle.
- (2) (a) Except as provided in paragraph (b) of this subsection, unlawful use of a global positioning system device is a Class A misdemeanor.
 - (b) Unlawful use of a global positioning system device is a Class C felony if, at the time of the offense, the person:
 - (A) Has been previously convicted of stalking under ORS 163.732, violating a court's stalking order under ORS 163.750 or committing an equivalent crime in another jurisdiction; or
 - (B) Is the subject of a citation issued under ORS 163.735, an order issued under ORS 30.866, 107.700 to 107.735 or 163.738 or another court order prohibiting the person from contacting another person.

(3) This section does not apply to:

- (b) A police officer who affixes a global positioning system device to a motor vehicle pursuant to a warrant or court order; or
- (c) A person who affixes a global positioning system device to a motor vehicle operated by a motor carrier.

(4) As used in this section:

- (a) “Global positioning system device” means an electronic device that permits the tracking of a person or object by means of global positioning system coordinates.
- (b) “Motor carrier” has the meaning given that term in ORS 825.005.
- (c) “Police officer” has the meaning given that term in ORS 133.525.

Relevant Case Law

***State v. Jackson*, 313 P.3d 383 (Or. Ct. App. 2013)**

Defendant was convicted of stalking and appealed, arguing that the State failed to prove that its conduct amounted to an unequivocal threat. For purposes of a prosecution for stalking, a “threat” does not include the kind of hyperbole, rhetorical excesses, and impotent expressions of anger or frustration that in some contexts can be privileged even if they alarm the addressee. A “threat” is a communication that instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal, and is objectively likely to be followed by unlawful acts. In this case, the victim testified that the defendant taunted him and attempted to incite him to fight. The Court of Appeals reversed the conviction and found that the defendant’s purely expressive conduct did not constitute threat, as required to support conviction of stalking.

***M. D. O. v. Desantis*, 461 P.3d 1066 (Or. Ct. App. 2020)**

Petitioner was granted a stalking protection order against respondent. The respondent appealed arguing that the trial court erred by finding that there were two qualifying contacts for the purposes of the stalking statutes. The petitioner testified that he had an acrimonious relationship, arising from incidents wherein the respondent closely followed petitioner for 15 miles, parked his truck close to petitioner’s car, and threatened him. The Court of Appeals affirmed the issuance of the protection order, stating that, “when issuing a protective order, unwanted contacts must be considered in the context of the parties’ entire history. So viewed, contacts that might appear innocuous in isolation often take on a different character.”

***J.C.R. v. McNulty*, 467 P.3d 48, 50 (Or. Ct. App. 2020)**

Petitioner filed a Stalking Protective Order (SPO) against Respondent, her former partner, after the Respondent made repeated and unwanted contact with the Petitioner. Petitioner's request for a SPO was denied on the basis that the contact did not pose a credible threat. Petitioner appealed. The appellate court found that the case law has established that there must be proof of conduct that either consists of or is analogous to a "credible threat" for an SPO based on conduct involving expression. It is held that that expressive conduct must be communication that installs in the addressee a fear of imminent and serious personal violence that is unambiguous, unequivocal, and specific to the recipient so that it convincingly expresses the intention of being carried out.

***State v. Shields*, 56 P.3d 937 (Or. Ct. App. 2002)**

Defendant was convicted of stalking after making repeated communications to the victim upon his release from incarceration, a sentence he was serving due to a prior stalking conviction involving the same victim. The defendant appealed the conviction, arguing there was insufficient evidence to support a stalking conviction because his communications were not proven to be a threat. The appellate court found that a person commits the crime of stalking when he/she knowingly alarms or coerces another through repeated and unwanted contact and the victim is actually alarmed or coerced as a result of this behavior. Defendant argues that his contact was expressive and, therefore, there had to be a showing that the expression was a threat. The appellate court found, however, that several of the contact (calling the victim and not speaking) were not expressive and did not require that the showing of a threat.

***D.A. v. White*, 292 P.3d 587 (Or. Ct. App. 2012)**

Petitioner filed for a Stalking Protective Order (SPO) against Respondent, a former co-worker, after the professional relationship with Respondent became increasingly hostile. Immediately prior to the filing for the SPO, Respondent had come to Petitioner's home and made comments and gestures from the end of the driveway that Petitioner interpreted to be threatening. A SPO was entered against Respondent, and he appealed on the grounds that there was insufficient evidence provided to support the SPO. The appellate court found that when a petitioner is relying on contact that involves speech, it can only be considered for purposes of a SPO if it is determined to be a threat. To be qualified as a threat, the communication must be of a nature to instill a fear of imminent and serious personal violence from the speaker, be unequivocal, and objectively likely to be followed by unlawful acts. The court found that the Respondent dry firing a weapon while at work and the contact Respondent made at Petitioner's home satisfies this analysis.

***State v. Hejazi*, 323 Or. App. 752, 524 P.3d 534 (2023)**

The Defendant was convicted of menacing and stalking based on three interactions with the victim. The first interaction took place when the Defendant approached the victim, a local attorney, in the courtroom. After asking if they could discuss his case, the Defendant told the victim he would "skin him alive." A week later the Defendant approached the victim outside the courthouse. When the victim would not talk with the Defendant, the Defendant threw a piece of paper at him and told him he would "kill him and his family." The third encounter occurred later that day in the courtroom. The victim saw the Defendant across the room and the Defendant was smiling and pointing at the victim. Defendant argued that the first two contacts with the victim were expressive and should be held to

the heightened standard – it must be showing that the communication articulates a threat. The appellate court found that the first contact was entirely expressive and could not count as a threat. In analyzing the second contact, the court recognized that the contact included both expressive and nonexpressive communication. The court gives weight, however, to the conduct that caused the victim alarm. The court found that the expressive communication is what caused the victim alarm and the evidence was insufficient to conclude the threat was imminent, which is required.

Stalking, Harassment, & Related Offenses: Pennsylvania

Current as of June 2023

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PENNSYLVANIA

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct is a pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct. 18 Pa. Stat. and Cons. Stat. § 2709.1 (f).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required but threatening can be part of a course of conduct. 18 Pa. Stat. and Cons. Stat. § 2709.1 (f).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must intend to place the victim in reasonable fear of bodily injury or to cause substantial emotional distress. 18 Pa. Stat. and Cons. Stat. § 2709.1(a)(1),(2).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	There is no published case law that addresses this and the statutory law is silent.
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear of bodily injury or to suffer emotional distress 18 Pa. Stat. and Cons. Stat. § 2709.1(a)(1),(f).
Does fear include emotional distress?	Yes. Emotional distress means temporary or permanent state of mental anguish. 18 Pa. Stat. and Cons. Stat. § 2709.1(a)(1),(f).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. 18 Pa. Stat. and Cons. Stat. § 2709.1(a)(1).

<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>See Commonwealth v. Sexton</i>, 222 A.3d 405 (Pa. Super Ct. 2019) (Evidence was sufficient to support defendant's conviction for stalking; multiple inscriptions of graffiti written on benches and trashcan near witness's bus stop stating victim was lying about rape and graffiti threatening to kill witness using a nickname for witness constituted a course of conduct or repeated communications demonstrating an intent to place witness in reasonable fear of bodily injury or to cause substantial emotional distress, and defendant succeeded in causing witness such severe emotional stress).</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>i.e., getting a third person to stalk the victim</i>)</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</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 under the "communications" definition. 18 Pa. Stat. and Cons. Stat. § 2709.1(f).</p>
<p>Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)</p>	<p>There is no residency requirement. <i>See</i> 18 Pa. Stat. and Cons. Stat. § 2709.1 (b) ("Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.").</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>Gradation of crimes (<i>list out statues in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)</p>	<p>Stalking is a misdemeanor in the first degree under 18 Pa. Stat. and Cons. Stat. § 2709.1(c)(1) or a felony in the third degree under 18 Pa. Stat. and Cons. Stat. § 2709.1(c)(2).</p>

<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a felony upon the offenders second or subsequent offense or, upon first offense and the offender has previously been convicted of an enumerated crime of violence against the same victim/victim's family. 18 Pa. Stat. and Cons. Stat. § 2709.1(c)(2).</p>
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Statutes

18 PA. STAT. AND CONS. STAT. ANN. § 2709 (WEST 2023). HARASSMENT

(a) Offense defined.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

- (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;
- (2) follows the other person in or about a public place or places;
- (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;
- (4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;
- (5) communicates repeatedly in an anonymous manner;
- (6) communicates repeatedly at extremely inconvenient hours; or
- (7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

(a.1) Cyber harassment of a child.--

(1) A person commits the crime of cyber harassment of a child if, with intent to harass, annoy or alarm, the person engages in a continuing course of conduct of making any of the following by electronic means directly to a child or by publication through an electronic social media service:

- (i) seriously disparaging statement or opinion about the child's physical characteristics, sexuality, sexual activity or mental or physical health or condition; or
- (ii) threat to inflict harm.

(2) (i) If a juvenile is charged with a violation of paragraph (1), the judicial authority with jurisdiction over the violation shall give first consideration to referring the juvenile charged with the violation to a diversionary program under Pa.R.J.C.P. No. 312 (relating to Informal Adjustment) or No. 370 (relating to Consent Decree). As part of the diversionary program, the judicial authority may order the juvenile to participate in an educational program which includes the legal and nonlegal consequences of cyber harassment.

(ii) If the person successfully completes the diversionary program, the juvenile's records of the charge of violating paragraph (1) shall be expunged as provided for under section 9123 (relating to juvenile records).

(b) Deleted by 2002, Dec. 9, P.L. 1759, No. 218, § 1, effective in 60 days.

(b.1) Venue.--

(1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.

(2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

(3) In addition to paragraphs (1) and (2), an offense under subsection (a.1) may be deemed to have been committed at the place where the child who is the subject of the communication resides.

(c) Grading.--

(1) Except as provided under paragraph (3), an offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.

(2) An offense under subsection (a)(4), (5), (6) or (7) or (a.1) shall constitute a misdemeanor of the third degree.

(3) The grading of an offense under subsection (a)(1), (2) or (3) shall be enhanced one degree if the person has previously violated an order issued under 23 Pa.C.S. § 6108 (relating to relief involving the same victim, family or household member).

(d) False reports.--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

(e) Application of section.--This section shall not apply to constitutionally protected activity.

(f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Communicates.” Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

“Course of conduct.” A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

“Emotional distress.” A temporary or permanent state of mental anguish.

“Family or household member.” Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

“Seriously disparaging statement or opinion.” A statement or opinion which is intended to and under the circumstances is reasonably likely to cause substantial emotional distress to a child of the victim's age and which produces some physical manifestation of the distress.

18 PA. STAT. AND CONS. STAT. ANN. § 2709.1 (WEST 2023). STALKING

(a) Offense defined.--A person commits the crime of stalking when the person either:

- (1) engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or
- (2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

(b) Venue.--

- (1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.
- (2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

(c) Grading.--

- (1) Except as otherwise provided for in paragraph (2), a first offense under this section shall constitute a misdemeanor of the first degree.
- (2) A second or subsequent offense under this section or a first offense under subsection (a) if the person has been previously convicted of a crime of violence involving the same victim, family or household member, including, but not limited to, a violation of section 2701 (relating to simple assault), 2702 (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2718 (relating to strangulation), 2901 (relating to kidnapping), 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), an order issued under section 4954 (relating to protective orders) or an order issued under 23 Pa.C.S. § 6108 (relating to relief) shall constitute a felony of the third degree.

(d) False reports.--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

(e) Application of section.--This section shall not apply to constitutionally protected activity.

(f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Communicates.” To convey a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

“Course of conduct.” A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

“Emotional distress.” A temporary or permanent state of mental anguish.

“Family or household member.” Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

23 PA. STAT. AND CONS. STAT. ANN. § 6114 (WEST 2023). CONTEMPT FOR VIOLATION OF ORDER OR AGREEMENT

- (a) General rule.--Where the police, sheriff or the plaintiff have filed charges of indirect criminal contempt against a defendant for violation of a protection order issued under this chapter, a foreign protection order or a court-approved consent agreement, the court may hold the defendant in indirect criminal contempt and punish the defendant in accordance with law.
- (a.1) Jurisdiction.--A court shall have jurisdiction over indirect criminal contempt charges for violation of a protection order issued pursuant to this chapter in the county where the violation occurred and in the county where the protection order was granted. A court shall have jurisdiction over indirect criminal contempt charges for violation of a foreign protection order in the county where the violation occurred.
- (a.2) Minor defendant.--Any defendant who is a minor and who is charged with indirect criminal contempt for allegedly violating a protection from abuse order shall be considered to have committed an alleged delinquent act as that term is defined in 42 Pa.C.S. § 6302(relating to definitions) and shall be treated as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).
- (b) Trial and punishment.--
- (1) A sentence for contempt under this chapter may include:
- (i) (A) a fine of not less than \$300 nor more than \$1,000 and imprisonment up to six months;
or
 - (B) a fine of not less than \$300 nor more than \$1,000 and supervised probation not to exceed six months; and
 - (ii) an order for other relief set forth in this chapter.
- (2) All money received under this section shall be distributed in the following order of priority:
- (i) \$100 shall be forwarded to the Commonwealth and shall be appropriated to the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105 (relating to responsibilities of law enforcement agencies).

- (ii) \$100 shall be retained by the county and shall be used to carry out the provisions of this chapter as follows:
 - (A) \$50 shall be used by the sheriff.
 - (B) \$50 shall be used by the court.
 - (iii) \$100 shall be forwarded to the Department of Public Welfare for use for victims of domestic violence in accordance with the provisions of section 2333 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929.
 - (iv) Any additional money shall be forwarded to the Commonwealth and shall be used by the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105.
- (3) The defendant shall not have a right to a jury trial on a charge of indirect criminal contempt. However, the defendant shall be entitled to counsel.
- (4) Upon conviction for indirect criminal contempt and at the request of the plaintiff, the court shall also grant an extension of the protection order for an additional term.
- (5) Upon conviction for indirect criminal contempt, the court shall notify the sheriff of the jurisdiction which issued the protection order of the conviction.
- (6) The minimum fine required by subsection (b)(1) allocated pursuant to subsection (b)(2)(i) and (iii) shall be used to supplement and not to supplant any other source of funds received for the purpose of carrying out the provisions of this chapter.
- (c) Notification upon release.--The appropriate releasing authority or other official as designated by local rule shall use all reasonable means to notify the victim sufficiently in advance of the release of the offender from any incarceration imposed under subsection (b). Notification shall be required for work release, furlough, medical leave, community service, discharge, escape and recapture. Notification shall include the terms and conditions imposed on any temporary release from custody. The plaintiff must keep the appropriate releasing authority or other official as designated by local rule advised of contact information; failure to do so will constitute waiver of any right to notification under this section.
- (d) Multiple remedies.--Disposition of a charge of indirect criminal contempt shall not preclude the prosecution of other criminal charges associated with the incident giving rise to the contempt, nor shall disposition of other criminal charges preclude prosecution of indirect criminal contempt associated with the criminal conduct giving rise to the charges.

Relevant Case Law

***Com. v. Urrutia*, 653 A.2d 706 (Pa. Super. Ct. 1995)**

The defendant was convicted of terroristic threats and stalking and appealed. On appeal, the defendant argued, *inter alia*, that the trial court erred in admitting evidence of prior bad acts. The court held that previous instances of harassment were not inadmissible as prior bad acts because of the nature of the crime of stalking which requires a pattern of repeated behavior. In this case, the prior bad acts were admissible to establish the course of conduct as well as his intent. The Superior Court noted that, “course of conduct by its very nature requires a showing of a repetitive pattern of behavior. Therefore, where evidence of prior bad acts is necessary to establish the pattern, the evidence is admissible,” and “the testimony permitted the inference that Urrutia intended to cause Thompson to fear for her physical safety or intended to cause her emotional distress.”

***Com. v. Miller*, 689 A.2d 238 (Pa. Super Ct. 1997)**

Defendant was found guilty in an indirect criminal contempt hearing of violating a protection order by stalking and harassing the victim. The defendant appealed, arguing, *inter alia*, that the Commonwealth failed to sufficiently prove the “intent” element. The defendant argued that, although he was in close proximity to the victim four times within one afternoon, intent to harass, annoy, alarm, cause reasonable fear of bodily injury, or substantial emotional distress cannot be inferred. Further, he argues that the *mens rea* was not proven because he did not physically harm he victim or threaten her. The Superior Court rejected this argument as “ridiculous” when the defendant, within the short time span of several hours, came into contact with the victim five times both at her home and in public and continued even after the police made an initial contact with him. While the occasional encounter may possibly be explained as an innocent and random happenstance, the present facts do not support such a finding. Therefore, the Court affirmed the conviction. The Court also noted that even if a victim does not claim to have suffered severe emotional distress, a defendant’s intent to harass, annoy, alarm, or cause substantial emotional distress is satisfactory.

***Com. v. Reese*, 725 A.2d 190 (Pa. Super. Ct. 1999)**

Defendant was charged with stalking but was convicted by jury of harassment. The defendant appealed arguing that because the statutes require different types of intent, harassment was precluded from being a lesser-included offense of stalking. The Superior Court reviewed both statutes and noted that the harassment statute requires the prohibited conduct be done with the intent to “harass, annoy, or alarm,” while stalking requires a more malevolent intent “to place [another] in reasonable fear of bodily injury” or “cause substantial emotional distress.” The Court affirmed the conviction because the “relevant inquiry is whether all of the elements of harassment are contained in stalking.”

***Com. v. Leach*, 729 A.2d 608 (Pa. Super. Ct. 1999)**

Defendant was convicted of nine counts of stalking, violating a protection order, and other crimes and appealed. On appeal, the defendant argued, *inter alia*, that eight of nine stalking convictions should be vacated because they arise out of a single sequence of nine incidents directed toward a

common goal, and therefore only one “course of conduct” transpired rather than nine. The Superior Court affirmed the convictions was properly convicted of nine acts of stalking. Each time a stalker commits an act, as part of an established course of conduct, under circumstances demonstrating an intent to place the victim in fear of bodily injury or to cause the victim substantial emotional distress, the fear and emotional distress increases. The repetitiveness of stalking acts is indicative of the defendant's unrelenting obsession with the victim and often reveals an escalation of violence. For these reasons, it is essential that each stalking act, which is included in an established course of conduct, be a separate offense, punishable with an individual sentence. Having established a course of conduct, each act must carry with it a commensurate penalty, for the effect of treating all as a single crime would be to denigrate the total chronic and repetitive imposition of harm with its debilitating progression into perpetual fear and immobility.

Com. v. Abed, 989 A.2d 23 (Pa. Super. Ct. 2010)

Defendant was convicted of stalking, harassment, and contempt of court and appealed, arguing, that the trial court erred in denying in motion for judgment of acquittal based on insufficient evidence. The Superior Court upheld his convictions finding that actual physical contact was not required to prove the crimes. Further, “lewd and obscene texts, calls, flyers, and letters” that accused victim of having an infectious disease are clearly encompassed in the statutory language.

Commonwealth v. Sexton, 222 A.3d 405 (Pa. Super Ct. 2019).

Defendant was convicted for stalking and appealed. AY (the complaining witness) was best friends with AL. AY confided in AL that sexually assaulted by NT. AL reported this to the police. Then three different graffiti appeared on or near the bus stop that NT knew AY to use saying “AL is lying about rape” and another one saying “kill squill” a nickname for AY that NT knew. The court found the evidence was sufficient to support defendant's conviction for stalking. Evidence of graffiti written on benches and trashcan near witness's bus stop concerning the victim and the sexual assault, and the graffiti threatening to kill the witness was sufficient to show a course of conduct or repeated communications demonstrating an intent to place the witness in reasonable fear of bodily injury or to cause substantial emotional distress. It was also shown that the defendant succeeded in causing the witness to experience such severe emotional stress. s such, the conviction was upheld.

Stalking, Harassment, & Related Offenses: Puerto Rico

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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PUERTO RICO

Summary

What constitutes a "course of conduct" / pattern of behavior?	Persistent behavior pattern; on two or more occasions commit acts that show the intentional purpose of intimidating a specific person or his/her family members and Includes vigilance over a person, repeated communications, repeated acts of vandalism, or repeated harassment. 33 P.R. Laws tit. § 4013(a)(b).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threats are not required but can be part of a pattern of conduct. Threats can be written, verbal, or implicit. 33 P.R. Laws tit. § 4013 (a).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must intend to intimidate or threaten. 33 P.R. Laws tit. § 4013 (a),(b).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, if towards a victim's family member. 33 P.R. Laws tit. § 4013 (b).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear that oneself or family member would suffer personal harm, harm to property, or will be forced to do something against his/her will. 33 P.R. Laws tit. § 4013(d).
Does fear include emotional distress?	No. There is no readily accessible published case law that addresses this and the statutory law is silent.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. 33 P.R. Laws tit. § 4013(d).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	Fear that oneself or family member would suffer personal harm, harm to property, or will be forced to do something against his/her will. 33 P.R. Laws tit. § 4013(d).

Must the victim tell the defendant to stop in order to constitute stalking?	No. There is no readily accessible published case law that addresses this and the statutory law is silent.
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	No. There is no readily accessible published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is not criminalized by statute and there is no readily accessible published case law that addresses this.
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?)	No. There is no readily accessible published case law that addresses this and the statutory law is silent.
Any unique provisions, elements, or requirements?	No.
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)	Stalking is a fourth degree felony under 33 P.R. Laws tit. § 4014(b). Stalking is a misdemeanor under 33 P.R. Laws tit. § 4014(a).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking becomes a fourth-degree felony if the offender: <ul style="list-style-type: none"> - Causes fear by entering the victim's or the victim's family's dwelling; - Inflicted grave bodily injury on victim or member of the victim's family; - Uses a deadly weapon; - Violates a restraining and the order protects the victim who the offender stalks; - Commits an act of vandalism that destroys property in the vicinity of the victim's or the victim's family's home/work/school/vehicle; - Is an adult and the victim is a child; - Stalks a pregnant woman; or - Stalks a person with whom he/she has an affective or intra-family relationship in a

	shared household where no intimate relationship has ever existed 33 P.R. Laws tit. § 4014(b).
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Statutes

33 P.R. LAWS ANN TIT. § 4013 (2023). DEFINITIONS

For the purposes of §§ 4013-4026 of this title, the following terms shall have the meaning stated below:

- (a) Stalking. - Means a pattern of behavior of vigilance, over a person; unwanted verbal or written communications are sent repeatedly to a specific person; written, verbal or implicit threats are made against a specific person; repeated acts of vandalism are directed to a specific person; repeated harassment through words, gestures or actions intended to intimidate, threaten or pursue the victim or members of his/her family.
- (b) Persistent behavior pattern. - Means to make in sic two (2) or more occasions acts that show the intentional purpose of intimidating a specific person or his/her family members.
- (c) (1) Family. - Means: Spouse, son, daughter, father, mother, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, male or female cousin of the victim; or other relative by consanguinity, or affinity who is part of the family nucleus.
 - (2) A person who lives or has formerly cohabited with the victim as a couple; or has been involved in a relationship as a paramour or lover.
 - (3) A person who resides or has resided in the same dwelling as the victim, for at least six (6) months before the acts constituting stalking are evident.
- (d) Intimidate. - Means any repeated action or word that instills terror in the animus of a prudent and reasonable person, to the effect that he/]she, or any member of the family could suffer harm, personally, or of his/]her property, and/r exert moral pressure on the animus of the person to perform an act against his/]her will.
- (e) Restraining order. - Means any written order under the seal of a court whereby the measures are dictated to an offender to abstain from incurring or performing certain acts that constitute stalking.
- (f) Respondent. - Means any person against whom an order of protection is requested.
- (g) Petitioner. - Means any person who requests a restraining order.

- (h) Court. - Means the Trial Court of the General Court of Justice.
- (i) Police officer. - Means any member or officer of the Police of Puerto Rico; or a municipal policeman duly trained and accredited by the Police of Puerto Rico.

33 P.R. LAWS ANN TIT. § 4014 (2023). DELINQUENT CONDUCT; PENALTIES

- (a) Any person who intentionally exhibits a constant or repetitive pattern of stalking directed at intimidating a specific person to the effect that said person or any member of his/her family could suffer personal or property damage; or that maintains said type of conduct knowing that a certain person could reasonably feel intimidated, shall be guilty of a misdemeanor.

The court may order restitution in addition to the term of imprisonment thus imposed.

- (b) Stalking, as classified in this chapter, shall constitute a fourth-degree felony, if one or more of the following circumstances exist:
 - (1) The dwelling of a certain person or a member of his/her family is entered, thus instilling fear of suffering physical injury, and/r exerting moral pressure on the person's animus to perform an act that is against his/her will; or
 - (2) grave bodily injury is inflicted on a certain person or a member of his/her family; or
 - (3) it is committed with a deadly weapon in circumstances not intended to kill or mutilate; or
 - (4) it is committed after a restraining order has been issued against the offender, in aid of the victim of stalking or other person who is also stalked by the offender; or
 - (5) an act of vandalism is committed that destroys property in the places that are adjacent or relatively close to the home, residence, school, workplace, or vehicle of a certain person or member of the family; or
 - (6) is committed by an adult against a child, or
 - (7) is committed against a pregnant woman.
 - (8) When committed against a person with whom he/she has an affective or intra-family relationship in a shared household where no intimate relationship has ever existed, as defined by §§ 601 et seq. of Title 8.

The court may impose the penalty of restitution in addition to the established term of imprisonment. The prosecution and punishment of any person for the crime defined and punished in §§ 4013-4026 of this title, shall not prevent the prosecution and punishment of the

same person for any other act or omission in violation of any of the other provisions of §§ 4013-4026 of this title, or any other act.

33 P.R. LAWS ANN TIT. § 4020 (2023). FAILURE TO COMPLY WITH RESTRAINING ORDERS

Any intentional violation of a restraining order issued pursuant to §§ 4013-4026 of this title, shall be punished as a misdemeanor, which will not impair his/her criminal liability under § 4014(b)(1) of this title or any other penal statute, and shall constitute contempt of court, which could result in a penalty of imprisonment, a fine, or both penalties.

Notwithstanding what is provided by Rule 11 of the Rules of Criminal Procedure, as amended, App. II of Title 34, even though there were no order to such effect, every police officer shall make an arrest, if a restraining order issued under §§ 4013-4026 of this title or a similar act is filed against the person to be arrested, or if it is determined that there is such an order by communicating with the pertinent authorities and there are grounds to believe that the provisions thereof have been violated.

Relevant Case Law

There is no readily accessible relevant case law.

Stalking, Harassment, & Related Offenses: Rhode Island

Current as of June 2023

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RHODE ISLAND

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct. 11 R.I. Gen. Laws § 11-59-1(1).
What types of threats are required (credible, explicit, implicit, bodily injury?)	The law is silent as to whether a threat is required.
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Offender must intend to place victim in reasonable fear of bodily injury or must intend to seriously alarm, annoy, or bother. 11 R.I. Gen. Laws § 11-59-2 (a); 11 R.I. Gen. Laws § 11-59-1(2)(defining harass as course of conduct that would cause reasonable person substantial emotional distress or fear of bodily injury).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	No. There is no published case law that addresses this and the statutory law is silent.
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Reasonable fear of bodily injury or substantial emotional distress. 11 R.I. Gen. Laws § 11-59-2(a); 11 R.I. Gen. Laws § 11-59-1(2)(defining harass as course of conduct that would cause reasonable person substantial emotional distress or fear of bodily injury).
Does fear include emotional distress?	Yes, if stalking by harassment. 11 R.I. Gen. Laws §§ 11-59-2(a), 11-59-1(2).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. 11 R.I. Gen. Laws § 11-59-2(a); <i>See also State v. Koisol</i> , 126 A.3d 487, 494 (R.I. 2015) (“Simply put, the complainant's subjective fear is irrelevant: the [stalking] statute requires only that <i>the defendant</i> intend to place another person ‘in reasonable fear of bodily injury’ by ‘harass[ing]’

	or ‘willfully, maliciously, and repeatedly follow[ing]’ that person.”).
If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)	<p>What constitutes reasonable fear is case specific.</p> <p><i>State v. Kolsoi</i>, 126 A.3d 487 (R.I. 2015) (Testimony of two of five high school students was sufficient to establish element of reasonable fear of bodily injury as to all five students, as required to support conviction on five counts of stalking for defendant's conduct at coffee shop; testimony of other three victims would have been cumulative and would have added very little to information received at trial, victims arrived and left coffee shop together as group in one car, and defendant's actions were directed toward entire group).</p>
Must the victim tell the defendant to stop in order to constitute stalking?	No. See <i>State v. Koisol</i> , 126 A.3d 487, 493 (R.I. 2015) (The stalking statute “neither imputes a requirement that the defendant be notified his actions are disturbing nor requires direct contact with a complainant.”).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	No. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	<p>Technology-facilitated stalking is not explicitly covered under the regular stalking statute or accompanying case law but is covered under a separate cyber-stalking statute. R.I. Gen. Laws § 11-52-4.2.</p> <p>Other statutes criminalize similar conduct such as the electronic tracking of motor vehicles. 11 R.I. Gen. Laws § 11-69-1.</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?)	No. There is no published case law that addresses this and the statutory law is silent.

Any unique provisions, elements, or requirements?	No.
Gradation of crimes (<i>list out statutes in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)	Stalking is graded as a felony. 11 R.I. Gen. Laws § 11-59-2 (b).
What aggravating circumstances elevate the gradation of a stalking offense?	There are no aggravating factors.

Statutes

11 R.I. GEN. LAWS ANN. § 11-52-4.2 (WEST 2023). CYBERSTALKING AND HARASSMENT PROHIBITED

- (a) Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his or her family is guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$ 500), by imprisonment for not more than one year, or both. For the purpose of this section, "harassing" means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose. The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."
- (b) A second or subsequent conviction under subsection (a) of this section shall be deemed a felony punishable by imprisonment for not more than two (2) years, by a fine of not more than six thousand dollars (\$ 6,000), or both.

11 R.I. GEN. LAWS ANN. § 11-52-4.3 (WEST 2023). VIOLATION OF RESTRAINING ORDER

- (a) Whenever there is a restraining order or injunction issued by a court of competent jurisdiction enjoining one person from harassing another person, and the person so enjoined is convicted of the crime as set forth in § 11-52-4.2 for actions against the person protected by the court order or injunction, he or she shall be guilty of a felony which shall be punishable by imprisonment for not more than two (2) years, or by a fine of not more than six thousand dollars (\$6,000), or both.
- (b) A second or subsequent conviction under subsection (a) of this section shall be punishable by imprisonment for not more than five (5) years, by a fine of not more than ten thousand dollars (\$10,000), or both.

11 R.I. GEN. LAWS ANN. § 11-59-1 (WEST 2023). DEFINITIONS

For the purpose of this chapter:

- (1) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."
- (2) "Harasses" means a knowing and willful course of conduct directed at a specific person with the intent to seriously alarm, annoy, or bother the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury.

11 R.I. GEN. LAWS ANN. § 11-59-2 (WEST 2023). STALKING PROHIBITED

- (a) Any person who: (1) harasses another person; or (2) willfully, maliciously, and repeatedly follows another person with the intent to place that person in reasonable fear of bodily injury, is guilty of the crime of stalking.
- (b) Stalking shall be deemed a felony punishable by imprisonment for not more than five (5) years, by a fine of not more than ten thousand dollars (\$ 10,000), or both.

11 R.I. GEN. LAWS ANN. § 11-69-1 (WEST 2023). ELECTRONIC TRACKING OF MOTOR VEHICLES

- (a) (1) Except as provided in subsection (b) of this section, it is an offense for a person to knowingly install, conceal, or otherwise place or use an electronic tracking device in or on a motor vehicle without the consent of the operator and all occupants of the vehicle for the purpose of monitoring or following the operator, occupant, or occupants of the vehicle.
- (2) Definitions. As used in this section:
 - (i) The term "dealer" has the same meaning as set forth in § 31-5-5 and includes, for purposes of this section, an assignee of the dealer;
 - (ii) The term "person" does not include the manufacturer of the motor vehicle, provider of telematics equipment and services, or entities that rent motor vehicles; and
 - (iii) The term "starter interrupt technology" means technology used to remotely disable the starter of a motor vehicle.

- (b) (1) It shall not be a violation if the installation, concealment, placement, or use of an electronic tracking device in or on a motor vehicle is by, or at the direction of, a law enforcement officer in furtherance of a criminal investigation and is carried out in accordance with the applicable state and federal law.
- (2) If the installation, concealment, placement, or use of an electronic tracking device in or on a motor vehicle is by, or at the direction of, a parent or legal guardian who owns or leases the vehicle, and if the device is used solely for the purpose of monitoring the minor child of the parent or legal guardian when the child is an occupant of the vehicle, then the installation, concealment, placement, or use of the device in or on the vehicle without the consent of any or all occupants in the vehicle shall not be a violation, unless the person utilizing the tracking device has an active restraining order or no contact order against them for the protection of any vehicle occupant.
- (3) It shall not be a violation of this section if an electronic tracking device is attached to stolen goods for the purpose of tracking the location of the stolen goods, whether or not they may be transported in a vehicle, or if installed, concealed, placed, or used in or on a vehicle as a vehicle theft recovery device.
- (4) It shall not be a violation of this section if an electronic tracking device, including but not limited to devices also containing technology used to remotely disable the starter of a motor vehicle, is installed and/or used by a motor vehicle dealer in connection with the credit sale, loan, or lease of a motor vehicle with the express written consent of the vehicle's purchaser, lessor, or lessee.
- (5) It shall not be a violation of this section if an electronic tracking device is installed and/or used by a business that is authorized to transact business in this state and the tracking device is used by the business for the purpose of tracking vehicles that are owned or leased by the business and driven by employees of that business, its affiliates, or contractors of that business or its affiliates.
- (c) The provisions of this section shall not apply to a tracking system installed by the manufacturer of a motor vehicle, a provider of telematics equipment and services, or installed and/or used by an entity renting out vehicles, or installed or provided by an insurance company with the vehicle owner's or vehicle lessee's permission to monitor driving habits for insurance rating purposes.
- (d) A violation of this section is a misdemeanor punishable by up to one year in prison, or up to a one thousand dollar (\$1,000) fine, or both.

Relevant Case Law

State v. Fonseca, 670 A.2d 1237 (R.I. 1996)

Defendant was convicted of stalking and of violating restraining order which prohibited him from having contact with his estranged wife. The Superior Court dismissed the complaint against defendant, finding the former version of stalking statute to be unconstitutionally vague. The State appealed. The Supreme Court of Rhode Island held that the statute was constitutional as it gave adequate warning to potential offenders of the conduct that was prohibited. Further, the phrase “repeatedly follows or harasses” in the former version of stalking statute did not render the statute unconstitutionally vague.

State v. Kolsoi, 126 A.3d 487 (R.I. 2015)

Defendant was convicted of multiple counts of stalking after he followed a group of high school girls over a period of two weeks. The defendant appealed and claimed ignorance of both their presence as well as their fear of him. Defendant argued that precedent stated that he needed to be aware that his behavior toward the victims was unwanted. The Supreme Court of Rhode Island held that the defendant had misinterpreted precedent and that he need not have notice that their actions were unwanted in order to be convicted under the stalking statute.

Stalking, Harassment, & Related Offenses: South Carolina

Current as of June 2023

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and is being furnished strictly for informational purposes.

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SOUTH CAROLINA

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Pattern” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. S.C. Code § 16-3-1700(D).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not explicitly required but implicitly covered under stalking definition. S.C. Code § 16-3-1700(C).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must intend to create fear in the victim. S.C. Code § 16-3-1700(C).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, if enumerated conduct is directed to member of victim’s family. S.C. Code § 16-3-1700(C). “Family” means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person. S.C. Code § 16-3-1700(E).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear of death, assault, bodily injury, criminal sexual contact, property damage, or kidnapping of victim or family member. S.C. Code § 16-3-1700(C).
Does fear include emotional distress?	No. Emotional distress is included for harassment but not for stalking.
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Both. “Stalking” means pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear. S.C. Code § 16-3-1700(C).

<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>There is no published case law that addresses this and the statutory law is silent.</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>i.e., getting a third person to stalk the victim</i>)</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</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 which includes pattern of words through “electronic” means. S.C. Code § 16-3-1700(C). Electronic contact “means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.” S.C. Code § 16-3-1700(E).</p>
<p>Do the stalking laws have a resident requirement? (<i>i.e., must the victim or defendant reside in the jurisdiction in order for this to constitute a criminal offense?</i>)</p>	<p>No. There is no published case law that addresses this and the statutory law is silent.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>Gradation of crimes (<i>list out statues in order of declining gradation and say what type of felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor</i>)</p>	<p>Stalking is graded as a felony with increased penalties upon aggravating factors. S.C. Code § 16-3-1730 (A).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking is punishable by up to 10 years in prison if there was a restraining order in place;</p> <p>Stalking is punishable by up to 15 years in prison if the offender has been convicted of stalking or harassment within 10 years; and</p>

	Stalking has a minimum imprisonment of 1 year if the offender received licensing or registration information in furtherance of the crime. S.C. Code § 16-3-1730 (B)-(D).
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Statutes

S.C. CODE ANN. § 16-3-1700 (2023). DEFINITIONS

As used in this article:

(A) “Harassment in the first degree” means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:

(1) following the targeted person as he moves from location to location;

(2) visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;

(3) surveillance of or the maintenance of a presence near the targeted person's:

(a) residence;

(b) place of work;

(c) school; or

(d) another place regularly occupied or visited by the targeted person; and

(4) vandalism and property damage.

(B) “Harassment in the second degree” means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

(C) “Stalking” means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear:

- (1) death of the person or a member of his family;
 - (2) assault upon the person or a member of his family;
 - (3) bodily injury to the person or a member of his family;
 - (4) criminal sexual contact on the person or a member of his family;
 - (5) kidnapping of the person or a member of his family; or
 - (6) damage to the property of the person or a member of his family.
- (D) “Pattern” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.
- (E) “Family” means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.
- (F) “Electronic contact” means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.
- (G) This section does not apply to words or conduct protected by the Constitution of this State or the United States, a law enforcement officer or a process server performing official duties, or a licensed private investigator performing services or an investigation as described in detail in a contract signed by the client and the private investigator pursuant to Section 40-18-70.
- (H) A person who commits the offense of harassment in any degree or stalking, as defined in this section, while subject to the terms of a restraining order issued by the family court may be charged with a violation of this article and, upon conviction, may be sentenced pursuant to the provisions of Section 16-3-1710, 16-3-1720, or 16-3-1730.

S.C. CODE ANN. § 16-3-1730 (2023). PENALTIES FOR CONVICTION OF STALKING

- (A) A person who engages in stalking is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars, imprisoned not more than five years, or both.
- (B) A person who engages in stalking when an injunction or restraining order, including a restraining order issued by the family court, is in effect prohibiting this conduct is guilty of a felony and, upon conviction, must be fined not more than seven thousand dollars, imprisoned not more than ten years, or both.

- (C) A person who engages in stalking and who has a prior conviction of harassment or stalking within the preceding ten years is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars, imprisoned not more than fifteen years, or both.
- (D) In addition to the penalties provided in this section, a person convicted of stalking who received licensing or registration information pursuant to Article 4, Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense pursuant to this section must be fined one thousand dollars or imprisoned one year, or both.

S.C. CODE ANN. § 16-3-1710 (2023). PENALTIES FOR CONVICTION OF HARASSMENT IN THE SECOND DEGREE

- (A) Except as provided in subsection (B), a person who engages in harassment in the second degree is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars, imprisoned not more than thirty days, or both.
- (B) A person convicted of harassment in the second degree is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, imprisoned not more than one year, or both if:
- (1) the person has a prior conviction of harassment or stalking within the preceding ten years; or
 - (2) at the time of the harassment an injunction or restraining order, including a restraining order issued by the family court, was in effect prohibiting the harassment.
- (C) In addition to the penalties provided in this section, a person convicted of harassment in the second degree who received licensing or registration information pursuant to Article 4 of Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense under this section must be fined two hundred dollars or imprisoned thirty days, or both.

S.C. CODE ANN. § 16-3-1720 (2023). PENALTIES FOR CONVICTION OF HARASSMENT IN THE FIRST DEGREE

- (A) Except as provided in subsections (B) and (C), a person who engages in harassment in the first degree is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, imprisoned not more than three years, or both.
- (B) A person who engages in harassment in the first degree when an injunction or restraining order, including a restraining order issued by the family court, is in effect prohibiting this conduct is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars, imprisoned not more than three years, or both.

- (C) A person who engages in harassment in the first degree and who has a prior conviction of harassment or stalking within the preceding ten years is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars, imprisoned not more than five years, or both.
- (D) In addition to the penalties provided in this section, a person convicted of harassment in the first degree who received licensing or registration information pursuant to Article 4 of Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense under this section must be fined one thousand dollars or imprisoned one year, or both.

S.C. CODE ANN. § 16-3-1910 (2023). PERMANENT RESTRAINING ORDERS; PROCEDURE.

[...]

- (J) Upon a finding that the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity, as applicable, the court may issue a permanent restraining order. In determining whether to issue a permanent restraining order, physical injury to the victim or witness is not required.
- (K) The terms of a permanent restraining order must protect the victim or witness and may include enjoining the respondent from:
- (1) abusing, threatening to abuse, or molesting the victim, witness, or members of the victim's or witness' family;
 - (2) entering or attempting to enter the victim's or witness' place of residence, employment, education, or other location; and
 - (3) communicating or attempting to communicate with the victim, witness, or members of the victim's or witness' family in a way that would violate the provisions of this section.
- (L) A permanent restraining order must conspicuously bear the following language: "Violation of this order is a felony criminal offense punishable by up to five years in prison."
- (M)(1) A permanent restraining order remains in effect for a period of time to be determined by the judge. If a victim or witness is a minor at the time a permanent restraining order is issued on the minor's behalf, the victim or witness, upon reaching the age of eighteen, may file a motion with the circuit court to have the permanent restraining order removed.
- (2) The court may modify the terms of a permanent restraining order upon request of the complainant, including extending the duration of the order or lifting the order.
- (N) Notwithstanding another provision of law, a permanent restraining order is enforceable throughout this State.

- (O) Law enforcement officers shall arrest a respondent who is acting in violation of a permanent restraining order after service and notice of the order is provided. A respondent who is in violation of a permanent restraining order is guilty of a felony, if the underlying conviction that was the basis for the permanent restraining order was a felony and, upon conviction, must be imprisoned not more than five years. If the underlying conviction that was the basis for the permanent restraining order was a misdemeanor, a respondent who is in violation of a permanent restraining order is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both.
- (P) Permanent restraining orders are protection orders for purposes of Section 20-4-320, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, as long as all other criteria of Article 3, Chapter 4, Title 20 are met. However, permanent restraining orders are not orders of protection for purposes of Section 16-25-30.
- (Q) The remedies provided by this section are not exclusive, but are additional to other remedies provided by law.

Relevant Case Law

***State v. Prince*, 517 S.E.2d 229 (S.C. Ct. App. 1999)**

Defendant was convicted malicious injury to personal property and aggravated stalking, and he appealed arguing there was insufficient evidence to support his convictions. The Appellate Court affirmed the convictions and held that property damage in combination with fear of bodily injury is sufficient for a felony conviction of aggravated stalking because these acts constituted crimes of violence. In this case, an ex-husband repeatedly called and threatened his ex-wife and subsequently slashed the tires on her car. Fear of property damage is an element of stalking in South Carolina and the court held that actual property damage was enough to elevate the conviction to aggravated stalking.

***State v. Brandenburg*, 797 S.E. 2d 416 (S.C. Ct. App. 2017)**

Defendant was charged with stalking but convicted of harassment. The defendant appealed, arguing that harassment is not a lesser included offense of stalking because harassment includes two elements not found in stalking: “unreasonable intrusion into the private life of a targeted person” and “emotional distress.” The Appellate Court affirmed the conviction stating that the stalking statute implicitly requires the element of a pattern of intentional, substantial, and unreasonable intrusion. “Based on our reading of the statute, we conclude the more loosely defined ‘intrusion’ element from the harassment statute equates to the ‘words ... or conduct’ element in the stalking statute as an intrusion could conceivably—and logically—be through either words or conduct.”

Stalking, Harassment, & Related Offenses: South Dakota

Current as of June 2023

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and is being furnished strictly for informational purposes.

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SOUTH DAKOTA

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct. S.D. Codified Laws § 22-19A-5.
What types of threats are required (credible, explicit, implicit, bodily injury?)	A credible threat is not required but stalking can be based on a credible threat. Another. S.D. Codified Laws § 22-19A-1(2). A credible threat means a threat made with the intent and the apparent ability to carry out the threat. A credible threat need not be expressed verbally. S.D. Codified Laws § 22-19A-6.
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>For stalking by harassment, offender must have the intent to harass (“vex or annoy”). S.D. Codified Laws § 22-19A-1(3). <i>See White v. Bain</i>, 752 N.W.2d 203 (S.D. 2008) (Neighbor’s conduct towards cabin owners was malicious, as required for a course of conduct constituting harassment, as basis for stalking protection order; neighbor’s series of offensive and insulting letters to cabin owners, concerning disagreements about parties’ garages with common deck, reflected an intent to vex or annoy).</p> <p>For stalking by threat, offender must have the intent to put the victim in reasonable fear of bodily injury. S.D. Codified Laws § 22-19A-1(2).</p> <p><i>See also State v. Pollman</i>, 562 N.W.2d 105, 108 (S.D. 1997) (“The evidence presented to the jury supports proof of intent to cause reasonable fear of great bodily injury or death, along with proof that Pollman ‘willfully ... harass[ed]’ Stahl or made a ‘credible threat’ against him, or both.”).</p>

<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes, via case law. <i>See Donat v. Johnson</i>, 862 N.W.2d 122, 132 (S.D. 2015) (“Here, the circuit court found that Johnson willfully engaged in harassing and annoying conduct over the course of several years. [...] Johnson insulted, disparaged, and assaulted Donat. He made an unwanted sexual advance on her, drove by and stopped at her house to glare at her on numerous occasions, and even alarmed Donat's neighbors because of his conduct.”); <i>See also State v. McGill</i>, 536 N.W.2d 89 (S.D. 1995) (Evidence that defendant continuously called victim's parents day and night, continuously called victim, sent her threatening letters, and told victim that he was spying on her children, was relevant for purpose of showing course of conduct, which was a contested issue in stalking prosecution); <i>See also Parker v. Parker</i>, 898 N.W.2d 1 (S.D. 2017) (Court upheld issuance of protective and found that respondent’s acts of threatening the petitioner’s male friend constituted harassment).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear of death or bodily injury. S.D. Codified Laws § 22-19A-1(2).</p>
<p>Does fear include emotional distress?</p>	<p>No, this element was removed in 1993. <i>See S.B. 291</i>, 68th Leg., Reg. Sess. (S.D. 1993).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. S.D. Codified Laws § 22-19A-1(2) (“Make a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury.”).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable is fact specific.</p> <p><i>State v. Pollman</i>, 562 N.W.2d 105 (S.D. 1997) (Defendant's conviction for stalking was supported by evidence that defendant had willfully, maliciously, and repeatedly followed his neighbor, with whom he had been feuding, and that he had done so with intent to place neighbor in reasonable fear of bodily injury or</p>

	<p>death, and by evidence that defendant had intentionally swerved toward neighbor's vehicle with his tractor while on roadway).</p> <p><i>Schaefer ex rel. S.S. v. Liechti</i>, 711 N.W.2d 257 (S.D. 2006) (Respondent made credible threats to complainants' children that placed them in reasonable fear of bodily injury, as grounds for stalking protection order; respondent repeatedly followed children with his truck while they rode four-wheelers, including one incident where children were forced into wheat field to elude respondent, and respondent told State's Attorney that he may as well have gotten shotgun to solve his problem with children when Attorney told respondent he would not prosecute what Attorney considered to be false complaint by respondent).</p>
Must the victim tell the defendant to stop in order to constitute stalking?	No. There is no published case law that addresses this and the statutory law is silent.
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	No. There is no published case law that addresses this and the statutory law is silent.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	<p>Technology-facilitated stalking is covered by the regular stalking statute. S.D. Codified Laws § 22-19A-1 (3).</p> <p>There is also a separate statute prohibiting harassment through electronic devices. S.D. Codified Laws § 49-31-31.</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?)	There is no residency requirement and a person can be charged with stalking if the crime was commenced outside of the state but consummated within the state. S.D. Codified Laws § 23A-16-2.
Any unique provisions, elements, or requirements?	No.
Gradation of crimes (list out statutes in order of declining gradation and say what type of	Regular stalking is either a Class 1 misdemeanor or a Class 6 felony upon second

<p>felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor)</p>	<p>or subsequent conviction. S.D. Codified Laws § 22-19A-1.</p> <p>Stalking a child is a Class 6 felony. S.D. Codified Laws § 22-19A-7.</p> <p>Stalking where the offender has previously been convicted of stalking the same victim within 7 years and the stalking included an act of violence or credible threat of violence is a Class 5 felony. S.D. Codified Laws § 22-19A-3.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>See above.</p>

Statutes

S.D. CODIFIED LAWS § 22-19A-1 (2023). STALKING AS A MISDEMEANOR—SECOND OFFENSE AS A FELONY

No person may:

- (1) Willfully, maliciously, and repeatedly follow or harass another person;
- (2) Make a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury; or
- (3) Willfully, maliciously, and repeatedly harass another person by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication.

A violation of this section constitutes the crime of stalking. Stalking is a Class 1 misdemeanor. However, any second or subsequent conviction occurring within ten years of a prior conviction under this section is a Class 6 felony. Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would be a violation of this section and occurring within ten years prior to the date of the violation being charged, shall be used to determine if the violation being charged is a second or subsequent offense.

S.D. CODIFIED LAWS § 22-19A-2 (2023). VIOLATION OF RESTRAINING ORDER, INJUNCTION, PROTECTION ORDER, OR NO CONTACT ORDER AS FELONY

Any person who violates § 22-19A-1 when there is a temporary restraining order, or an injunction, or a protection order, or a no contact order issued pursuant to § 25-10-23 or 25-10-25 in effect prohibiting the behavior described in § 22-19A-1 against the same party, is guilty of a Class 6 felony.

S.D. CODIFIED LAWS § 22-19A-3 (2023). STALKING--SUBSEQUENT CONVICTIONS--VIOLATION AS FELONY

A person who has a second or subsequent conviction occurring within seven years of a prior conviction under § 22-19A-1, 22-19A-2, or 22-19A-7 against the same victim, and involving an act of violence, or a credible threat of violence, is guilty of a Class 5 felony. Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would be a violation of § 22-19A-1, 22-19A-2, or 22-19A-7 and involving an act of violence, or a credible threat of violence, and occurring within seven years prior to the date of the violation being charged, shall be used to determine if the violation being charged is a second or subsequent offense.

S.D. CODIFIED LAWS § 22-19A-4 (2023). HARASSES DEFINED

For the purposes of this chapter, harasses means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose.

S.D. CODIFIED LAWS § 22-19A-5 (2023). COURSE OF CONDUCT DEFINED

For the purposes of this chapter, course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct.

S.D. CODIFIED LAWS § 22-19A-6 (2023). CREDIBLE THREAT DEFINED

For the purposes of this chapter, a credible threat means a threat made with the intent and the apparent ability to carry out the threat. A credible threat need not be expressed verbally.

S.D. CODIFIED LAWS § 22-19A-7 (2023). STALKING A CHILD OF TWELVE OR YOUNGER— FELONY

Any person who willfully, maliciously, and repeatedly follows or harasses a child twelve years of age or younger or who makes a credible threat to a child twelve years of age or younger with the intent to place that child in reasonable fear of death or great bodily injury or with the intent to cause the child to reasonably fear for the child's safety is guilty of the crime of felony stalking. Felonious stalking is a Class 6 felony.

S.D. CODIFIED LAWS § 22-19A-16 (2023). PROTECTION ORDER – VIOLATION – PENALTY

If a temporary protection order or a protection order is granted pursuant to §§ 22-19A-8 to 22-19A-16, inclusive, and the respondent or person restrained knows of the order, a violation of the order is a Class 1 misdemeanor.

If the acts constituting a violation of this section also constitute an assault, as defined in § 22-18-1, the violation of this section is a Class 6 felony.

If a respondent or person restrained has been convicted of, or entered a plea of guilty to, two or more prior violations of this section, § 21-65-19, or § 25-10-13, or the comparable laws of any other state, within ten years of committing the current offense, and the factual basis for the current offense occurred after the date of the second conviction or guilty plea, the respondent or person restrained is guilty of a Class 6 felony for a third offense, a Class 5 felony for a fourth offense, and a Class 4 felony for a fifth or subsequent offense.

Any proceeding under §§ 22-19A-8 to 22-19A-16, inclusive, is in addition to other civil or criminal remedies.

S.D. CODIFIED LAWS § 22-19A-17 (2023). DEFENDANT PROHIBITED FROM CONTACTING VICTIM PRIOR TO COURT APPEARANCE—MISDEMEANOR

While in custody after arrest for assault or stalking, no defendant may have or be permitted any contact or communications, either directly or by means of a third party, with the victim or the family or household members of the victim, until the defendant's initial court appearance or until such contact or communication is specifically authorized by the court. Willful violation of this section is a Class 1 misdemeanor.

S.D. CODIFIED LAWS § 22-21-1 (2023). EAVESDROPPING--PRIVACY--MISDEMEANOR

No person may, except as authorized by law:

- (1) Trespass on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or
- (2) Install in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or uses any such unauthorized installation.

A person who violates this section is guilty of a Class 1 misdemeanor. Subdivision (2) does not apply to law enforcement officers, or to those acting under the direction of a law enforcement officer, while engaged in the performance of the officer's lawful duties.

Relevant Case Law

State v. McGill, 536 N.W.2d 89 (S.D. 1995)

Defendant was convicted of stalking and appealed arguing that there was insufficient evidence to support his conviction and evidence of prior acts of harassment should not have been admitted. The Supreme Court of South Dakota affirmed the conviction holding that whether “other acts” can be admitted as evidence depends on “(1) whether the purpose for offering the other acts evidence is relevant to some material issue in the case, and (2) whether the probative value of the evidence substantially is outweighed by its prejudicial effect.” The other acts here were used as a means to establish a course of conduct and to prove absence of mistake or accident.

State v. Pollman, 562 N.W.2d 105 (S.D. 1997)

Defendant was convicted of stalking after he veered his tractor toward the victim on a narrow gravel road, repeatedly pursued him to the fields he worked, and once followed him into his place of worship. On appeal, the defendant argued, *inter alia*, there was insufficient evidence to support his conviction. The Supreme Court of South Dakota affirmed the conviction, finding that the evidence presented proved that the defendant willfully, maliciously, and repeatedly followed or harassed the victim and did so with intent to place him in reasonable fear of bodily injury or death.

White v. Bain, 752 N.W.2d 203 (S.D. 2008)

Petitioner was granted a protection order against his neighbors and the neighbors appealed. On appeal, the neighbors argue that the trial court was clearly erroneous in finding that harassment occurred because the repeated phone calls and letters were served for a legitimate purpose of attempting to collect an unpaid debt. The Supreme Court of South Dakota affirmed the issuance of the protection order and found that the neighbors’ acts did not serve a legitimate purpose. While an act or a preliminary set of acts might not rise to the level of harassment because it does not show a sufficient pattern of conduct, as additional alarming or annoying acts are committed, a more complete pattern of conduct may be established and the line between mere annoyance and legal harassment may be crossed. The neighbors’ series of offensive and insulting letters to the petitioner was clearly vexing and annoying. Further, the neighbors’ entry into the petitioner’s residence and

attempt to recover her chairs by force also reflected an intention to vex, annoy, and possible even to injure the petitioner.

Donat v. Johnson, 862 N.W.2d 122 (S.D. 2015)

Petitioner sought a protection order against respondent, a former friend. After the court granted an injunction against respondent, respondent appealed and argued that the court erred by admitting other acts evidence. The Supreme Court of South Dakota found that since the prior relationship, as well as the acts before December 2013, contributed to victim's "sense of alarm, annoyance, or harassment," they were not merely prior acts but were evidence of the course of conduct element. Even if they were merely other acts they would still be admissible as relevant to things other than character.

Stalking, Harassment, & Related Offenses: Tennessee

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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TENNESSEE

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate, noncontinuous acts evidencing a continuity of purpose, including, but not limited to, acts in which the defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to a person, or interferes with a person's property. Tenn. Code § 39-17-315(a)(1).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threats are not required for stalking but can be direct, indirect, or through a third party. Tenn. Code § 39-17-315(a)(1). For aggravated stalking, if by credible threat, then the threat includes a credible threat to the victim, the victim's child, sibling, spouse, parent, or dependents, with the intent to place any such person in reasonable fear of death or bodily injury. Tenn. Code § 39-17-315(c)(1)(D). <i>See also</i> 7 Tenn. Prac. Pattern Jury Instr. Crim. 30.12(b).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Offender must intend to engage in conduct and must intend to place victim in reasonable fear. Tenn. Code § 39-17-315(4). <i>See also State v. Vigil</i> , 65 S.W.3d 26 (Tenn. Crim. App. 2001) (Evidence was sufficient to establish that defendant intended to place the victim in fear of being assaulted or suffering bodily injury, so as to support stalking conviction; <i>State v. Treadwell</i> , No. 01C01-9705-CR-00166, 1998 WL 546714, at *4 (Tenn. Crim. App. Aug. 28, 1998) (“We find that there is sufficient evidence that the defendant ‘followed’ S.L. repeatedly with the intent to place her in ‘reasonable fear of a sexual offense, bodily injury or death.’”).

	<p>“Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result. 7 Tenn. Prac. Pattern Jury Instr. Crim. 30.12(a).</p>
<p>Do offender actions toward persons other than the victim help establish course of conduct?</p>	<p>Yes, via case law. <i>See State v. Treadwell</i>, No. 01C01-9705-CR-00166, 1998 WL 546714 (Tenn. Crim. App. Aug. 28, 1998) (Relying on previous conduct by the defendant, including threats made to the victim’s mother and an assault against the victim’s aunt, the court held that the evidence sufficiently established that the defendant engaged in a course of conduct with the intent to create fear). <i>See also State v. Thomas</i>, No. E201800353CCAR3CD, 2019 WL 3822178 (Tenn. Crim. App. Aug. 15, 2019) (Court upheld aggravated stalking conviction and included defendant’s threats to the victim’s mother, brother, and family members as part of the course of conduct).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>For misdemeanor stalking, victim must feel terrorized, frightened, intimidated, threatened, harassed, or molested. If stalking by harassment, then emotional distress is included. Tenn. Code § 39-17-315(a)(4).</p> <p>For aggravated stalking, the victim must be fearful of death or bodily injury. Tenn. Code § 39-17-315(c)(1),(D).</p>
<p>Does fear include emotional distress?</p>	<p>Yes, if stalking by harassment. Tenn. Code § 39-17-315 (a)(3). Emotional distress “means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.” Tenn. Code § 39-17-315(a)(2).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both. The conduct must be such that would cause a reasonable person to feel frightened but also must actually cause the victim to feel frightened. Tenn. Code § 39-17-315 (a)(4); <i>See also State v. Flowers</i>, 512 S.W.3d 161 (Tenn. 2016) (evidence was insufficient to support the subjective requirement of emotional distress, as necessary element of stalking).</p>

<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>Purifoy v. Mafa</i>, 556 S.W.3d 170 (Tenn. Ct. App. 2017) (The trial court referenced the Facebook videos and written posts by Dr. Mafa and concluded that they would give any reasonable person reason to be afraid of what he might do. The court further found that Ms. Purifoy viewed the videos that Dr. Mafa posted about her she was scared of him as a result).</p> <p><i>State v. Duty</i>, No. E200201772CCAR3CD, 2003 WL 23004991, at *4 (Tenn. Crim. App. Dec. 23, 2003) (“The victim had previously been assaulted by the defendant, combined with the defendant's doggedness, his threat to whip the victim, and his brandishing a brick on May 16, 2001, the victim would reasonably be fearful of bodily injury at the hands of the defendant.”).</p> <p><i>State v. Duty</i>, No. E2001-03008-CCA-R3CD, 2002 WL 31512332, at *3 (Tenn. Crim. App. Nov. 13, 2002) (“We conclude that a rational jury could have found beyond a reasonable doubt that the defendant repeatedly maintained a visual and physical proximity to the victim and that the victim reasonably feared being assaulted by him.”).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, but victim telling the offender to stop can be used to create an inference that the offender’s conduct caused victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. 7 Tenn. Prac. Pattern Jury Instr. Crim. 30.12(a) (“Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue such conduct or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, creates an inference that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. However, you are never required to make this inference.”).</p>

<p>Is stalking by proxy included? (i.e., getting a third person to stalk the victim)</p>	<p>Yes. Course of conduct includes actions “through third parties.” Tenn. Code § 39-17-315 (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 by the regular statute under the definition for “unconsented contact” and is interpreted by case law. Tenn. Code § 39-17-315 (a)(5)(E)-(F); <i>Purifoy v. Mafa</i>, 556 S.W.3d 170 (Tenn. Ct. App. 2017) (Video postings on therapist’s own social networking website account constituted unconsented contacts in the form of electronic communications to constitute stalking).</p> <p>Other statutes criminalize similar conduct such as placing a GPS on a person’s car without their consent. Tenn. Code § 39-13-606.</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>There is no residency requirement and conduct that occurs outside of the jurisdiction ends inside the jurisdiction can be prosecuted. Tenn. Code § 39-11-103.</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 Class A misdemeanor under Tenn. Code § 39-17-315 (b)(2).</p> <p>Stalking is a Class E felony under Tenn. Code § 39-17-315 (b)(3), (c)(2).</p> <p>Stalking is a Class C felony under Tenn. Code § 39-17-315 (d)(2).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a Class E felony if the offender:</p> <ul style="list-style-type: none"> - Was required or was registered as a sexual offender at the time of the offense <p>Stalking is a Class E felony under Tenn. Code § 39-17-315 (b)(3).</p> <p>Stalking becomes aggravated stalking and a Class E felony if the offender:</p> <ul style="list-style-type: none"> - Displayed a deadly weapon;

	<ul style="list-style-type: none"> - Was 5 or more years older than the victim and the victim was less than 18 years old and the offender; - Had previously been convicted of stalking within 7 years; - Makes a credible threat to victim, victim’s child, sibling, spouse, parent, or dependents with the intent to place in reasonable fear of bodily injury or death; or - Was prohibited by protection order from engaging in certain conduct against the victim and offender knew the order was in place <p>Stalking is a Class E felony under Tenn. Code § 39-17-315 (c)(2).</p> <p>Stalking becomes especially aggravated stalking and a Class C felony if the offender:</p> <ul style="list-style-type: none"> - Has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense; - Commits aggravated stalking and intentionally or recklessly causes serious bodily injury to the victim of the offense or to the victim's child, sibling, spouse, parent or dependent; or - Commits stalking or aggravated stalking against a victim was less than twelve years old at any time during the offender’s course of conduct and the offender is at least 18 years old. <p>Tenn. Code § 39-17-315 (d)(2).</p>
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Statutes

TENN. CODE ANN. § 36-3-610 (WEST 2023). CONTEMPT

(a) Upon violation of the order of protection or a court-approved consent agreement, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. A judge of the general sessions court shall have the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising concurrent jurisdiction with a court of record. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt.

- (b) (1) In addition to the authorized punishments for contempt of court, the judge may assess any person who violates an order of protection or a court-approved consent agreement a civil penalty of fifty dollars (\$50.00). The judge may further order that any support payment made pursuant to an order of protection or a court-approved consent agreement be made under an income assignment to the clerk of court.
- (2) The judge upon finding a violation of an order of protection or a court-approved consent order shall require a bond of the respondent until such time as the order of protection expires. Such bond shall not be less than two thousand five hundred dollars (\$2,500) and shall be payable upon forfeit as provided. Bond shall be set at whatever the court determines is necessary to reasonably assure the safety of the petitioner as required. Any respondent for whom bond has been set may deposit with the clerk of the court before which the proceeding is pending a sum of money in cash equal to the amount of the bond. The clerk of the court may deposit funds received in lieu of bonds, or any funds received from the forfeiture of bonds, in an interest bearing account. Any interest received from such accounts shall be payable to the office of the clerk. Failure to comply with this subsection (b) may be punished by the court as a contempt of court as provided in title 29, chapter 9.
- (3) If a respondent posting bond under this subsection (b) does not comply with the conditions of the bond, the court having jurisdiction shall enter an order declaring the bond to be forfeited. Notice of the order of forfeiture shall be mailed forthwith by the clerk to the respondent at the respondent's last known address. If the respondent does not within thirty (30) days from the date of the forfeiture satisfy the court that compliance with the conditions of the bond was met, the court shall enter judgment for the state against the defendant for the amount of the bond and costs of the court proceedings. The judgment and costs may be enforced and collected in the same manner as a judgment entered in a civil action.
- (4) Nothing in this section shall be construed to limit or affect any remedy in effect on July 1, 2010.
- (c) Upon collecting the civil penalty imposed by subsection (b), the clerk shall, on a monthly basis, send the money to the state treasurer who shall deposit it in the domestic violence community education fund created by § 36-3-616.
- (d) The proceeds of a judgment for the amount of the bond pursuant to this section shall be paid quarterly to the administrative office of the courts. The quarterly payments shall be due on the fifteenth day of the fourth month of the year; the fifteenth day of the sixth month; the fifteenth day of the ninth month; and on the fifteenth day of the first month of the next succeeding year. The proceeds shall be allocated equally on an annual basis as follows:
- (1) To provide legal representation to low-income Tennesseans in civil matters in such manner as determined by the supreme court as described in § 16-3-808(c); provided, that one-fourth ($\frac{1}{4}$) of such funds shall be allocated to an appropriate statewide nonprofit organization capable of providing continuing legal education, technology support, planning assistance, resource development and other support to organizations delivering civil legal representation

to indigents. The remainder shall be distributed to organizations delivering direct assistance to clients with Legal Services Corporation funding as referenced in the Tennessee State Plan for Civil Legal Justice approved in March, 2001, by the Legal Services Corporation;

- (2) To the domestic violence state coordinating council, created by title 38, chapter 12;
- (3) To the Tennessee Court Appointed Special Advocates Association (CASA); and
- (4) To Childhelp.

TENN. CODE ANN. § 36-3-611 (WEST 2023). ARREST

- (a) An arrest for violation of an order of protection issued pursuant to this part may be with or without warrant. Any law enforcement officer shall arrest the respondent without a warrant if:
 - (1) The officer has proper jurisdiction over the area in which the violation occurred;
 - (2) The officer has reasonable cause to believe the respondent has violated or is in violation of an order for protection; and
 - (3) The officer has verified whether an order of protection is in effect against the respondent. If necessary, the police officer may verify the existence of an order for protection by telephone or radio communication with the appropriate law enforcement department.
- (b) No ex parte order of protection can be enforced by arrest under this section until the respondent has been served with the order of protection or otherwise has acquired actual knowledge of such order.

TENN. CODE ANN. § 36-3-612 (WEST 2023). VIOLATION OF A PROTECTION ORDER

- (a) A person arrested for the violation of an order of protection issued pursuant to this part or a restraining order or court-approved consent agreement, shall be taken before a magistrate or the court having jurisdiction in the cause without unnecessary delay to answer a charge of contempt for violation of the order of protection, restraining order or court-approved consent agreement, and the court shall:
 - (1) Notify the clerk of the court having jurisdiction in the cause to set a time certain for a hearing on the alleged violation of the order of protection, restraining order or court-approved consent agreement within ten (10) working days after arrest, unless extended by the court on the motion of the arrested person;
 - (2) Set a reasonable bond pending the hearing on the alleged violation of the order of protection, restraining order or court-approved consent agreement; and

- (3) Notify the person to whom the order of protection, restraining order or court-approved consent agreement was issued to protect and direct the party to show cause why a contempt order should issue.
- (b) Either the court that originally issued the order of protection or restraining order or a court having jurisdiction over orders of protection or restraining orders in the county where the alleged violation of the order occurred shall have the authority and jurisdiction to conduct the contempt hearing required by subsection (a). If the violation is of a court-approved consent agreement, the same court that approved the agreement shall conduct the contempt hearing for any alleged violation of it. If the court conducting the contempt hearing is not the same court that originally issued the order of protection or restraining order, the court conducting the hearing shall have the same authority to punish as contempt a violation of the order of protection or restraining order as the court originally issuing the order.

TENN. CODE ANN. § 39-13-606 (WEST 2023). ELECTRONIC TRACKING DEVICES; MOTOR VEHICLES

(a) (1)(A) Except as provided in subsection (b), it is an offense for a person to knowingly install, conceal or otherwise place an electronic tracking device in or on a motor vehicle without the consent of all owners of the vehicle for the purpose of monitoring or following an occupant or occupants of the vehicle.

(B) It is an offense for a person who leases a motor vehicle to knowingly install, conceal, or otherwise place an electronic tracking device in or on the motor vehicle without the consent of the lessee of the vehicle.

(2) As used in this section:

(A) “Lease” has the same meaning as defined in § 39-14-147;

(B) “Owner” includes a person who has purchased a motor vehicle using a loan; and

(C) “Person” does not include the manufacturer of the motor vehicle.

(b) (1) It shall not be a violation if the installing, concealing or placing of an electronic tracking device in or on a motor vehicle is by, or at the direction of, a law enforcement officer in furtherance of a criminal investigation and is carried out in accordance with applicable state and federal law.

(2) If the installing, concealing or placing of an electronic tracking device in or on a motor vehicle is by, or at the direction of, a parent or legal guardian who owns or leases the vehicle, and if the device is used solely for the purpose of monitoring the minor child of the parent or legal guardian when the child is an occupant of the vehicle, then the installation, concealment or

placement of the device in or on the vehicle without the consent of any or all occupants in the vehicle shall not be a violation.

(3) It shall also not be a violation of this section if the installing, concealing or placing of an electronic tracking device in or on a motor vehicle is for the purpose of tracking the location of stolen goods being transported in the vehicle or for the purpose of tracking the location of the vehicle if it is stolen.

(c) This section shall not apply to a tracking system installed by the manufacturer of a motor vehicle.

(d) A violation of this section is a Class A misdemeanor.

TENN. CODE ANN. § 39-17-315 (WEST 2023). STALKING

(a) As used in this section, unless the context otherwise requires:

(1) “Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate, noncontinuous acts evidencing a continuity of purpose, including, but not limited to, acts in which the defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to a person, or interferes with a person's property;

(2) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling;

(3) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

(4) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested;

(5) “Unconsented contact” means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(A) Following or appearing within the sight of that person;

- (B) Approaching or confronting that person in a public place or on private property;
- (C) Appearing at that person's workplace or residence;
- (D) Entering onto or remaining on property owned, leased, or occupied by that person;
- (E) Contacting that person by telephone;
- (F) Sending to that person mail or any electronic communications, including, but not limited to, electronic mail, text messages, or any other type of electronic message sent using the Internet, web sites, or a social media platform; or
- (G) Placing an object on, or delivering an object to, property owned, leased, or occupied by that person; and

(6) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(b) (1) A person commits an offense who intentionally engages in stalking.

(2) Stalking is a Class A misdemeanor.

(3) Stalking is a Class E felony if the defendant, at the time of the offense, was required to or was registered with the Tennessee bureau of investigation as a sexual offender, violent sexual offender or violent juvenile sexual offender, as defined in § 40-39-202.

(c) (1) A person commits aggravated stalking who commits the offense of stalking as prohibited by subsection (b), and:

(A) In the course and furtherance of stalking, displays a deadly weapon;

(B) The victim of the offense was less than eighteen (18) years of age at any time during the person's course of conduct, and the person is five (5) or more years older than the victim;

(C) Has previously been convicted of stalking within seven (7) years of the instant offense;

(D) Makes a credible threat to the victim, the victim's child, sibling, spouse, parent or dependents with the intent to place any such person in reasonable fear of death or bodily injury; or

(E) At the time of the offense, was prohibited from making contact with the victim under a restraining order or injunction for protection, an order of protection, or any other court-imposed prohibition of conduct toward the victim or the victim's property, and the person knowingly violates the injunction, order or court-imposed prohibition.

(2) Aggravated stalking is a Class E felony.

(d) (1) A person commits especially aggravated stalking who:

(A) Commits the offense of stalking or aggravated stalking, and has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense; or

(B) Commits the offense of aggravated stalking, and intentionally or recklessly causes serious bodily injury to the victim of the offense or to the victim's child, sibling, spouse, parent or dependent.

(C) Commits the offense of stalking or aggravated stalking, the person is eighteen (18) years of age or older, and the victim of the offense was less than twelve (12) years of age at any time during the person's course of conduct.

(2) Especially aggravated stalking is a Class C felony.

(e) Notwithstanding any other law, if the court grants probation to a person convicted of stalking, aggravated stalking or especially aggravated stalking, the court may keep the person on probation for a period not to exceed the maximum punishment for the appropriate classification of offense. Regardless of whether a term of probation is ordered, the court may, in addition to any other punishment otherwise authorized by law, order the defendant to do the following:

(1) Refrain from stalking any individual during the term of probation;

(2) Refrain from having any contact with the victim of the offense or the victim's child, sibling, spouse, parent or dependent;

(3) Be evaluated to determine the need for psychiatric, psychological, or social counseling, and, if determined appropriate by the court, to receive psychiatric, psychological or social counseling at the defendant's own expense;

(4) If, as the result of such treatment or otherwise, the defendant is required to take medication, order that the defendant submit to drug testing or some other method by which the court can monitor whether the defendant is taking the required medication; and

(5) Submit to the use of an electronic tracking device, with the cost of the device and monitoring the defendant's whereabouts, to be paid by the defendant.

(f) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the conduct or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, is prima facie evidence that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

- (g) (1) If a person is convicted of aggravated or especially aggravated stalking, or another felony offense arising out of a charge based on this section, the court may order an independent professional mental health assessment of the defendant's need for mental health treatment. The court may waive the assessment, if an adequate assessment was conducted prior to the conviction.
- (2) If the assessment indicates that the defendant is in need of and amenable to mental health treatment, the court may include in the sentence a requirement that the offender undergo treatment, and that the drug intake of the defendant be monitored in the manner best suited to the particular situation. Monitoring may include periodic determinations as to whether the defendant is ingesting any illegal controlled substances or controlled substance analogues, as well as determinations as to whether the defendant is complying with any required or recommended course of treatment that includes the taking of medications.
- (3) The court shall order the offender to pay the costs of assessment under this subsection (g), unless the offender is indigent under § 40-14-202.
- (h) Any person who reasonably believes they are a victim of an offense under this section, regardless of whether the alleged perpetrator has been arrested, charged or convicted of a stalking-related offense, shall be entitled to seek and obtain an order of protection in the same manner, and under the same circumstances, as is provided for victims of domestic abuse by title 36, chapter 3, part 6.
- (i) When a person is charged and arrested for the offense of stalking, aggravated stalking or especially aggravated stalking, the arresting law enforcement officer shall inform the victim that the person arrested may be eligible to post bail for the offense and to be released until the date of trial for the offense.
- (j) If a law enforcement officer or district attorney general believes that the life of a possible victim of stalking is in immediate danger, unless and until sufficient evidence can be processed linking a particular person to the offense, the district attorney general may petition the judge of a court of record having criminal jurisdiction in that district to enter an order expediting the processing of any evidence in a particular stalking case. If, after hearing the petition, the court is of the opinion that the life of the victim may be in immediate danger if the alleged perpetrator is not apprehended, the court may enter such an order, directed to the Tennessee bureau of investigation, or any other agency or laboratory that may be in the process of analyzing evidence for that particular investigation.
- (k) (1) For purposes of determining if a course of conduct amounting to stalking is a single offense or multiple offenses, the occurrence of any of the following events breaks the continuous course of conduct, with respect to the same victim, that constitutes the offense:

- (A) The defendant is arrested and charged with stalking, aggravated stalking or especially aggravated stalking;

(B) The defendant is found by a court of competent jurisdiction to have violated an order of protection issued to prohibit the defendant from engaging in the conduct of stalking; or

(C) The defendant is convicted of the offense of stalking, aggravated stalking or especially aggravated stalking.

(2) If a continuing course of conduct amounting to stalking engaged in by a defendant against the same victim is broken by any of the events set out in subdivision (k)(1), any such conduct that occurs after that event commences a new and separate offense.

(l) Stalking may be prosecuted pursuant to § 39-11-103(d).

TENN. CODE ANN. § 39-17-308 (WEST 2023). HARASSMENT; EXCLUSIONS FOR ELECTRONIC COMMUNICATIONS SERVICE

(a) A person commits an offense who intentionally:

(1) Communicates a threat to another person, and the person communicating the threat:

(A) Intends the communication to be a threat of harm to the victim; and

(B) A reasonable person would perceive the communication to be a threat of harm;

(2) Communicates with another person without lawful purpose, anonymously or otherwise, with the intent that the frequency or means of the communication annoys, offends, alarms, or frightens the recipient and, by this action, annoys, offends, alarms, or frightens the recipient;

(3) Communicates to another person, with intent to harass that person, that a relative or other person has been injured or killed when the communication is known to be false; or

(4) Communicates with another person or transmits or displays an image without legitimate purpose with the intent that the image is viewed by the victim by any method described in subdivision (a)(1) and the person:

(A) Maliciously intends the communication to be a threat of harm to the victim; and

(B) A reasonable person would perceive the communication to be a threat of harm.

(b) (1) A person convicted of a criminal offense commits an offense if, while incarcerated, on pretrial diversion, probation, community correction or parole, the person intentionally communicates in person with the victim of the person's crime if the communication is:

- (A) Anonymous or threatening or made in an offensively repetitious manner or at hours known to be inconvenient to the victim;
 - (B) Made for no legitimate purpose; and
 - (C) Made knowing that it will alarm or annoy the victim.
- (2) If the victim of the person's offense died as the result of the offense, this subsection (b) shall apply to the deceased victim's next-of-kin.
- (c) (1) Except as provided in subsection (d), a violation of subsection (a) is a Class A misdemeanor.
- (2) A violation of subsection (b) is a Class E felony.
- (d) A violation by a minor of subdivision (a)(4) is a delinquent act and shall be punishable only by up to thirty (30) hours of community service, without compensation, for charitable or governmental agencies as determined by the court.
- (e) As used in this section:
- (1) "Communicate" means contacting a person in writing or print or by telephone, wire, radio, electromagnetic, photoelectronic, photooptical, or electronic means, and includes text messages, facsimile transmissions, electronic mail, instant messages, and messages, images, video, sound recordings, or intelligence of any nature sent through or posted on social networks, social media, or websites;
 - (2) "Electronic communications service" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system;
 - (3) "Image" includes, but is not limited to, a visual depiction, video clip or photograph of another person;
 - (4) "Log files" mean computer-generated lists that contain various types of information regarding the activities of a computer, including, but not limited to, time of access to certain records, processes running on a computer or the usage of certain computer resources; and
 - (5) "Social network" means any online community of people who share interests and activities, or who are interested in exploring the interests and activities of others, and which provides ways for users to interact.
- (f) (1) The offense described in this section shall not apply to an entity providing an electronic communications service to the public acting in the normal course of providing that service.
- (2) The service providers described in this subsection (f) shall not be required to maintain any record not otherwise kept in the ordinary course of that service provider's business; provided,

however, that if any electronic communications service provider operates a website that offers a social network service and the electronic communications service provider provides services to consumers in this state, any log files and images or communications that have been sent, posted, or displayed on the social network service's website and maintained by the electronic communications service provider shall be disclosed to any governmental entity responsible for enforcing this section only if the governmental entity:

- (A) Obtains a warrant issued using this state's warrant procedures by a court of competent jurisdiction;
 - (B) Obtains a court order for the disclosure under subdivision (f)(4); or
 - (C) Has the consent of the person who sent, posted, or displayed any log files and images or communications on the social network service's website maintained by the electronic communications service provider.
- (3) No cause of action shall lie in any court against any provider of an electronic communications service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or warrant.
- (4) A court order for disclosure under subdivision (f)(2)(B) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of an electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. A court order shall not issue if prohibited by the law of this state. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with the order otherwise would cause an undue burden on the provider.

Relevant Case Law

***State v. Vigil*, 65 S.W.3d 26 (Tenn. Crim. App. 2001)**

The defendant was convicted of stalking and appealed, arguing there was insufficient evidence to establish that he intended to place the victim in fear of being assaulted or suffering bodily injury. Evidence at trial showed that police responded to the victim's home for 10 domestic disturbances involving the defendant, the defendant followed the victim into a store and threatened her, and the defendant followed the victim to her parent's house where the victim hid in the bathroom and the defendant kicked in the door. The Court of Appeals found sufficient evidence to prove that the defendant intended to put the victim in fear where he assaulted her on multiple occasions and the victim testified that she was afraid the defendant would kill her.

***State v. Flowers*, 512 S.W.3d 161 (Tenn. 2016)**

The defendant was convicted of stalking and appealed, arguing that there was insufficient evidence to support his conviction. At trial, the state presented evidence that the defendant put a sign on the fence at the victim's place of employment stating that the victim was a "deadbeat." On another occasion, the defendant followed the victim while driving. The Supreme Court of Tennessee held that the victim failed to show beyond a reasonable doubt that he experienced emotional distress when the defendant posted defamatory signs about him and followed him in her car. The Court reversed the conviction and reasoned that the state must prove beyond a reasonable doubt that the victim in fact suffered emotional distress or significant mental suffering due to the defendant's actions. While the potential for job loss experienced by the victim could cause emotional distress, the victim did not testify that he personally or actually experienced emotional distress.

***Purifoy v. Mafa*, 556 S.W.3d 170 (Tenn. Ct. App. 2017)**

Petitioner was granted an order of protection against occupational therapist after the court found that the therapist was stalking and harassing her. The therapist appealed and argued, *inter alia*, that there was insufficient evidence to prove that the therapist stalked the petitioner and that Facebook posts did not constitute "contact." Throughout the course of a couple of months, the therapist created a false Facebook account and repeatedly friended the petitioner, posted videos on Facebook calling the petitioner a racist, posted pictures of the petitioner on his Facebook page multiple times in which he referred to himself as the Messiah, and made statements in his posts that he had stared at a photo of petitioner for hours. The Court of Appeals affirmed the trial court's issuance of a protection order, finding that the Facebook posts were "part of his stalking." Further, the court found there was contact because the therapist spoke directly to the petitioner in his Facebook videos, stating that "electronic communication like that occurring in this case has been held to qualify as contact or communication."

***State v. Stephens*, 521 S.W.3d 718 (Tenn. 2017)**

Defendant was convicted of aggravated stalking and appealed. The Court of Appeals reduced the conviction to misdemeanor stalking after concluding that the state had not presented sufficient evidence to establish that the defendant knowingly violated an order of protection. The state appealed. The Supreme Court of Tennessee held that defendant's conviction for aggravated stalking was valid given his testimony that he had received the order of protection and knew that it prohibited any contact with his wife. "The crime of aggravated stalking does not require proof that an order of protection was technically served on a defendant. The crime of aggravated stalking requires only that a defendant knowingly violated an order of protection. The trier of fact may find that a defendant has knowingly violated an order of protection when the State of Tennessee adduces sufficient proof to establish, beyond a reasonable doubt, that the defendant had actual knowledge of the order and that his conduct is in violation of the order."

***State v. Thomas*, No. E201800353CCAR3CD, 2019 WL 3822178 (Tenn. Crim. App. Aug. 15, 2019)**

Defendant was convicted of aggravated stalking and appealed, arguing there was insufficient evidence to support his conviction. Defendant had exchanged angry text messages with the victim's mother, including messages discussing the victim. The defendant also texted the victim's mother

and stated, “We will have somebody f--k with [the victim's brother] at school all day long and then try to break up every friendship he has.” The defendant continued that, if she did not “get enough satisfaction from that,” she would accuse the victim's other male family members of raping the defendant’s daughter and have someone “start physically hurting” the victim's brother. After a protection order was put in place, the defendant continued to harass the victim. The Court of Appeals affirmed the conviction and held that evidence showed that the defendant repeatedly engaged in willful conduct involving repeated or continuing harassment of the victim through unconsented contact.

Stalking, Harassment, & Related Offenses: Texas

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>Course of conduct means “on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person.” Tex. Penal Code § 42.072(a).</p> <p>See also <i>Pomier v. State</i>, 326 S.W.3d 373, 379–80 (Tex. Crim. App. 2010) (“Section 42.072 does not specify a time period in which the scheme or course of conduct must occur; rather, it merely requires that the accused's conduct must occur ‘on more than one occasion and pursuant to the same scheme or course of conduct.’”).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threats are not required.
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>If stalking by harassment, then the offender must intend to engage in a course of conduct with the intent to harass, annoy, alarm, abuse, torment. Tex. Penal Code §§ 42.07, 42.072(a)(2)(D).</p> <p>If stalking by threat, the offender must intend to engage in a course of conduct that the offender knows or should know would be threatening. Tex. Penal Code § 42.072 (a)(1).</p>
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, if directed at a family member, household member, or someone the victim is dating. Tex. Penal Code § 42.072 (a)(2); See also <i>Hansen v. State</i> , 224 S.W.3d 325 (Tex. App. 2006) (The statute specifically provides that the “course of conduct” does not have to be directed at only the complainant but can be conduct that the complainant would regard as threatening bodily injury or death to a family member); <i>Ploeger v. State</i> , 189 S.W.3d 799 (Tex. App. 2006) (When determining whether the defendant’s conduct would cause a reasonable person to fear bodily

	injury or death, the court included in its analysis that the defendant visited the victim's mother's store on multiple occasions, called the store on multiple occasions, and left items in the store's mailbox).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear of bodily injury, death, or a property offense to victim, victim's family member, victim's household member, or victim's dating partner. Tex. Penal Code § 42.072(1)(A)-(C),(2). Emotional distress is included if stalking by harassment. Tex. Penal Code §§ 42.07(a)(8),42.072(a)(2)(D).
Does fear include emotional distress?	Yes, if charged with stalking by harassment. Tex. Penal Code §§42.07(a)(8), 42.072(a)(2)(D).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Both. See <i>Lopez v. Crisanto</i> , 583 S.W.3d 926 (Tex. App. 2019) (Trial court could determine that respondent knowingly engaged in conduct constituting stalking on more than one occasion as part of common scheme or course of conduct directed at petitioner, petitioner subjectively felt harassed, tormented, and embarrassed by respondent's conduct, and reasonable person in petitioner's situation would have had same feelings, as required for protective order against stalking pursuant to statute). See also <i>Kenebrew v. State</i> , No. 05-99-01575-CR, 2001 WL 185562 (Tex. App. Feb. 27, 2001) (The State was required to prove beyond a reasonable doubt that appellant, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at the victim, knowingly engaged in conduct that (1) appellant knew or reasonably believed the victim would regard as threatening; (2) caused the victim to be placed in fear of bodily injury or death, or fear that an offense would be committed against the victim's property, and (3) would cause a reasonable person to fear bodily injury or death for himself or herself or a

	<p>family member, or that an offense would be committed against the person's property). See also <i>Ploeger v. State</i>, 189 S.W.3d 799 (Tex. App. 2006) (The jury rationally could have concluded that the frequency, escalation, content, and unsolicited nature of appellant's conduct, as well as his display of at least some anger when others disagreed with him or prevented his sitting near the victim, would have caused a reasonable person to fear bodily injury or death for herself).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</p>	<p>What constitutes reasonable fear is case specific.</p> <p>See <i>Lewis v. State</i>, No. 09-06-047 CR, 2007 WL 2200000 (Tex. App. Aug. 1, 2007) (Threatening the complainant with bodily injury, threatening to kill complainant while choking her, threatening to kill complainant by using a firearm, and pushing complainant into a wall and preventing her from using a telephone. The defendant's actions produced the victim's reasonable fear through a course of conduct directed specifically at his victim).</p> <p>See also <i>Ploeger v. State</i>, 189 S.W.3d 799 (Tex. App. 2006) (The jury rationally could have concluded that the frequency, escalation, content, and unsolicited nature of appellant's conduct, as well as his display of at least some anger when others disagreed with him or prevented his sitting near the victim, would have caused a reasonable person to fear bodily injury or death for herself).</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>No. There is no published case law that addresses this and the statutory law is silent.</p>
<p>Is technology-facilitated stalking covered by regular stalking statutes and accompanying</p>	<p>Technology-facilitated stalking is not covered by the regular stalking statute but is addressed in case law. See <i>Shoemaker v. State for Prot. of</i></p>

<p>case law, or is it covered under a separate offense?</p>	<p>C.L., 493 S.W.3d 710 (Tex. App. 2016) (Evidence supported trial court’s finding that communications by petitioner’s former coworker via text messages, e-mails, and online posts about petitioner subjected petitioner to public ridicule in manner that was intended to and was reasonably likely to harass, annoy, embarrass, abuse, and offend her. On website for people to post reviews, respondent posted that petitioner was “high-maintenance woman” and “diva” who would “always have trouble finding a mate.”).</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>There is no residency requirement. Conduct that occurs outside of the jurisdiction may be prosecuted if the conduct is an element of the offense. Tex. Penal Code § 1.04(a)(1),(4).</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 a felony in the third degree under Tex. Penal Code § 42.072(b) and a felony in the second degree under Tex. Penal Code § 42.072 (b)(1)-(4).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking increases from a third degree felony to a second degree felony if the offender has previously been convicted of a stalking offense in Texas or similar offense in another jurisdiction. Tex. Penal Code § 42.072 (b)(1)-(4).</p>

Statutes

TEX. PENAL CODE ANN. § 25.07 (WEST 2023). VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE

(a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under Subchapter A, Chapter 7B, Code of Criminal Procedure, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte

order has been served on the person, Chapter 85, Family Code, or Subchapter F, Chapter 261, Family Code, or an order issued by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

- (1) commits family violence or an act in furtherance of an offense under Section 20A.02, 22.011, 22.012, 22.021, or 42.072;
 - (2) communicates:
 - A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;
 - B) a threat through any person to a protected individual or a member of the family or household; or
 - C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;
 - (3) goes to or near any of the following places as specifically described in the order or condition of bond:
 - A) the residence or place of employment or business of a protected individual or a member of the family or household; or
 - B) any child care facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;
 - (4) possesses a firearm;
 - (5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order or condition of bond; or
 - (6) removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system.
- (a-1) For purposes of Subsection (a)(5), possession of a pet, companion animal, or assistance animal by a person means:
- (1) actual care, custody, control, or management of a pet, companion animal, or assistance animal by the person; or

(2) constructive possession of a pet, companion animal, or assistance animal owned by the person or for which the person has been the primary caregiver.

(b) For the purposes of this section:

(1) “Family violence,” “family,” “household,” and “member of a household” have the meanings assigned by Chapter 71, Family Code.

(2) “Firearm” has the meaning assigned by Chapter 46.

(2-a) “Global positioning monitoring system” has the meaning assigned by Article 17.49, Code of Criminal Procedure.

(3) “Assistance animal” has the meaning assigned by Section 121.002, Human Resources Code.

(4) “Sexual abuse” means any act as described by Section 21.02 or 21.11.

(5) “Sexual assault” means any act as described by Section 22.011 or 22.021.

(6) “Stalking” means any conduct that constitutes an offense under Section 42.072.

(7) “Trafficking” means any conduct that constitutes an offense under Section 20A.02.

(8) “Indecent assault” means any conduct that constitutes an offense under Section 22.012.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(d) Reconciliatory actions or agreements made by persons affected by an order do not affect the validity of the order or the duty of a peace officer to enforce this section.

(e) A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may not arrest a person protected by that order for a violation of that order.

(f) It is not a defense to prosecution under this section that certain information has been excluded, as provided by Section 85.007, Family Code, or Article 17.292, Code of Criminal Procedure, from an order to which this section applies.

(g) An offense under this section is a Class A misdemeanor, except the offense is:

(1) subject to Subdivision (2), a state jail felony if it is shown at the trial of the offense that the defendant violated an order issued under Subchapter A, Chapter, Code of Criminal Procedure, following the defendant’s conviction of or place on deferred adjudication community supervision for an offense, if the order was issued with respect to a victim of that offense; or

(2) a felony of the third degree if it is shown on the trial of the offense that the defendant:

A) has previously been convicted two or more times of an offense under this section or two or more times of an offense under Section 25.072, or has previously been convicted of an offense under this section and an offense under Section 25.072; or

B) has violated the order or condition of bond by committing an assault or the offense of stalking.

(h) For purposes of Subsection (g), a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense under this section or Section 25.072 is considered to be a conviction under this section or Section 25.072 is considered to be a conviction under 25.072, as applicable.

TEX. PENAL CODE ANN. § 25.071 (WEST 2023). VIOLATION OF PROTECTIVE ORDER PREVENTING OFFENSE CAUSED BY BIAS OR PREJUDICE

(a) A person commits an offense if, in violation of an order issued under Subchapter C, Chapter 7B, Code of Criminal Procedure, the person knowingly or intentionally:

(1) commits an offense under Title 5 or Section 28.02, 28.03, or 28.08 and commits the offense because of bias or prejudice as described by Article 42.014, Code of Criminal Procedure;

(2) communicates:

A) directly with a protected individual in a threatening or harassing manner;

B) a threat through any person to a protected individual; or

C) in any manner with the protected individual, if the order prohibits any communication with a protected individual; or

(3) goes to or near the residence or place of employment or business of a protected individual.

(b) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(c) A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may not arrest a person protected by that order for a violation of that order.

(d) An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted under this section two or more times

or has violated the protective order by committing an assault, in which event the offense is a third degree felony.

TEX. PENAL CODE ANN. § 25.072 (WEST 2023). REPEATED VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE

- (a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 25.07.
- (b) If the jury is the trier of fact, members of the jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 25.07.
- (c) A defendant may not be convicted in the same criminal action of another offense an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:
 - (1) is charged in the alternative;
 - (2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or
 - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).
- (d) A defendant may not be charged with more than one count under Subsection (a) if all of the specific conduct that is alleged to have been engaged in is alleged to have been committed in violation of a single court order or single setting of bond.
- (e) An offense under this section is a felony of the third degree.

TEX. PENAL CODE ANN. § 42.072 (WEST 2023). STALKING

- (a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:
 - (1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know the other person will regard as threatening:
 - A) bodily injury or death for the other person;

- B) bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or
 - C) that an offense will be committed against the other person's property;
- (2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
- (3) would cause a reasonable person to:
- A) fear bodily injury or death for himself or herself;
 - B) fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;
 - C) fear that an offense will be committed against the person's property; or
 - D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.
- (b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:
- (1) the laws of another state;
 - (2) the laws of a federally recognized Indian tribe;
 - (3) the laws of a territory of the United States; or
 - (4) federal law.
- (c) For purposes of this section, a trier of fact may find that different types of conduct described by Subsection (a), if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.
- (d) In this section:
- (1) "Dating relationship," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.
 - (2) "Property" includes a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code.

TEX. PENAL CODE ANN. § 42.07 (WEST 2023). HARASSMENT

*** Section (a)(7) held unconstitutional by *State v. Chen*, 615 S.W.3d 376 (Tex. Crim. App. 2020) ***

(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

- (1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;
- (2) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's family or household, or the person's property;
- (3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;
- (4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;
- (5) makes a telephone call and intentionally fails to hang up or disengage the connection;
- (6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section;
- (7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or
- (8) publishes on an Internet website, including a social media platform, repeated electronic communications in a manner reasonably likely to cause emotional distress, abuse, or torment to another person, unless the communications are made in connection with a matter of public concern.

(b) In this section:

- (1) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes:
 - A) a communication initiated through the use of electronic mail, instant message, network call, a cellular or other type of telephone, a computer, a camera, text message, a social

media platform or application, an Internet website, any other Internet-based communication tool, or facsimile machine; and

B) a communication made to a pager.

(2) “Family” and “household” have the meaning assigned by Chapter 71, Family Code.

(3) “Obscene” means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function.

(c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:

(1) the actor has previously been convicted under this section; or

(2) the offense was committed under Subsection (a)(7) or (8) and:

A) the offense was committed against a child under 18 years of age with the intent that the child:

(i) commit suicide; or

(ii) engage in conduct causing serious bodily injury to the child; or

B) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

(d) In this section, “matter of public concern” has the meaning assigned by Section 27.001, Civil Practice and Remedies Code.

Relevant Case Law

***Kenebrew v. State*, No. 05-99-01575-CR, 2001 WL 185562 (Tex. App. Feb. 27, 2001)**

The Appellate Court affirmed the trial court’s finding of stalking. The State was required to prove beyond a reasonable doubt that appellant, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at the victim, knowingly engaged in conduct that (1) appellant knew or reasonably believed the victim would regard as threatening; (2) caused the victim to be placed in fear of bodily injury or death, or fear that an offense would be committed against the victim’s property, and (3) would cause a reasonable person to fear bodily injury or death for himself or herself or a family member, or that an offense would be committed against the person's property. The Defendant refused to leave their home one time when the victim told him to leave, he pointed a steak knife at the victim saying “move back or I will stab you,” he

showed up at the victim's apartment, he found her in a parking lot and pulled her out of the car and beat her up, and there were two other incidents when the victim spotted the Defendant near her apartment or trying to get in.

***Ploeger v. State*, 189 S.W.3d 799 (Tex. App. 2006)**

Defendant was convicted of stalking and appealed. At trial, the state presented evidence that the defendant sent cards, letters, flowers, and gifts to the victim on a daily basis. The victim also testified that she was "terrified" and "frightened to death" by the defendant's actions. The defendant also visited the victim's mother's store on multiple occasions, called the store on multiple occasions, and left items in the store's mailbox. The Appellate Court held that the jury rationally could have concluded that the frequency, escalation, content, and unsolicited nature of the defendant's conduct, as well as his display of at least some anger when others disagreed with him or prevented his sitting near the victim, would have caused a reasonable person to fear bodily injury or death for herself.

***Hansen v. State*, 224 S.W.3d 325 (Tex. App. 2006)**

Defendant was charged with stalking the mother in a family but contended that his conduct was directed at one of her daughters. The court held the statute specifically provides that the "course of conduct" does not have to be directed at only the complainant but can be conduct that the complainant would regard as threatening bodily injury or death to a family member.

***Lewis v. State*, No. 09-06-047 CR, 2007 WL 2200000 (Tex. App. Aug. 1, 2007)**

The Appellate Court affirmed the judgement of the trial court and overruled the Appellant's issue. Defendant appealed the decision that they committed stalking against the complainant, alleging that the State failed to prove the element that the Appellant's conduct was "pursuant to the same scheme or course of conduct" against the complainant. The Appellant's argument was that "the complainant testified to three incidents that occurred two years apart over a total of four years... While the State arguably proved that Appellant committed three separate assaults against the complainant over a four year time frame, such evidence does not amount to a scheme or course of conduct as required by the elements of stalking." Defendant was indicted for threatening the complainant with bodily injury, threatening to kill complainant while choking her, threatening to kill complainant by using a firearm, and pushing complainant into a wall and preventing her from using a telephone. The court held the Appellant's conduct would cause a reasonable person to fear bodily injury or death; his conduct did produce the victim's reasonable fear through a course of conduct directed specifically at his victim; and the fact that the conduct occurred over a period of years was only one of the factors that the court could consider in determining whether the Appellant violated the statute.

***Pomier v. State*, 326 S.W.3d 373 (Tex. Crim. App. 2010)**

Defendant was convicted of stalking and appealed arguing, *inter alia*, that there was insufficient evidence to support his conviction. The trial court admitted evidence of the defendant's history of violent and threatening behavior directed at the victim. Further, when the defendant was released from prison on a separate offense, the defendant continuously called the victim at home and at work and often drove past her home. The Appellate Court affirmed the conviction stating that the victim's testimony that she was afraid the defendant would kill her because he had beaten her so many

times would allow a rational jury to infer that the defendant knew or reasonably believed the victim would regard his conduct as threatening bodily injury or death.

Shoemaker v. State for Prot. of C.L., 493 S.W.3d 710 (Tex. App. 2016)

Appellant challenged a protective order entered in favor of the victim under Chapter 7A of the Texas Code of Criminal Procedure, but the Appellate Court affirmed the trial court's decision to issue the protective order. Appellant argued that (1) legally and factually insufficient evidence exists to support the order and (2) provisions of the statute allowing a trial court to issue a protective order in favor of a complainant who is a victim of the defendant's stalking violate the constitutional right to due process. The Appellate Court found that the trial court did not abuse its discretion in considering the Defendant's actions prior to a statutory change because such history was necessary to provide context to determine if the Defendant's subsequent acts that could constitute violations caused the victim to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended or whether it would have caused a reasonable person to have those feelings. The Appellate Court found that sufficient evidence existed to support the trial court's finding that "reasonable grounds" existed to conclude the victim was a victim of stalking. Two electronic communications (a Yelp review and email) satisfied the first element of the stalking statute; they were insults and accusations intended to and reasonably likely to harass, annoy, embarrass, abuse, and offend the victim and a reasonable, objective person. There was also legally sufficient evidence exists to support the second and third elements of the stalking statute, that these communications made the victim feel "harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended" and would make a reasonable person feel the same. The Appellate Court determined that the history between the victim and Defendant—namely the repeated, earlier contact before the statutory change—further support the trial court's conclusion that the victim and a reasonable person would feel "harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended" by the two electronic communications after the statutory change. The Appellate Court also found that the trial court could have disbelieved the Defendant's testimony, with was in direct contrast to the testimony of the victim and witnesses.

Lopez v. Crisanto, 583 S.W.3d 926 (Tex. App. 2019)

Defendant appealed the decision to grant the victim a protective order on the basis of stalking, on the grounds that the victim presented no evidence from which the trial court could have found that she was in fear of bodily injury or death, or in fear that an offense would be committed against her property. The appeals court affirmed the trial court's order, finding that the Penal Code does not require the victim to present evidence of any such fears and the evidence of harassing conduct presented at the hearing was enough. At trial, the victim testified that the defendant sent her multiple emails and as many as 50 text messages with photographs of the defendant engaged in sexual activity with the victim's then-husband, along with text about the activity. She also testified that the defendant left physical copies of such photographs in her yard. The victim testified that the defendant's conduct caused her to feel "humiliated," "threatened," "insecure," and concerned for her safety, and that she subsequently sought psychiatric counseling. The appeals court found that at trial, there was enough evidence to support a finding that all three elements of the stalking statute were met: (1) the defendant knowingly engaged in conduct that constituted the offense of harassment and engaged in such conduct on more than one occasion; (2) the victim subjectively felt

“harassment, annoyed, alarmed, abused, tormented, embarrassed, or offended” by the defendant’s conduct; and (3) a reasonable person in the victim’s situation would have had those same feelings.

***Griswold v. State*, No. 05-19-01561-CR, 2021 WL 4958862 (Tex. App. Oct. 26, 2021)**

Defendant appealed his conviction for third degree felony stalking arguing, *inter alia*, that the stalking statute is unconstitutionally overbroad and vague on its face. At the time the defendant was indicted, the stalking statute stated that “(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

(1) constitutes an offense under Section 42.07 ...:

(2) causes the other person ... to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and

(3) would cause a reasonable person to:

...

(D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.”

The defendant argued that the words “harass, annoy, alarm, abuse, torment, or embarrass” leaves the electronic-communications subsection open to various “uncertainties of meaning.” The Appellate Court agreed and held that the harassment provisions incorporated into the stalking statute are facially unconstitutional as vague and overbroad.

Stalking, Harassment, & Related Offenses: U.S. Virgin Islands

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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U.S. VIRGIN ISLANDS

Summary

What constitutes a "course of conduct" / pattern of behavior?	Course of conduct means an act that happens more than once, however brief, within a year, directed at a specific person, evidencing a continuity of purpose which would cause a reasonable person to suffer substantial emotional distress; which includes but is not limited to the stalker's directly or indirectly, by any action, method or device, following, monitoring, observing, pursuing, threatening or communicating to or about a person or interfering with a person's property. V.I. Code Ann. tit. 14, § 2071(c).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required but can be a basis for a stalking conviction. If stalking is based on threat, the threat can be explicit or implicit, must be a credible threat, and must create a fear for personal safety, of death, or of bodily harm. V.I. Code Ann. tit. 14, § 2071 (a),(b).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must intend to annoy or create fear. V.I. Code Ann. tit. 14, § 2071 (a),(b).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes, offender can communicate <i>about</i> a person other than the victim. V.I. Code Ann. tit. 14, § 2071 (c). If stalking by threat, the threat can be towards the victim's family member. V.I. Code Ann. tit. 14, § 2071 (b).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear for personal safety or the safety of a family member or fear of death or bodily harm. V.I. Code Ann. tit. 14, § 2071 (a),(b).
Does fear include emotional distress?	Yes. V.I. Code Ann. tit. 14, § 2071(a).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. V.I. Code Ann. tit. 14, § 2071 (a)(c); <i>See also Gov't of the Virgin Islands v. Davis</i> , No. CR 01/2002, 2002 WL 35631589 (Terr. V.I. Aug. 14, 2002) (Whether defendant's conduct put one in fear of bodily harm is determined based on an objective standard of whether the acts would induce fear in a reasonable person).

<p>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>People v. Hodge</i>, NO. ST-2015-CR-00331, 2020 WL 7980227 (V.I. Super. Ct. Nov. 19, 2020) (“A variety of opinions from outside this jurisdiction have indicated that prior bad acts or crimes may be relevant in considering whether or not a victim was reasonably afraid... It is certainly reasonable to fear someone who has murdered and threatens to murder again.”).</p> <p><i>Gov't of the Virgin Islands v. Davis</i>, No. CR 01/2002, 2002 WL 35631589, at *4 (Terr. V.I. Aug. 14, 2002) (“The evidence at trial was that several shots were fired into the small truck, one of which pierced the windshield of the cabin where both Parilla and Shanadalis sat ... Parilla heard a shot fired and, immediately thereafter, Francis pushed her head down and told her to duck...Under these facts and circumstances, it is not unreasonable for the jury to infer that Parilla—indeed, any reasonable person in her place—was aware that shots were being fired into the truck, from which she had no escape, and feared that she was about to be shot.”).</p> <p><i>Gonzalez v. Burgos</i>, No. SX-12-DV-126, 2012 WL 3029629, at *2 (V.I. Super. Ct. May 31, 2012) (“Petitioner’s actions in instigating a verbal confrontation with Respondent at the stoplight and gas station would cause a reasonable person to suffer 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>No. There is no published case law that addresses this and the statutory law is silent.</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 by a separate statute which criminalizes cyberstalking. V.I. Code Ann. tit. 14, § 2071 (e).</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?)	There is no residency requirement and conduct that occurs outside of the jurisdiction may be prosecuted. V.I. Code Ann. tit. 14, §§ 81, 82.
Any unique provisions, elements, or requirements?	No.
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)	Stalking is not criminalized by degree (the charges are neither classified as misdemeanors or felonies). However, the punishment increases based on subsequent offense or if the stalking falls under aggravated stalking. V.I. Code Ann. tit. 14, § 2072 (a)-(d)
What aggravating circumstances elevate the gradation of a stalking offense?	<p>First offense: max imprisonment of 18 months and/or fined up to \$7,500</p> <p>Second offense: max imprisonment of 5 years and/or fined up to \$15,000 and psychological/emotional assistance</p> <p>Third offense: min imprisonment of 1-month, max imprisonment of 5 years and/or fined up to \$15,000</p> <p>Aggravated stalking with or without violence: when stalking violates a court order max imprisonment of 5 years and/or fined up to \$15,000</p> <p>V.I. Code Ann. tit. 14, § 2072 (a)-(d).</p>

Statutes

V.I. CODE ANN. TIT. 4, § 1473 (2023). PROCEDURAL REQUIREMENTS

(a) An adult person who is a victim of stalking may seek relief under this chapter by filing with the Magistrate Division of the Superior Court a verified petition on a form provided by the court. A verified petition must allege sufficient facts to establish the following:

- 1) The name of the stalking victim;
- 2) The name or physical description of the alleged perpetrator;
- 3) The dates on which the alleged stalking behavior occurred; and

- 4) The acts that the victim alleges constitute stalking.
- (b) A minor who is a stalking victim may have a parent, guardian, or adult residing with the minor file a verified petition on the minor's behalf, as prescribed in subsection (a).
- (c) Service of process upon the alleged perpetrator must be by personal service.
- (d) The victim's address and telephone number must remain confidential and may be disclosed only to authorized court or law enforcement personnel.

V.I. CODE ANN. TIT. 14, § 465 (2023). CYBER-STALKING AND CYBER-HARASSMENT PROHIBITED

- (a) Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his or her family is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment for not more than one year, or both.
- (b) For the purpose of this section, 'harassing' means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose.
- (c) The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury.
- (d) As used in this section, 'course of conduct' means a pattern of conduct comprised of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of 'course of conduct.'
- (e) A second or subsequent conviction under subsection (a) of this section shall be deemed a felony punishable by imprisonment for not more than two (2) years, by a fine of not more than six thousand dollars (\$6,000), or both.

V.I. CODE ANN. TIT. 14, § 706 (2023). HARASSMENT BY TELEPHONE, TELEGRAPH, OR WRITTEN COMMUNICATION

Whoever, with intent to harass or alarm another person-

- 1) communicates with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to harass or alarm; or

- 2) makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication, is guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than 1 year, or both.

V.I. CODE ANN. TIT. 14, § 2071 (2023). DEFINITIONS

As used in this chapter:

- (a) 'Stalking' means purposely and repeatedly following another person and engaging in a course of conduct or making a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily harm or injury and causing emotional distress.
- (b) 'Credible threat' means an explicit or implicit threat made with the intent and the apparent ability to carry out the threat, so as to cause the targeted person to reasonably fear for personal safety or the safety of a family member.
- (c) 'Course of conduct' means an act that happens more than once, however brief, within a year, directed at a specific person, evidencing a continuity of purpose which would cause a reasonable person to suffer substantial emotional distress; which includes but is not limited to the stalker's directly or indirectly, by any action, method or device, following, monitoring, observing, pursuing, threatening or communicating to or about a person or interfering with a person's property.
- (d) 'Harassment' means engaging in a knowing and intentional course of conduct directed at a specific person which alarms annoys torments or terrorizes the person and would cause a reasonable person to suffer emotional distress.
- (e) 'Cyberstalk' means to communicate, or to cause to be communicated, words, images, or language through the use of electronic mail or electronic communication directed to a specific person which serves no legitimate purpose, but causes that person substantial emotional distress.

V.I. CODE ANN. TIT. 14, § 2072 (2023). STALKING PROHIBITED; DEGREES OF OFFENSE; PUNISHMENT

- (a) A person is guilty of the crime of stalking who purposely and repeatedly follows another person and engages in a course of conduct or makes a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily harm or injury. Any person convicted of the crime of stalking shall be imprisoned for a period not to exceed 18 months, or may be fined up to \$7,500, or both.
- (b) A person who commits a second or subsequent offense of stalking shall be imprisoned for a period not to exceed 5 years, or may be fined up to \$15,000, or both and shall be required to

obtain psychological or emotional assistance as determined by the court. Provided, however, a person who is convicted of a third or subsequent offense, shall be imprisoned for not less than one month and not more than 5 years, or may be fined up to \$15,000, or both.

- (c) A person is guilty of the crime of aggravated stalking who commits the crime of stalking in violation of an existing court order prohibiting the behavior and shall be imprisoned for a period not to exceed 5 years, or may be fined up to \$15,000, or both.
- (d) A person is guilty of the crime of aggravated stalking who commits the crime of stalking which involves a crime of violence as defined in Title 23, section 451, subsection (e) of this code and shall be imprisoned for a period not to exceed 5 years, or may be fined up to \$15,000, or both.
- (e) The provisions of this section shall not apply to conduct which occurs during organized group picketing.

Relevant Case Law

***Ascencio v. Virgin Islands*, 54 V.I. 769 (D.V.I. Nov. 10, 2010)**

Defendant appealed his conviction for aggravated stalking, arguing, *inter alia*, that there was insufficient evidence to support his conviction. A plain reading of the stalking statute reveals two factual scenarios in which an individual may be held criminally liable for stalking. The first scenario is where a person: a) purposely; and b) repeatedly follows another person; and also, c) engages in a prohibited “course of conduct.” The second scenario occurs where a person makes a “credible threat” with the intent of either: a) annoying another; or b) placing another in reasonable fear of death or bodily harm or injury. The court held that the state proved the jury beyond a reasonable doubt that: 1) a court order prohibited the defendant from stalking the victim; 2) the defendant had knowledge of the order; and 3) the defendant violated that order by stalking the victim. The District Court affirmed the conviction finding that the defendant running out from the bushes towards the victim’s vehicle and threatening to kill her was sufficient to support the elements of stalking.

***People v. Williams*, 71 V.I. 111 (Super. Ct. 2019)**

Defendant was charged with aggravated stalking and other crimes against his co-worker. The defendant moved for an acquittal of the charges which was denied. The defendant went to the victim’s home on many occasions, took her car keys, interrupted her while she danced with another man, and went out of his way to drive to her home during his work hours as a police officer. The victim’s annoyance with his behavior was indicated by her general avoidance of him, the fact that she sought out a police sergeant after seeing the defendant near her home, and the perception of multiple witnesses that she did not wish to speak to or interact with defendant. The Superior Court found there was sufficient evidence to support the convictions where the defendant purposely and repeatedly followed the victim and engaged in a course of conduct with the intent of annoying her or placing her in reasonable fear of death or bodily harm or injury.

Stalking, Harassment, & Related Offenses: Utah

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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UTAH

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>Course of conduct is two or more acts directed at a specific person and includes following, monitoring, photographing, surveilling, threatening, communicating to or about a person, interfering with a person's property; engaging in or causing another person to engage in confronting the victim, appearing at the victim's place of work, contacting the victim's employer or coworkers, appearing at the victim's residence or contacting the victim's neighbors, entering the victim's dwelling, sending material to the victim, and/or delivering objects to the victim's residence. Utah Code § 76-5-106.5 (1)(a)(i),(ii).</p> <p>Simply because photographing someone and surveilling them are listed separately does not mean they are separate incidents when they occur simultaneously. <i>See Hardy v. Hardy</i>, 467 P.3d 931(Utah Ct. App. 2020)</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threat is no required but can be part of a course of conduct. Threats can be direct, indirect, or through a third party. Utah Code § 76-5-106.5 (1)(a)(i)(A).</p> <p><i>See also Carson v. Barnes</i>, 385 P.3d 744 (Utah Ct. App. 2016) ("By the plain language of the statute, the threatening act need not be direct, and it includes situations in which the actor comes to the 'person's workplace' or 'contacts the person's ... coworkers,' without requiring the presence of the victim.").</p> <p>Threat does not need to be a threat of violence; <i>See Salt Lake City v. Josephson</i>, 435 P.3d 255, 263 (Utah 2019) ("In contrast, [to the stalking statute], the threat of violence statute requires proof that either 'the person threatens to commit any offense involving bodily injury,</p>

	death, or substantial property damage, and acts with intent to place a person in fear of imminent serious bodily injury, substantial bodily injury, or death.”).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	The offender must intentionally and knowingly engage in a course of conduct directed at a specific person. Utah Code § 76-5-106.5 (2). <i>See also Ragsdale v. Fishler</i> , 491 P.3d 835 (Utah 2021) (“a person must ‘intentionally or knowingly engage in a course of conduct directed at a specific person.’”).
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	Yes. Course of conduct can be “directly, indirectly, or through any third party” and can include contacting the person’s employer or coworkers, contacting the person’s neighbor or tenant, communicating with a friend, family member, or associate. Utah Code § 76-5-106.5 (1)(a)(i)(A)-(D). Stalking also includes fear for safety of any third party. Utah Code § 76-5-106.5 (2)(a)(i). <i>See also Ragsdale v. Fishler</i> , 491 P.3d 835, 838 (Utah 2021) (“But nothing in the statute defines the term ‘directed at.’ Nor does it expressly indicate that the petitioner must be the ‘ultimate target’ of a respondent's course of conduct.”); <i>State v. Miller</i> , 496 P.3d 282, 288 (Utah Ct. App. 2021) (Contacting a person’s employer or co-workers about the person is conduct included in the definition of stalking. The statute does not require that the perpetrator intend for his message to reach the victim through the victim’s employer or co-workers).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear one’s own safety or the safety of a third person or to suffer emotional distress. Utah Code § 76-5-106.5 (2)(a)(b).
Does fear include emotional distress?	Yes. Emotional distress means significant mental or psychological suffering, whether or not medical or other professional treatment or

	counseling is required. Utah Code § 76-5-106.5 (1)(a)(ii)(A).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. Utah Code Ann. § 76-5-106.5 (2).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	<p>What constitutes reasonable fear is case specific.</p> <p><i>State v. Rashid</i>, 483 P.3d 87 (Utah Ct. App. 2021) (“When Rashid placed the GPS device on Victim's car, waited for her in the parking lot, followed her for a significant distance, and then returned a few days later, he should have known his actions might cause a reasonable person in those circumstances to fear for her safety.”).</p> <p><i>State v. Miller</i>, 496 P.3d 282, 288 (Utah Ct. App. 2021) (“The State presented sufficient evidence from which a reasonable jury could find that, at the time that Miller sent the emails, he knew or should have known that a reasonable person in the victim’s circumstances would suffer significant mental or psychological suffering. Victim testified that defendant’s emails to her employer's attorney made her feel afraid that she was going to lose her job and that she felt anxious because she knew people at her place of employment were talking about her.”).</p>
Must the victim tell the defendant to stop in order to constitute stalking?	No. The stalking statute explicitly states that not receiving actual notice that the conduct was unwanted is not a defense. Utah Code § 76-5-106.5 (4)(a).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Yes. Utah Code § 76-5-106.5 (1)(a)(ii).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	<p>Technology-facilitated stalking is covered by the regular stalking statute. Utah Code § 76-5-106.5 (1)(a)(i)(B)(VI).</p> <p>Separate statutes criminalize similar conduct such as electronic communication harassment,</p>

	invasion of privacy through electronic surveillance, and unlawful installation of a tracking device. Utah Code §§ 76-9-201(2), 76-9-402, 76-9-408.
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?)	There is no residency requirement. Conduct that occurs outside of the jurisdiction but affects a victim inside the jurisdiction can be prosecuted. Utah Code §§ 76-1-201 (1)(a)(2), 76-5-106.5 (5).
Any unique provisions, elements, or requirements?	No.
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)	Stalking is a second degree felony under Utah Code § 76-5-106.5(3)(c), a third degree felony under Utah Code § 76-5-106.5(3)(b), and a class A misdemeanor under Utah Code § 76-5-106.5 (3)(a).
What aggravating circumstances elevate the gradation of a stalking offense?	<p>Stalking becomes a third degree felony if the offender:</p> <ul style="list-style-type: none"> - Has previously been convicted of stalking. - Has previously been convicted of stalking or to a similar offense in another jurisdiction; - Has previously been convicted of a felony (or crime in another jurisdiction that would be a felony in Utah) against the same victim or the same victim's family member; - Has violated a permanent criminal stalking injunction; or - Was cohabitating with the victim at the time of the offense <p>Utah Code § 76-5-106.5 (3)(b).</p> <p>Stalking becomes a second degree felony if the offender:</p> <ul style="list-style-type: none"> - Used a dangerous weapon or other means/force that would likely produce death or serious bodily injury; - Has two or more previous stalking convictions; - Has two or more similar convictions in another jurisdiction;

- | | |
|--|--|
| | <ul style="list-style-type: none"> - Has two or more convictions for a felony (or crime in another jurisdiction that would be a felony in Utah) against the same victim or the same victim's family member; or - Has previously been convicted of stalking in the third degree <p>Utah Code § 76-5-106.5 (3)(c).</p> |
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Statutes

UTAH CODE ANN. § 76-5-106 (WES 2023). HARASSMENT

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits harassment if, with intent to frighten or harass another, the actor communicates a written or recorded threat to commit a violent felony.
- (3) A violation of Subsection (2) is a class B misdemeanor.

UTAH CODE ANN. § 76-5-106.5 (WEST 2023). STALKING--DEFINITIONS--INJUNCTION--PENALTIES--DUTIES OF LAW ENFORCEMENT OFFICER

- (1) (a) As used in this section:
 - (i) "Course of conduct" means two or more acts directed at or toward a specific individual, including:
 - (A) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property:
 - (I) directly, indirectly, or through any third party; and
 - (II) by any action, method, device, or means; or
 - (B) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:
 - (I) approaches or confronts an individual;
 - (II) appears at the individual's workplace or contacts the individual's employer or coworkers;

- (III) appears at an individual's residence or contacts an individual's neighbor, or enters property owned, leased, or occupied by an individual;
- (IV) sends material by any means to the individual or for the purpose of obtaining or disseminating information about or communicating with the individual to a member of the individual's family or household, employer, coworker, friend, or associate of the individual;
- (V) places an object on or delivers an object to property owned, leased, or occupied by an individual, or to the individual's place of employment with the intent that the object be delivered to the individual; or
- (VI) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(ii) (A) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(B) "Emotional distress" includes significant mental or psychological suffering resulting from harm to an animal.

(iii) "Immediate family" means a spouse, parent, child, sibling, or any other individual who regularly resides in the household or who regularly resided in the household within the prior six months.

(iv) "Private investigator" means the same as that term is defined in Section 76-9-408.

(v) "Reasonable person" means a reasonable person in the victim's circumstances.

(vi) "Stalking" means an offense as described in Subsection (2).

(vii) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another individual's telephone or computer by addressing the communication to the recipient's telephone number.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits stalking if the actor intentionally or knowingly:

(a) engages in a course of conduct directed at a specific individual and knows or should know that the course of conduct would cause a reasonable person:

(i) to fear for the individual's own safety or the safety of a third individual; or

(ii) to suffer other emotional distress; or

(b) violates:

(i) a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions; or

(ii) a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

(3) (a) A violation of Subsection (2) is a class A misdemeanor:

(i) upon the actor's first violation of Subsection (2); or

(ii) if the actor violated a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony if the actor:

(i) has been previously convicted of an offense of stalking;

(ii) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(iii) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

(iv) violated a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions; or

(v) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

(c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a second degree felony if the actor:

(i) used a dangerous weapon or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(ii) has been previously convicted two or more times of the offense of stalking;

(iii) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(iv) has been convicted two or more times, in any combination, of offenses under Subsection (3)(b)(i), (ii), or (iii);

(v) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

(vi) has been previously convicted of an offense under Subsection (3)(b)(iv) or (v).

(4) In a prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted; or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) (a) Except as provided in Subsection (6)(b), an actor does not violate this section if the actor is acting:

(i) in the actor's official capacity as a law enforcement officer, governmental investigator, or private investigator; and

(ii) for a legitimate official or business purpose.

(b) A private investigator is not exempt from this section if the private investigator engages in conduct that would constitute a ground for disciplinary action under Section 53-9-118.

(7) (a) A permanent criminal stalking injunction limiting the contact between the actor and victim may be filed in accordance with Section 78B-7-902.

(a) This section does not preclude the filing of criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions, or a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

(8) (a) A law enforcement officer who responds to an allegation of stalking shall use all reasonable means to protect the victim and prevent further violence, including:

(i) taking action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

- (ii) confiscating the weapon or weapons involved in the alleged stalking;
 - (iii) making arrangements for the victim and any child to obtain emergency housing or shelter;
 - (iv) providing protection while the victim removes essential personal effects;
 - (v) arranging, facilitating, or providing for the victim and any child to obtain medical treatment; and
 - (vi) arranging, facilitating, or providing the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of stalking, in accordance with Subsection (8)(b).
- (b) (i) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this section and Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions.
- (ii) The written notice shall also include:
- (A) a statement that the forms needed in order to obtain a stalking injunction are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled; and
 - (B) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance.
- (c) If a weapon is confiscated under this Subsection (8), the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a stalking injunction is not issued or once the stalking injunction is terminated.

UTAH CODE ANN. § 76-5-107 (WEST 2023). THREAT OF VIOLENCE--PENALTY

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2) (a) An actor commits a threat of violence if the actor:
- (i) (A) threatens to commit an offense involving bodily injury, death, or substantial property damage; and
 - (B) acts with intent to place an individual in fear of imminent serious bodily injury, substantial bodily injury, or death; or

(ii) makes a threat, accompanied by a show of immediate force or violence, to do bodily injury to an individual.

(b) A threat under this section may be express or implied.

(3) (a) A violation of Subsection (2) is a class B misdemeanor.

(b) An actor who commits an offense under this section is subject to punishment for that offense, in addition to any other offense committed, including the carrying out of the threatened act.

(c) In addition to any other penalty authorized by law, a court shall order an actor convicted of a violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

(4) It is not a defense under this section that the actor did not attempt to or was incapable of carrying out the threat.

UTAH CODE ANN. § 76-5-108 (WEST 2021). PROTECTIVE ORDERS RESTRAINING ABUSE OF ANOTHER--VIOLATION

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits violation of protective order if the actor:

(a) is the respondent or defendant subject to a protective order, child protective order, ex parte protective order, ex parte child protective order, or foreign protection order issued under, or for the purposes of Subsection (2)(a)(i), enforceable under:

(i) Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act;

(ii) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;

(iii) Title 78B, Chapter 7, Part 8, Criminal Protective Orders; or

(iv) Title 80, Utah Juvenile Code; and

(b) intentionally or knowingly violates that order after having been properly served or having been present, in person or through court video conferencing, when the order was issued.

- (3) A violation of Subsection (2) is a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.
- (4) Violation of an order described in Subsection (2) is a domestic violence offense under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

UTAH CODE ANN. § 76-9-201 (WEST 2023). ELECTRONIC COMMUNICATION HARASSMENT-DEFINITIONS-PENALTIES

(1) As used in this section:

- (a) “Adult” means an individual 18 years of age or older.
- (b) “Electronic communication” means a communication by electronic, electro-mechanical, or electro-optical communication device for the transmission and reception of audio, image, or text but does not include broadcast transmissions or similar communications that are not targeted at a specific individual.
- (c) “Electronic communication device” includes a telephone, a facsimile machine, electronic mail, a pager, a computer, or another device or medium that can be used to communicate electronically.
- (d) “Minor” means an individual who is younger than 18 years of age.
- (e) “Personal identifying information” means the same as that term is defined in Section 76-6-1102.

(2) Except to the extent the person's conduct constitutes an offense under Section 76-9-203, a person is guilty of electronic communication harassment and subject to prosecution in the jurisdiction where the communication originated or was received if with intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

- (a) (i) makes repeated contact by means of electronic communications, regardless of whether a conversation ensues; or
- (ii) after the recipient has requested or informed the person not to contact the recipient, and the person repeatedly or continuously:
- (A) contacts the electronic communication device of the recipient; or
- (B) causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication;

- (b) makes contact by means of electronic communication and insults, taunts, or challenges the recipient of the communication or any person at the receiving location in a manner likely to provoke a violent or disorderly response;
- (c) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person; or
- (d) causes disruption, jamming, or overload of an electronic communication system through excessive message traffic or other means utilizing an electronic communication device.

(3) A person is guilty of electronic communication harassment if the person:

- (a) electronically publishes, posts, or otherwise discloses personal identifying information of another individual in a public online site or forum with the intent to abuse, threaten, or disrupt the other individual's electronic communication and without the other individual's permission; or
- (b) sends a communication by electronic mail, instant message, or other similar means, if:
 - (i) the communication references personal identifying information of another individual; and
 - (ii) the person sends the communication:
 - (A) without the individual's consent; and
 - (B) with the intent to cause a recipient of the communication to reasonably believe that the individual authorized or sent the communication; and
 - (iii) with the intent to:
 - (A) cause an individual physical, emotional, or economic injury or damage; or
 - (B) defraud an individual.

(4) (a) Electronic communication harassment is a class B misdemeanor.

(b) A second or subsequent offense of electronic communication harassment is a class A misdemeanor.

(5) (a) Except as provided under Subsection (5)(b), criminal prosecution under this section does not affect an individual's right to bring a civil action for damages suffered as a result of the commission of an offense under this section.

- (b) This section does not create a civil cause of action based on electronic communications made for legitimate business purposes.

UTAH CODE ANN. § 76-9-401 (WEST 2023). DEFINITIONS

For purposes of this part:

- (1) “Private place” means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.
- (2) “Eavesdrop” means to overhear, record, amplify, or transmit any part of a wire or oral communication of others without the consent of at least one party thereto by means of any electronic, mechanical, or other device.
- (3) “Public” includes any professional or social group of which the victim of a defamation is a member.

UTAH CODE ANN. § 76-9-402 (WEST 2021). PRIVACY VIOLATION

- (1) (a) A property owner has an expectation of privacy regarding characteristics, data, or information pertaining to the owner's property that:
 - (i) is not immediately apparent through routine visual observation of the property; and
 - (ii) requires ground-penetrating technology to detect, observe, measure, map, or otherwise capture information or data about the property or characteristics of the property.
- (2) A person is guilty of privacy violation if, except as authorized by law, the person:
 - (a) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place;
 - (b) installs, or uses after unauthorized installation in a private place, without the consent of the person or persons entitled to privacy in the private place, any device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events in the private place;
 - (c) installs or uses outside of a private place a device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events originating in the private place which would not ordinarily be audible, visible, or comprehensible outside the private place, without the consent of the person or persons entitled to privacy in the private place; or

(d) uses ground-penetrating technology, without the consent of the property owner, to detect, observe, measure, map, or otherwise capture information or data about the property or characteristics of the property of another for which the property owner has an expectation of privacy as described in Subsection (1).

(3) A person is not guilty of a violation of this section if:

(a) the device used is an unmanned aircraft;

(b) the person is operating the unmanned aircraft for legitimate commercial or educational purposes in a manner consistent with applicable Federal Aviation Administration rules, exemptions, or other authorizations; and

(c) any conduct described in Subsection (2) that occurs via the unmanned aircraft is solely incidental to the lawful commercial or educational use of the unmanned aircraft.

(4) For a person who commits a violation of Subsection (2), a court may order the person to remove and destroy any data collected by the person in the commission of the violation of Subsection (2).

(5) Privacy violation is a class B misdemeanor.

(6) (a) This section does not apply to lawful practices of:

(i) a law enforcement agency; or

(ii) another government entity.

(b) Subsection (2)(d) does not apply to a land surveyor if:

(i) the land surveyor is performing a survey service in good faith pursuant to a bona fide contract; and

(ii) for any data pertaining to property not owned by a party to the contract described in Subsection (6)(b)(i) that is captured incidentally by the land surveyor, the land surveyor:

(A) does not share, publish, sell, or distribute any incidentally captured data pertaining to property that is not relevant to the contract described in Subsection (6)(b)(i); and

(B) upon completion of the contract, deletes or destroys any data pertaining to property that is not the subject of the contract.

UTAH CODE ANN. § 76-9-408 (WEST 2023). UNLAWFUL INSTALLATION OF A TRACKING DEVICE

(1) As used in this section:

(a) “Motor vehicle” means the same as that term is defined in Subsection 41-12a-103(4).

(b) “Private investigator” means an individual who is:

(i) licensed as a private investigator under Title 53, Chapter 9, Private Investigator Regulation Act; and

(ii) acting in the capacity of a private investigator.

(c) “Protective order” means a protective order, stalking injunction, or restraining order issued by a court of any jurisdiction.

(d) (i) “Tracking device” means a device used for the primary purpose of revealing the device's location or movement by the transmission or recording of an electronic signal.

(ii) “Tracking device” does not include location technology installed on a vehicle by the vehicle manufacturer or a commercial vehicle dealer that transmits electronic signals for the purpose of data collection, if the data collection is anonymized.

(2) Except as provided in Subsection (3), a person is guilty of unlawful installation of a tracking device if the person knowingly installs, or directs another to install, a tracking device on a motor vehicle owned or leased by another person, without the permission of the owner or lessee of the vehicle.

(3) A person is not guilty of unlawful installation of a tracking device if the person:

(a) (i) is a licensed private investigator installing the tracking device for a legitimate business purpose; and

(ii) installs the tracking device on a motor vehicle that is not:

(A) owned or leased by an individual under the protection of a protective order; or

(B) operated by an individual under the protection of a protective order who resides with, or is an immediate family member of, the owner or lessee of the motor vehicle; or

(b) installs the tracking device pursuant to a court order.

(4) Unlawful installation of a tracking device is a class A misdemeanor.

- (5) This section does not apply to a peace officer, acting in the peace officer's official capacity, who installs a tracking device on a motor vehicle in the course of a criminal investigation or pursuant to a court order.
- (6) Before installing a tracking device on a motor vehicle under Subsection (3), a private investigator shall request confirmation from a state entity with access to updated protective order records, that:
- (a) the owner or lessee of the vehicle is not under the protection of a protective order; and
 - (b) an individual who resides with, or is an immediate family member of, the owner or lessee of the motor vehicle is not under the protection of a protective order.
- (7) On request from a licensed private investigator, a state entity, including a law enforcement agency, with access to protective order records shall confirm or deny the existence of a protective order, disclosing only whether an individual named by the private investigator is under the protection of a protective order issued in any jurisdiction.
- (8) A private investigator may not disclose the information obtained under Subsection (7) to any person, except as permitted by law.
- (9) On request from the Bureau of Criminal Identification, a private investigator who installs a tracking device on a motor vehicle shall disclose the purpose of the tracking device to the Bureau of Criminal Identification.

Relevant Case Law

***Baird v. Baird*, 322 P.3d 728 (Utah 2014)**

Petitioner was granted an injunction against his mother, the respondent, after the trial court's finding that the mother's nearly daily phone calls to the petitioner were causing him emotional distress. On appeal, the Court analyzed whether the district court erred in entering the injunction based solely on its finding that the respondent's conduct caused the petitioner emotional distress, without considering whether her conduct would have caused emotional distress to a reasonable person in the petitioner's circumstances. The Supreme Court of Utah vacated the injunction and remanded the case to be analyzed reasonable person standard. The Court went on to state that emotional distress can be determined by the facts surrounding the offender's conduct, such as the history and relationship of the parties, and the offender's knowledge of the victim's vulnerabilities.

***Sheeran v. Thomas*, 340 P.3d 797 (Utah Ct. App. 2014)**

Respondent appealed an injunction granted against him. The petitioner worked with the respondent's girlfriend. The respondent thought that the petitioner was harassing and annoying his girlfriend at work and therefore filed complaints with the company, contacted a lawyer, and directly

confronted the petitioner. The petitioner testified that the respondent made him feel unsafe on three occasions. On appeal, the respondent argued there was insufficient evidence to support a finding that he engaged in a course of conduct that would cause a reasonable person to fear bodily injury or suffer emotional distress. The Court of Appeals disagreed and held that when analyzing two or more acts directed at a specific person, the Court does not read the plain language of the stalking statute to require that each act or incident independently be such as to cause a reasonable person to fear for his or her safety; rather, it is the pattern of behavior or the course of conduct considered in the context of the circumstances that must have that cumulative effect.

***Hardy v. Hardy*, 467 P.3d 931 (Utah Ct. App. 2020)**

Petitioner was granted a civil stalking injunction and the Defendant appealed, and the Court held that the two simultaneous incidents in question counted as one incident, not two. Petitioner filed for a civil stalking injunction against her ex-husband the same day that he observed her and photographed her car at their child’s therapist’s office. The court held that observing someone and photographing them is one incident, not two separate incidents because they occurred simultaneously. The Court held there was not a course of conduct in this case.

***State v. Rashid*, 483 P.3d 87 (Utah Ct. App. 2021)**

Defendant was convicted of stalking and appealed, arguing that the stalking statute was unconstitutionally vague and that the District Court erred in excluding his expert witness. The defendant argued that the statute is vague because it is void of any language that allows for certain conduct that has a legitimate purpose. He argued that his actions of putting a GPS on the victim’s car, following her, and taking photos of her were for a legitimate purpose as he was a private investigator. He also sought to have an expert testify regarding proper training of private investigators to show the defendant was not properly trained and therefore would not know his conduct amounted to stalking. The District Court denied admission of the expert’s testimony, finding it was not relevant to whether the defendant knowingly engaged in a course of conduct that would cause a reasonable person to fear bodily injury or suffer emotional distress.

The Court of Appeals affirmed the conviction, holding that the statute was not unconstitutionally vague because the statute makes absolutely clear that the defendant could be convicted of stalking if he “directly” undertook following, monitoring, observing, photographing, or surveilling the victim, on two or more occasions, if he knew or should have known that by so doing it would have caused “a reasonable person ... to fear for the person’s own safety or ... to suffer other emotional distress.” Further, the Court of Appeals agreed that the proffered testimony of the expert would not be relevant to the charge and that even if the trial court erred in excluding expert testimony, the Court of Appeals will not reverse if that “error ... does not affect the substantial rights of [the] party.”

***State v. Miller*, 496 P.3d 282 (Utah Ct. App. 2021)**

Defendant was convicted of stalking after sending disparaging emails regarding the victim to the victim’s employer. After the jury verdict, the District Court granted the defendant’s motion to arrest the judgment, determining that no reasonable jury could find that the defendant (1) intentionally or knowingly engaged in a course of conduct directed at the victim and (2) knew or should have known that the course of conduct would cause a reasonable person fear or emotional distress because the

defendant did not know that the victim would read the emails. The state appealed and the Court of Appeals reversed and remanded to reinstate the jury's verdict. The Court of Appeals held that the state was not required to present evidence that the defendant knew or should have known that his emails to the company would reach the victim to prove beyond a reasonable doubt that his conduct amounted to stalking and that the state presented sufficient evidence from which a reasonable jury could find that, at the time the defendant sent the emails, he knew or should have known that a reasonable person in the victim's circumstances would suffer significant mental or psychological distress. The victim testified that defendant's emails to her employer made her feel afraid that she was going to lose her job and that she felt anxious because she knew people at her place of employment were talking about her.

Stalking, Harassment, & Related Offenses: Vermont

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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VERMONT

Summary

What constitutes a "course of conduct" / pattern of behavior?	“Course of conduct” means two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of “course of conduct.” Vt. Stat. tit. 13, § 1061 (1)(A).
What types of threats are required (credible, explicit, implicit, bodily injury?)	Threat is not required but can be a part of the course of conduct. Threat does not need to be an express or overt threat but must be a true threat. Vt. Stat. tit. 13, § 1061 (1)(A). A threat does not require threat of violence. <i>State v. Noll</i> , 199 A.3d 1054, 1057 (Vt. 2018) (“Any expression prohibited under the statute falls within this constitutionally unprotected category of true threats. In suggesting that the statute criminalized speech solely on the basis that it would cause a reasonable person substantial emotional distress, defendant fails to consider the statute as a whole, including the definitions of conduct that could trigger the statutes application.”); <i>State v. Ellis</i> , 979 A.2d 1023 (Vt. 2009) (The elements of the crime of stalking, by following the victim, do not require that defendant had threatened violent behavior). <i>But see Morton v. Young</i> , 2023 VT 29 (Vt. May 19, 2023)(the term ‘threatens, or makes threats about’ in § 131(1) encompasses ‘only threats of physical harm.’).
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	Offender must intend to engage in course of conduct that he knows or should know would cause reasonable person fear or substantial emotional distress. Vt. Stat. tit. 13, § 1061 (4).

<p>Do offender actions toward persons <i>other than the victim</i> help establish course of conduct?</p>	<p>Yes, if offender makes threats about another person or causes fear for the safety of another. Vt. Stat. tit. 13, §§ 1061(1)(A), (4); <i>See also State v. Hinchliffe</i>, 987 A.2d 988 (Vt. 2009)(A victim’s knowledge of a defendant’s conduct towards a third party may be relevant, in a stalking prosecution, to the issue of whether it is reasonable for the victim to fear the defendant).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear for one’s safety or fear for the safety of another. Vt. Stat. tit. 13, § 1061(4). Substantial emotional distress evidenced by a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death, or significant modifications in the person's actions or routines. Vt. Stat. tit. 12, § 5131 (6)(A)(B)(i)(ii).¹</p>
<p>Does fear include emotional distress?</p>	<p>Yes. Vt. Stat. tit. 13, § 1061(4). “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling. Vt. Stat. tit. 13, § 1061(2). <i>See also</i> Vt. Stat. tit. 12, § 5131 (6)(B).²</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. Vt. Stat. tit. 13, § 1061(4). A reasonable person means a reasonable person in the victim's circumstances. Vt. Stat. tit. 13, § 1061 (3); <i>See also</i> Vt. Stat. tit. 12, § 5131 (4),(6).³</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>State v. Hinchliffe</i>, 987 A.2d 988 (Vt. 2009) (Defendant’s former wife’s testimony regarding defendant’s prior assault on his former girlfriend, was relevant to issue of whether a reasonable person in defendant’s former wife's circumstances would fear bodily injury, and thus was admissible in defendant’s prosecution</p>

¹ Civil statute for orders against stalking or sexual assault.

² Civil statute for orders against stalking or sexual assault.

³ Civil statute for orders against stalking or sexual assault.

	<p>for stalking his former wife. Although the statute requires the jury to view defendants conduct from the perspective of a reasonable person, the victim’s knowledge of defendant is relevant to the question of whether defendant's actions would have caused a reasonable person to fear bodily injury).</p> <p><i>McCool v. Macura</i>, 224 A.3d 847, 852 (Vt. 2019) (“Regarding the security cameras, the undisputed evidence was that defendant disabled security cameras that monitored only the exterior of the house. Given that defendant had never physically harmed plaintiff, that there had not been any incident of alleged physical restraint in almost a year, and that defendant entered plaintiff’s residence when he knew she was not there so as to avoid her, there was insufficient evidence in the record, as a matter of law, to support a conclusion that defendant’s conduct in entering her residence to retrieve his personal belongings placed plaintiff, from an objectively reasonable standpoint, in fear of imminent serious physical harm.”).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No. The stalking statute explicitly states that not receiving actual notice that the conduct was unwanted is not a defense. Vt. Stat. tit. 13, § 1064</p>
<p>Is stalking by proxy included? (i.e., getting a third person to stalk the victim)</p>	<p>Yes. The definition of course of conduct includes “acts conducted by the person directly or indirectly, and by any action, method, device, or means.” Vt. Stat. tit. 13, §§ 1061 (1)(A), 5131(1)(A).⁴</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 by the regular stalking statute which includes monitoring and surveilling by “any action, method, device, or means.” Vt. Stat. tit. 13, § 1061 (1)(A); <i>See also State v. Hinchliffe</i>, 987 A.2d 988 (Vt. 2009) (Court held that the defendant’s repeated emails, calls, and text</p>

⁴ Civil statute for orders against stalking or sexual assault. *Compilation, Page 734*

	<p>messages to ex-wife established a course of conduct under the stalking statute).</p> <p>However more detail on technology-facilitated stalking is provided in the civil stalking statute which includes nonphysical contact such as “telephone calls, mail, e-mail, social media commentary or comment, or other electronic communication, fax, and written notes. Vt. Stat. tit. 12, § 5131 (3)⁵; see also <i>Gilson v. Hrbek</i>, No. 2015-338, 2016 WL 937253 (Vt. Mar. 10, 2016) (Protective order granted based on defendant’s conduct of sending victim “barrage of e-mails,” accusing her of cheating during their relationship, threatening to post damaging information to the victim’s work Facebook page, and texting the victim’s current boyfriend).</p> <p>Other statutes criminalize similar conduct such as disturbing the peace by use of telephone or electronic communications. Vt. Stat. tit. 13, § 1027.</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>There is no residency requirement. Conduct that occurs outside of the jurisdiction may be prosecuted if the conduct is part of the commission of the crime within the jurisdiction. Vt. Stat. tit. 13, § 2.</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 crimes are not graded as misdemeanors or felonies but rather as “stalking” and “aggravated stalking.” Aggravated stalking is punishable by up to 5 years in prison and/or up to a \$25,000 fine. Vt. Stat. Ann. tit. 13, § 1063. Stalking is punishable by up to 2 years in prison and/or up to a \$5,000 fine. Vt. Stat. Ann. tit. 13, § 1062.</p>

⁵ Civil statute for orders against stalking or sexual assault
Compilation, Page 735

<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes aggravated stalking if the offender:</p> <ul style="list-style-type: none"> - Violates a court order prohibiting stalking; - Has previously been convicted of stalking or aggravated stalking; - Has previously convicted of an offense with an element of violence against the same victim; - Stalks a victim who is under 16 years of age; or - Possessed a deadly weapon during the stalking. <p>Vt. Stat. Ann. tit. 13, § 1063.</p>
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Statutes

VT. STAT. ANN. TIT. 12, § 5131 (WEST 2023). DEFINITIONS

As used in this chapter:

- (1) (A) “Course of conduct” means two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of “course of conduct.”

- (B) As used in subdivision (A) of this subdivision (1), threaten shall not be construed to require an express or overt threat.

- (2) Repealed by 2015, Adj. Sess., No. 162, § 2, eff. July 1, 2016.

- (3) “Nonphysical contact” includes telephone calls, mail, e-mail, social media commentary or comment, or other electronic communication, fax, and written notes.

- (4) “Reasonable person” means a reasonable person in the victim's circumstances.

- (5) “Sexually assaulted the plaintiff” means that the defendant engaged in conduct that meets elements of lewd and lascivious conduct as defined in 13 V.S.A. § 2601, lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602, sexual assault as defined in 13 V.S.A. § 3252, aggravated sexual assault as defined in 13 V.S.A. § 3253, use of a child in a sexual performance as defined in 13 V.S.A. § 2822, or consenting to a sexual performance as defined in 13 V.S.A. § 2823, and that the plaintiff was the victim of the offense.

- (6) “Stalk” means to engage purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to:
- (A) fear for his or her safety or the safety of a family member; or
 - (B) suffer substantial emotional distress as evidenced by:
 - (i) a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or
 - (ii) significant modifications in the person's actions or routines, including moving from an established residence, changes to established daily routes to and from work that cause a serious disruption in the person's life, changes to the person's employment or work schedule, or the loss of a job or time from work.
- (7) “Stay away” means to refrain from knowingly:
- (A) initiating or maintaining a physical presence near the plaintiff;
 - (B) engaging in nonphysical contact with the plaintiff directly or indirectly; or
 - (C) engaging in nonphysical contact with the plaintiff through third parties who may or may not know of the order.
- (8) Repealed by 2015, Adj. Sess., No. 162, § 2, eff. July 1, 2016.

VT. STAT. ANN. TIT. 12, § 5133 (WEST 2023). REQUESTS FOR AN ORDER AGAINST STALKING OR SEXUAL ASSAULT

- (a) A person, other than a family or household member as defined in 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on behalf of himself or herself or his or her children by filing a complaint under this chapter. A minor 16 years of age or older may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.
- (b) Except as provided in section 5134 of this title, the court shall grant the order only after notice to the defendant and a hearing. The plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant stalked or sexually assaulted the plaintiff.
- (c) In a hearing under this chapter, neither opinion evidence of nor evidence of the reputation of the plaintiff's sexual conduct shall be admitted. Evidence of prior sexual conduct of the plaintiff shall not be admitted; provided, however, where it bears on the credibility of the plaintiff or it is

material to a fact at issue and its probative value outweighs its private character, the court may admit any of the following:

- (1) evidence of the plaintiff's past sexual conduct with the defendant;
 - (2) evidence of specific instances of the plaintiff's sexual conduct showing the source of origin of semen, pregnancy, or disease; or
 - (3) evidence of specific instances of the plaintiff's past false allegations of violations of 13 V.S.A. chapter 59 or 72.
- (d) If the court finds by a preponderance of evidence that the defendant has stalked or sexually assaulted the plaintiff, or has been convicted of stalking or sexually assaulting the plaintiff, the court shall order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other order it deems necessary to protect the plaintiff or the plaintiff's children, or both.
- (e) Relief shall be granted for a fixed period, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff or the plaintiff's children, or both. It is not necessary for the court to find that the defendant stalked or sexually assaulted the plaintiff during the pendency of the order to extend the terms of the order. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstance.
- (f) No filing fee shall be required.
- (g) Every order under this chapter shall contain the name of the court, the names of the parties, the date of the petition, and the date and time of the order and shall be signed by the judge.
- (h) Form complaints and form orders for an "Order Against Stalking or Sexual Assault" shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.
- (i) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.
- (j) Every final order issued under this section shall bear the following language: "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH."
- (k) Affidavit forms required pursuant to this section shall bear the following language: "MAKING FALSE STATEMENTS IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904."

- (l) A finding by the court pursuant to this chapter that the defendant stalked or sexually assaulted the plaintiff shall not be admissible in any subsequent civil proceedings for the purpose of establishing liability.

Vt. STAT. ANN. TIT. 12, § 5138 (WEST 2023). ENFORCEMENT

- (a) Law enforcement officers are authorized to enforce orders issued under this chapter. A foreign abuse prevention order as defined in 15 V.S.A. § 1101 shall be accorded full faith and credit throughout this State and shall be enforced as if it were an order of this State. Law enforcement officers may rely upon a copy of any order issued under this chapter or any foreign abuse prevention order. Enforcement may include making an arrest in accordance with the provisions of Rule 3 of the Vermont Rules of Criminal Procedure.
- (b) In addition to the provisions of subsection (a) of this section, violation of an order issued under this chapter may be prosecuted as criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure. The prosecution for criminal contempt may be initiated by the State's Attorney in the Criminal or Civil Division of the Superior Court in the unit or county in which the violation occurred. The maximum penalty which may be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment for six months, or both. A sentence of imprisonment upon conviction for criminal contempt may be stayed in the discretion of the court, pending the expiration of the time allowed for filing notice of appeal or pending appeal if any appeal is taken. After two years have passed from conviction under this subsection, the court may on motion of the defendant expunge the record of the criminal proceeding and conviction unless the defendant has been convicted of a felony or misdemeanor involving moral turpitude or a violation of a protection order after such initial adjudication.

Vt. STAT. ANN. TIT. 13, § 1027 (WEST 2023). DISTURBING PEACE BY USE OF TELEPHONE OR OTHER ELECTRONIC COMMUNICATIONS

- (a) A person who, with intent to terrify, intimidate, threaten, harass, or annoy, makes contact by means of a telephonic or other electronic communication with another and makes any request, suggestion, or proposal that is obscene, lewd, lascivious, or indecent; threatens to inflict injury or physical harm to the person or property of any person; or disturbs, or attempts to disturb, by repeated telephone calls or other electronic communications, whether or not conversation ensues, the peace, quiet, or right of privacy of any person at the place where the communication or communications are received shall be fined not more than \$250.00 or be imprisoned not more than three months, or both. If the defendant has previously been convicted of a violation of this section or of an offense under the laws of another state or of the United States that would have been an offense under this section if committed in this State, the defendant shall be fined not more than \$500.00 or imprisoned for not more than six months, or both.

- (b) An intent to terrify, threaten, harass, or annoy may be inferred by the trier of fact from the use of obscene, lewd, lascivious, or indecent language or the making of a threat or statement or repeated telephone calls or other electronic communications as set forth in this section and any trial court may in its discretion include a statement to this effect in its jury charge.
- (c) An offense committed by use of a telephone or other electronic communication device as set forth in this section shall be considered to have been committed at either the place where the telephone call or calls originated or at the place where the communication or communications or calls were received.

VT. STAT. ANN. TIT. 13, § 1030 (WEST 2023). VIOLATION OF AN ABUSE PREVENTION ORDER, AN ORDER AGAINST STALKING OR SEXUAL ASSAULT, OR A PROTECTIVE ORDER CONCERNING CONTACT WITH A CHILD

- (a) A person who intentionally commits an act prohibited by a court or who fails to perform an act ordered by a court, in violation of an abuse prevention order issued under 15 V.S.A. chapter 21 or 33 V.S.A. chapter 69, a protective order that concerns contact with a child and is issued under 33 V.S.A. chapter 51, or an order against stalking or sexual assault issued under 12 V.S.A. chapter 178, after the person has been served notice of the contents of the order as provided in those chapters; or in violation of a foreign abuse prevention order or an order against stalking or sexual assault issued by a court in any other state, federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.
- (b) A person who is convicted of a second or subsequent offense under this section or is convicted of an offense under this section and has previously been convicted of domestic assault under section 1042 of this title, first degree aggravated domestic assault under section 1043 of this title, or second degree aggravated domestic assault under section 1044 of this title shall be imprisoned not more than three years or fined not more than \$25,000.00, or both.
- (c) Upon conviction under this section for a violation of an order issued under 15 V.S.A. chapter 21, the court shall, unless the circumstances indicate that it is not appropriate or not available, order the defendant to participate in domestic abuse counseling or a domestic abuse prevention program approved by the Department of Corrections. The defendant may at any time request the court to approve an alternative program. The defendant shall pay all or part of the costs of the counseling or program unless the court finds that the defendant is unable to do so.
- (d) Upon conviction for a violation of an order issued under 12 V.S.A. chapter 178, the court may order the defendant to participate in mental health counseling or sex offender treatment approved by the Department of Corrections. The defendant shall pay all or part of the costs of the counseling unless the court finds that the defendant is unable to do so.

- (e) Nothing in this section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through contempt proceedings.
- (f) Prosecution for violation of an abuse prevention order or an order against stalking or sexual assault shall not bar prosecution for any other crime, including any crime that may have been committed at the time of the violation of the order.

Vt. STAT. ANN. TIT. 13, § 1061 (WEST 2023). DEFINITIONS

As used in this subchapter:

- (1) (A) “Course of conduct” means two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(B) As used in subdivision (A) of this subdivision (1), threaten shall not be construed to require an express or overt threat.
- (2) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
- (3) “Reasonable person” means a reasonable person in the victim's circumstances.
- (4) “Stalk” means to engage purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to fear for his or her safety or the safety of another or would cause a reasonable person substantial emotional distress.

Vt. STAT. ANN. TIT. 13, § 1062 (WEST 2023). STALKING

Any person who intentionally stalks another person shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

Vt. STAT. ANN. TIT. 13, § 1063 (WEST 2023). AGGRAVATED STALKING

- (a) A person commits the crime of aggravated stalking if the person intentionally stalks another person, and:

- (1) such conduct violates a court order that prohibits stalking and is in effect at the time of the offense;
 - (2) has been previously convicted of stalking or aggravated stalking;
 - (3) has been previously convicted of an offense an element of which involves an act of violence against the same person;
 - (4) the person being stalked is under 16 years of age; or
 - (5) had a deadly weapon, as defined in section 1021 of this title, in his or her possession while engaged in the act of stalking.
- (b) A person who commits the crime of aggravated stalking shall be imprisoned not more than five years or be fined not more than \$25,000.00, or both.
- (c) Conduct constituting the offense of aggravated stalking shall be considered a violent act for the purposes of determining bail.

Vt. STAT. ANN. TIT. 13, § 1064 (WEST 2023). DEFENSES

In a prosecution under this subchapter, it shall not be a defense that the defendant was not provided actual notice that the course of conduct was unwanted.

Vt. STAT. ANN. TIT. 13, § 1702 (WEST 2023). CRIMINAL THREATENING

- (a) A person shall not by words or conduct knowingly:
- (1) threaten another person or a group of particular persons; and
 - (2) as a result of the threat, place the other person in reasonable apprehension of death, serious bodily injury, or sexual assault to the other person, a person in the group of particular persons, or any other person.
- (b) A person who violates subsection (a) of this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.
- (c) A person who violates subsection (a) of this section with the intent to prevent another person from reporting to the Department for Children and Families the suspected abuse or neglect of a child shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

- (d) A person who violates subsection (a) of this section by making a threat that places any person in reasonable apprehension that death, serious bodily injury, or sexual assault will occur at a public or private school; postsecondary education institution; place of worship; polling place during election activities; the Vermont State House; or any federal, State, or municipal building shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.
- (e) A person who violates subsection (a) of this section with the intent to terrify, intimidate, or unlawfully influence a person to prevent that person from complying with State laws or rules, State court or administrative orders, or State executive orders shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.
- (f) A person who violates subsection (a) of this section with the intent to terrify, intimidate, or unlawfully influence the conduct of a candidate for public office, a public servant, an election official, or a public employee in any decision, opinion, recommendation, vote, or other exercise of discretion taken in capacity as a candidate for public office, a public servant, an election official, or a public employee, or with the intent to retaliate against a candidate for public office, a public servant, an election official, or a public employee for any previous action taken in capacity as a candidate for public office, a public servant, an election official, or a public employee, shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.
- (g) As used in this section:
- (1) “Serious bodily injury” has the same meaning as in [section 1021](#) of this title.
 - (2) “Threat” and “threaten” do not include constitutionally protected activity.
 - (3) “Candidate” has the same meaning as in [17 V.S.A. § 2103](#).
 - (4) “Election official” has the same meaning as in [17 V.S.A. § 2455](#).
 - (5) “Public employee” means a classified employee within the Legislative, Executive, or Judicial Branch of the State and any of its political subdivisions and any employee within a county or local government and any of the county's or local government's political subdivisions.
 - (6) “Public servant” has the same meaning as in [17 V.S.A. § 2103](#).
 - (7) “Polling place” has the same meaning as described in 17 V.S.A. chapter 51, subchapter 4.
 - (8) “Sexual assault” has the same meaning as sexual assault as described in [section 3252](#) of this title.
- (h) Any person charged under this section who is younger than the age identified in [33 V.S.A. § 5201\(d\)](#) shall be subject to a juvenile proceeding.

Relevant Case Law

***State v. Hinchliffe*, 987 A.2d 988 (Vt. 2009)**

Defendant was convicted of stalking his ex-wife and appealed. On appeal, the defendant argued that the trial court erred in admitting evidence of a previous domestic violence assault conviction with a different victim, and that there was insufficient evidence to prove that his actions would cause a reasonable person to be fearful or suffer substantial emotional distress. The stalking charge was based on the defendant frequently calling and leaving messages on the victim's cell phone, work phone, and home phone, sending text messages and emails twelve to fifteen times in a week, and showing up at the victim's residence unannounced on multiple occasions. The victim testified that the defendant had not threatened her but she was afraid of him because she previously saw the defendant's ex-girlfriend with injuries after the defendant beat her.

The Supreme Court of Vermont held that defendant's repeated phone calls met the requirement of a pattern of conduct. The Supreme Court explained: "if a defendant's conduct taken in its totality is threatening by body language, by tone of voice and other evidence of threatening behavior on the part of an individual, then that is sufficient under the statute." Further, the Supreme Court held that the trial court did not err in admitting testimony of the defendant's previous assault on another victim because it was relevant to whether a reasonable person in the victim's circumstances would fear bodily injury. Although the statute requires the jury to view defendant's conduct from the perspective of a reasonable person, the victim's knowledge of defendant's violence is relevant to the question of whether defendant's actions would have caused a reasonable person to fear bodily injury.

***In re Hoch*, 82 A.3d 1167 (Vt. 2013)**

Defendant sought post-conviction relief for his aggravated stalking conviction arguing, *inter alia*, that there was no factual basis for the trial court to accept his guilty plea because any fear that the victim felt as the result of his conduct was not contemporaneous with the conduct. The Superior Court vacated the aggravating stalking conviction finding that there was no factual basis to support the charge. The state appealed. The Supreme Court of Vermont found that there was a factual basis to support the charge and to support the defendant's guilty plea. In this case, the victim stated that when she learned that her father had caught a man peeping through her bedroom window, she was afraid to sleep in her room, she feared being home alone, she was still nervous about it, and she had changed some behaviors as a result of her fears. Even though the victim only became fearful after learning that the defendant had been caught, the victim's fear did not have to be contemporaneous with the course of conduct. The Supreme Court relied on a holding in *People v. Norman*, 89 Cal. Rptr. 2d 806 (Cal. Ct. App. 1999) which stated that since stalking could occur by way of e-mail, a victim's fear would not be contemporaneous upon the conduct of writing and sending the email but rather on the act of the victim reading the e-mail, may occur hours or days or weeks after the email was made.

***State v. Noll*, 199 A.3d 1054 (Vt. 2018)**

Defendant was convicted of stalking and appealed arguing, *inter alia*, that the stalking statute was facially unconstitutional under the First Amendment and that there was insufficient evidence to support his conviction. The Supreme Court of Vermont affirmed the conviction, holding that the

stalking statute was facially valid because it included within the definition of stalking only constitutionally unprotected threatening speech. The Court went on to state that “in suggesting that the statute criminalized speech solely on the basis that it would cause a reasonable person substantial emotional distress, defendant fails to consider the statute as a whole, including the definitions of conduct that could trigger the statute’s application.” Further, the Supreme Court held that was sufficient evidence to support the stalking conviction. At trial, the victim testified that on separate occasions between 2008 and 2015 the defendant emailed and berated her for not being his date at a wedding, followed her home, called her with an anonymous number asking why she deleted him on social media, followed her to her place of work, yelled at her in front of her supervisor, posted critical comments on her art website, and published a book with a chapter solely dedicated to the her. A trier of fact could find that, in the context of defendant’s overall course of conduct as well as the specific context of the book he disseminated, would cause a reasonable person to fear unlawful violence.

***Beatty v. Keough*, 2022 VT 41, 287 A.3d 54 (Vt. 2022)**

The parties had a confrontation at work and the petitioner filed for a Stalking Protection Order (SPO) based on that incidence. The SPO was entered, but respondent appealed the decision on the basis that the evidence did not support there was a course of conduct. The Supreme Court found that there was no intervening event between the alleged acts and the evidence was insufficient to support a showing of a course of conduct.

***Morton v. Young*, 2023 VT 29 (Vt. May 19, 2023)**

Plaintiff filed for a Stalking Protective Order (SPO) after Respondent made several posts on Tik Tok. One of the posts made indicated that the Respondent was prepared to physically harm the Petitioner, the other posts indicated that the Respondent might share a picture that would be embarrassing to the Petitioner. The Petitioner appealed after the trial court denied issuance of the SPO. The Supreme Court affirmed the lower court’s determination that the behavior was insufficient to find that stalking had occurred because only one communication threatened physical harm.

Stalking, Harassment, & Related Offenses: Virginia

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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VIRGINIA

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>Course of conduct means “on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member. Va. Code § 18.2-60.3 (A); <i>See also Woolfolk v. Commonwealth</i>, 447 S.E.2d 530, 533 (Va. Ct. App. 1994) (“From these facts and circumstances, the jury could properly find that appellant, on more than one occasion and with no legitimate purpose, engaged in conduct intended to cause his ex-wife to suffer the specific emotional distress generated by placing her in reasonable fear of death or bodily injury.”).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threat is not required for stalking but can be used to determine a course of conduct. Va. Code § 19.2-152.7:1.</p> <p>The act of stalking in itself is considered an act of violence, force, or threat. <i>Parker v. Commonwealth</i>, 485 S.E.2d 150, 155 (Va. Ct. App. 1997) (“The statute’s purpose is legitimate: to protect innocent citizens from intentional or knowingly threatening <i>conduct</i> that subjects them to a reasonable fear of physical harm.”); <i>Stephens v. Rose</i>, 762 S.E.2d 758, 761 (Va. 2014) (Physical harm or threatened physical harm to a victim is not a necessary prerequisite to the granting of a protective order under Code § 19.2–152.10, because Code §§ 19.2–152.7:1 and –152.9(D) provide that such an order may be premised upon other acts, “includ[ing], but ... not limited to ... stalking.”).</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 intend to engage in a course of conduct with the intent to place victim in fear or when they know or reasonably should know that their conduct would place the victim in fear. Va. Code § 18.2-60.3(A); <i>Peters v. Commonwealth</i>, No. 1888-15-1, 2016 WL 6693949, at *2 (Va. Ct. App. Nov. 15, 2016) (“The mens rea element is satisfied if the evidence shows the defendant should have known his conduct would cause fear.”); <i>Parker v. Commonwealth</i>, 485 S.E.2d 150, 154 (Va. Ct. App. 1997) (“Citizens know that they are subject to prosecution for causing reasonable fear in others only if they intended their conduct to have this effect or know that it will have that effect.”).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes, the statute explicitly includes actions toward family or household members. Va. Code § 16.1-228 (A)(C); Va. Code § 16.1-228 (definition of family or household member).</p> <p>However, case law expands this, and in one case includes actions towards the victim’s guests. <i>Woolfolk v. Commonwealth</i>, 447 S.E.2d 530 (Va. Ct. App. 1994) (Defendant following the victim’s guests, calling the victim’s boyfriend and threatening him, and removing the air from the victim’s boyfriend’s car tires were included in the analysis that defendant engaged in a course of conduct); <i>Stephens v. Rose</i>, 762 S.E.2d 758 (Va. 2014) (Defendant visiting victim’s parent’s home in Ohio in efforts to locate victim was included in analysis that defendant engaged in course of conduct).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear of death, criminal sexual assault, or bodily injury to oneself or a family or household member. Va. Code § 18.2-60.3(A).</p>
<p>Does fear include emotional distress?</p>	<p>No, the emotional distress element was deleted when the statute was amended in 1995. S.B. 1056, 1995 Reg. Sess. (Va. 1995).</p>

<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. Va. Code Ann. § 18.2-60.3 (A); <i>Stephens v. Rose</i>, 762 S.E.2d 758, 762 (Va. 2014) (“The third element of stalking requires that the defendant’s conduct cause the victim to experience reasonable fear of death, criminal sexual assault, or bodily injury. The standard is an objective one.”); <i>Parker v. Commonwealth</i>, 485 S.E.2d 150, 153 (Va. Ct. App. 1997) (“By qualifying the word fear with the word ‘reasonable,’ the General Assembly intended to limit the reach of Code § 18.2–60.3 to conduct that would render an ordinary, reasonable person in the victim's circumstances in fear for his or her physical well-being.”).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>Peters v. Commonwealth</i>, No. 1888-15-1, 2016 WL 6693949, at *2 (Va. Ct. App. Nov. 15, 2016) (The victim already obtained a protective order against the defendant and he knew that the victim was afraid of him and did not want him to have contact with her).</p> <p><i>Parker v. Commonwealth</i>, 485 S.E.2d 150, 154 (Va. Ct. App. 1997) (“The evidence proved that appellant engaged in frenzied sprees of phone calls that he knew would cause the victim to worry for her safety upon his pending release from jail. He was aware of his past abusive relationship with the victim and the fact that he had previously been convicted for placing her in reasonable fear of bodily harm.”).</p> <p><i>Banks v. Commonwealth</i>, 795 S.E.2d 908 (Va. Ct. App. 2017) (Evidence was sufficient to support a finding that defendant’s conduct caused victim to experience reasonable fear of death where defendant contacted victim numerous times against her wishes, wrote her letters averring he wanted to marry her and where the unsolicited calls and letters only stopped after victim moved out of state, and</p>

	that after victim moved back, the unsolicited contacts resumed, with defendant becoming more insistent, making victim feel intimidated and scared).
Must the victim tell the defendant to stop in order to constitute stalking?	No, but if the contact or conduct continues after the victim tells the offender that the contact/conduct is unwelcome, this can be used as prima facie evidence that offender knew or should have known that conduct would cause reasonable fear. Va. Code § 18.2-60.3 (A).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Maybe. The statutory law is silent and there is only one case that may address this issue. <i>Schoenberger v. Commonwealth</i> , No. 0156-04-4, 2005 WL 41414, at *2 (Va. Ct. App. Jan. 11, 2005) (Defendant went to victim’s apartment complex in Alexandria, after having paid another person to locate her, and was observed by her looking in the apartment building’s windows).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	The stalking statute explicitly includes technology facilitated stalking “through any other means, including by mail, telephone, or an electronically transmitted communication.” Va. Code Ann. § 18.2-60.3 (A). <i>Parker v. Commonwealth</i> , 485 S.E.2d 150, 154 (Va. Ct. App. 1997)(Defendant convicted of stalking where only course of conduct was based on repeated phone calls from jail). Other statutes criminalize similar conduct such as unauthorized use of an electronic tracking device, threatening through via public airways, causing phone to ring with the intent to annoy, and harassment via computer. Va. Code §§ 18.2-60.5, 18.2-427, 18.2-429, 18.2-152.7:1.
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?)	There is no residency requirement. A person may be prosecuted of stalking even if some of the conduct occurs outside of the jurisdiction and this conduct may be is admissible if relevant. Va. Code § 18.2-60.3(C).

Any unique provisions, elements, or requirements?	No.
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)	Stalking is a Class 6 felony under Va. Code § 18.2-60.3(B) and a Class 1 misdemeanor under Va. Code § 18.2-60.3(A).
What aggravating circumstances elevate the gradation of a stalking offense?	Stalking increases from a Class 1 misdemeanor to a Class 6 felony if the offender is convicted of a section stalking offense (or substantially similar offense in another jurisdiction) within 5 years. Va. Code § 18.2-60.3(B)

Statutes

VA. CODE ANN. § 18.2-60.3 (WEST 2023). STALKING; PENALTY

- A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct, either in person or through any other means, including by mail, telephone, or an electronically transmitted communication, directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor. If the person contacts or follows or attempts to contact or follow the person at whom the conduct is directed after being given actual notice that the person does not want to be contacted or followed, such actions shall be prima facie evidence that the person intended to place that other person, or reasonably should have known that the other person was placed, in reasonable fear of death, criminal sexual assault, or bodily injury to himself or a family or household member.
- B. Any person who is convicted of a second offense of subsection A occurring within five years of a prior conviction of such an offense under this section or for a substantially similar offense under the law of any other jurisdiction is guilty of a Class 6 felony.
- C. A person may be convicted under this section in any jurisdiction within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried or in the jurisdiction where the person at whom the conduct was directed is a resident at the time of such conduct. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section.

- D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.
- E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least 15 days prior to release of a person sentenced to a term of incarceration of more than 30 days or, if the person was sentenced to a term of incarceration of at least 48 hours but no more than 30 days, 24 hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, “release” includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

- F. For purposes of this section:

“Family or household member” has the same meaning as provided in § 16.1-228.

VA. CODE ANN. § 18.2-60.4 (WEST 2023). VIOLATION OF PROTECTIVE ORDERS; PENALTY

- A. Any person who violates any provision of a protective order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. The punishment for any person convicted of a second offense of violating a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, when the offense is committed within 20 years of the

first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence, is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

- B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, other than a protective order issued pursuant to subsection C of § 19.2-152.10, is guilty of a Class 6 felony.
- C. If the respondent commits an assault and battery upon any party protected by the protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.
- D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.
- E. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction.
- F. A violation of this section may be prosecuted in the jurisdiction where the protective order was issued or in any county or city where any act constituting the violation of the protective order occurred.

VA. CODE ANN. § 18.2-60.5 (WEST 2023). UNAUTHORIZED USE OF ELECTRONIC TRACKING DEVICE; PENALTY

- A. Any person who installs or places an electronic tracking device through intentionally deceptive means and without consent, or causes an electronic tracking device to be installed or placed through intentionally deceptive means and without consent, and uses such device to track the location of any person is guilty of a Class 1 misdemeanor.
- B. The provisions of this section shall not apply to the installation, placement, or use of an electronic tracking device by:

1. A law-enforcement officer, judicial officer, probation or parole officer, or employee of the Department of Corrections when any such person is engaged in the lawful performance of official duties and in accordance with other state or federal law;
2. The parent or legal guardian of a minor when tracking (i) the minor or (ii) any person authorized by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the person's sole care;
3. A legally authorized representative of an a vulnerable adult, as defined in § 18.2-369;
4. The owner of fleet vehicles, when tracking such vehicles;
5. An electronic communications provider to the extent that such installation, placement, or use is disclosed in the provider's terms of use, privacy policy, or similar document made available to the customer; or
6. A registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and is acting in the normal course of his business and with the consent of the owner of the property upon which the electronic tracking device is installed and placed. However, such exception shall not apply if the private investigator is working on behalf of a client who is subject to a protective order under § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10 or subsection B of § 20-103, or if the private investigator knows or should reasonably know that the client seeks the private investigator's services to aid in the commission of a crime.

C. For the purposes of this section:

“Electronic tracking device” means an electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

“Fleet vehicle” means (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale by motor vehicle dealers.

VA. CODE ANN. § 18.2-427 (WEST 2023). USE OF PROFANE, THREATENING OR INDECENT LANGUAGE OVER PUBLIC AIRWAYS OR BY OTHER METHODS

Any person who uses obscene, vulgar, profane, lewd, lascivious, or indecent language, or makes any suggestion or proposal of an obscene nature, or threatens any illegal or immoral act with the intent to coerce, intimidate, or harass any person, over any telephone or citizens band radio, in this Commonwealth, is guilty of a Class 1 misdemeanor.

“Over any telephone” includes, for purposes of this section, any electronically transmitted communication producing a visual or electronic message that is received or transmitted by cellular telephone or other wireless telecommunications device.

VA. CODE ANN. § 18.2-429 (WEST 2023). CAUSING TELEPHONE OR PAGER TO RING WITH INTENT TO ANNOY

- A. Any person who, with or without intent to communicate but with intent to annoy any other person, causes any telephone or digital pager, not his own, to ring or to otherwise signal, and any person who permits or condones the use of any telephone under his control for such purpose, is guilty of a Class 3 misdemeanor. A second or subsequent conviction under this subsection is punishable as a Class 2 misdemeanor if such prior conviction occurred before the date of the offense charged.
- B. Any person who, with or without intent to converse, but with intent to annoy, harass, hinder or delay emergency personnel in the performance of their duties as such, causes a telephone to ring, which is owned or leased for the purpose of receiving emergency calls by a public or private entity providing fire, police or emergency medical services, and any person who knowingly permits the use of a telephone under his control for such purpose, is guilty of a Class 1 misdemeanor.

VA. CODE ANN. § 18.2-152.7:1 (WEST 2023). HARASSMENT BY COMPUTER; PENALTY

If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he is guilty of a Class 1 misdemeanor.

VA. CODE ANN. § 19.2-152.7:1 (WEST 2023). DEFINITIONS

As used in this chapter:

“Act of violence, force, or threat” means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

Relevant Case Law

***Parker v. Commonwealth*, 485 S.E.2d 150 (Va. Ct. App. 1997)**

Defendant was convicted of stalking and appealed, arguing that the statute is vague as applied to him because, as an incarcerated citizen who had no opportunity to harm the victim, he could not possibly have known that his conduct would subject him to prosecution. Evidence presented at trial proved that the defendant engaged in frenzied sprees of phone calls that he knew would cause the victim to worry for her safety upon his pending release from jail. Further, he was aware of his past abusive relationship with the victim and the fact that he had previously been convicted for placing her in reasonable fear of bodily harm. The defendant acknowledged that he was causing the victim to experience fear when he said, "Don't be afraid." The Court of Appeals affirmed the conviction finding that the trial court had a factual basis to conclude that the defendant knew that his continued barrage of phone calls would be interpreted by the victim as indicative of an impending physical threat.

***Stephens v. Rose*, 762 S.E.2d 758 (Va. 2014)**

Petitioner, who was the respondent's ex-girlfriend, received an order of protection against respondent. Respondent appealed, arguing there was insufficient evidence that he engaged in stalking and that the petitioner failed to show that he directed an act of violence, force, or threat toward her. The Supreme Court found that there was sufficient evidence to support the issuance of the protective order when, over a period of several years, the respondent persistently tried to contact the petitioner online through social media and email, went to her parent's home out of state to inquire of her whereabouts, called her at home, called her workplace, sent her flowers at work, and visited her home. The Supreme Court reiterated that the petitioner need not specify exactly what type of harm is feared in order to satisfy the third element of stalking and that the respondent could have known that his contact was unwelcome based on the petitioner's failure to respond as well as her request soon after they stopped dating that he stop calling her.

***Peters v. Commonwealth*, No. 1888-15-1, 2016 WL 6693949 (Va. Ct. App. Nov. 15, 2016)**

The defendant appealed his conviction of two counts of violating a protective order and violating conditions of his release for previous convictions, arguing that there was insufficient evidence to support his convictions. The evidence at trial showed that after the victim ended her relationship with the defendant, she began receiving numerous anonymous text messages, phone calls, and e-mails. The victim's son, mother, and best friend also received insulting text messages. Further, the defendant followed the victim as she took walks in her neighborhood. The victim received a protective order, which the defendant violated. Upon release from jail, the victim again began receiving anonymous text messages and the defendant began following the victim as she drove to work.

The Court of Appeals analyzed the stalking statute, noting that stalking has three elements: (1) the defendant directed his or her conduct toward the victim on at least two occasions; (2) the defendant intended to cause fear or knew or should have known that his or her conduct would cause fear; and (3) the defendant's conduct caused the victim to experience reasonable fear of death, criminal sexual assault, or bodily injury. The Court of Appeals affirmed the convictions finding that the

defendant violated the protective order by engaging in acts of stalking. The acts of stalking were proven by evidence that upon release from jail the defendant resumed his conduct of calling and following the victim, that the defendant directed his conduct at the victim, and the conduct caused the victim to be fearful.

***Banks v. Commonwealth*, 795 S.E.2d 908 (Va. Ct. App. 2017)**

Defendant was convicted of stalking based on conduct for over 24 years and across multiple states. The defendant appealed, arguing that the court erred by allowing admission of evidence past conduct that was prohibited by the statute of limitations. The Court of Appeals noted that the statute of limitations begins to run when the crime is *complete*. Otherwise, defendants would be protected from conviction so long as each contact with a victim occurred 365 days after the previous contact. “An interpretation that would lead to an absurd result such as this cannot be a correct interpretation.”

Stalking, Harassment, & Related Offenses: Washington

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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WASHINGTON

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of “course of conduct.” Wash. Rev. Code § 9A.46.110(b).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>Threat is not required for stalking unless stalking is by harassment. Threat under the harassment statute is a threat to cause bodily injury immediately or in the future to another person, threat to cause physical damage to another person's property, or a threat to subject another person to physical confinement or restraint. Wash. Rev. Code §§ 9A.46.110 (1), 10.14.020 (2).</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>Offender must intend to frighten, harass, or intimidate OR, even if the offender did not intend to frighten, harass, or intimidate, the offender must know or reasonably should have known that the victim was afraid, harassed, or intimidated. Wash. Rev. Code § 9A.46.110 (1)(a), (c)(i)(ii).</p> <p>If stalking is based on following, the offender must intend to follow. Wash. Rev. Code § 9A.46.110 (1)(a); <i>State v. Lee</i>, 917 P.2d 159 (Wash. Ct. App. 1996) (The statute can only be enforced upon a showing that the defendant’s following behavior was intentional, and that it provoked a reasonable sense of fear).</p>
Do offender actions toward persons other than the victim help establish course of conduct?	<p>Yes. Stalking via harassment includes a course of conduct by “any other form of communication.” Wash. Rev. Code § 10.14.020 (1).</p> <p>Further, stalking can include following that causes “fear that the stalker intends to injure the person,</p>

	<p>another person, or property of the person or of another person.” Wash. Rev. Code § 9A.46.110 (1)(b).</p> <p>Case law expands this as well. <i>State v. Becklin</i>, 182 P.3d 944, 948 (Wash. 2008) (“The legislature has indicated that it intended a broad definition of the type of conduct that could constitute stalking or harassment... <i>It is not the intent of the legislature, by adoption of this act, to restrict in any way the types of conduct or actions that can constitute harassment or stalking.</i>”) (emphasis added); <i>State v. Heutink</i>, 466 P.3d 775 (Wash Ct. App. 2020) (Evidence was sufficient to support stalking conviction where defendant sent victim messages through other people, made threats to the victim’s attorney and her pastor, and mailed multiple letters to the victim’s parent’s home).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Fear of injury to the person, injury to another person, or injury to the person’s or another person’s property. Wash. Rev. Code § 9A.46.110 (1)(b).</p> <p>Under stalking by harassment, the victim must suffer substantial emotional distress or fear the well-being of their child. Wash. Rev. Code §§ 9A.46.110 (1)(c), 10.14.020(2).</p>
<p>Does fear include emotional distress?</p>	<p>Yes, under stalking by harassment. Wash. Rev. Code §§ 9A.46.110 (1)(c), 10.14.020(2); <i>See also State v. Askham</i>, 86 P.3d 1224,1229 (Wash. Ct. App. 2004) (“Additional elements are required, then, when the alleged stalking conduct is harassment. The State must also prove: A course of conduct such as would cause a reasonable person to suffer substantial emotional distress, and Actual substantial emotional distress on the part of the victim.”).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. Wash. Rev. Code § 9A.46.110 (1)(b).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (Look to case law)</p>	<p>What constitutes reasonable fear is case specific and depends on the totality of the circumstances.</p>

	<p><i>State v. Lee</i>, 917 P.2d 159, 163 (Wash. Ct. App. 1996) (“The determination of whether Gross' fear was reasonable was one for the finder of fact in light of “all the circumstances”, including Lee's staring behavior, his repeated references in the notes to Gross' need for protection, and testimony that Lee's mother had warned Gross to avoid Lee and not to trust him. On this record the trial court's conclusion that Gross' fear was reasonable will not be disturbed.”).</p> <p><i>State v. Askham</i>, 86 P.3d 1224, 1229–30 (Wash. Ct. App. 2004) (Defendant sent emails accusing victim of visiting pornography sites and racist websites on a state computer. Defendant also sent emails and placed on website two manufactured images of the victim’s face electronically pasted onto a picture of a man receiving oral sex from a young male. Court found that victim experienced substantial emotional distress and the course of conduct would have caused substantial emotional distress to a reasonable person).</p> <p><i>State v. Ainslie</i>, 11 P.3d 318, 321 (Wash. Ct. App. 2000) (An unknown man repeatedly parked within sight of a 14–year–old girl. While she was walking alone, the girl witnessed the man exit and stand near his car. And even after this man was chased by the girl's father, he continued to park in the same place near her home. These facts are sufficient to elicit fear that is objectively reasonable).</p>
<p>Must the victim tell the defendant to stop in order to constitute stalking?</p>	<p>No, but prima facie evidence that the offender intended to intimidate/harass the victim can be proven when the offender continues to contact/follow the victim after the victim gives actual notice that such conduct is not wanted. Wash. Rev. Code § 9A.46.110(2)(a),(4).</p>
<p>Is stalking by proxy included? (i.e., getting a third person to stalk the victim)</p>	<p>Yes. Wash. Rev. Code § 10.14.020(1); <i>See also State v. Becklin</i>, 182 P.3d 944, 947 (Wash. 2008) (“Stalking can include the direction or manipulation of third parties, directing others to follow or otherwise harass a victim can be a ‘form of communication, contact, or conduct’ that amounts to harassment contemplated under the stalking statute.”).</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 can be prosecuted under the regular stalking statute if stalking by harassment where course of conduct includes “includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication.” Wash. Rev. Code § 10.14.020(1); See also <i>State v. Becklin</i>, 182 P.3d 944, 948 (Wash. 2008) (“the legislature has indicated that it intended a broad definition of the type of conduct that could constitute stalking or harassment. When it added electronic communications to the types of communications, contact, or conduct that could be considered stalking or harassment, it included the following statement of intent: It is the intent of this act to clarify that electronic communications are included in the types of conduct and actions that can constitute the crimes of harassment and stalking.”).</p> <p>There is also a separate cyberstalking statute. Wash. Rev. Code § 9.61.260.</p> <p>Other statutes criminalize similar conduct such as telephone harassment. Wash. Rev. Code § 9.61.230.</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>There is no residency requirement and conduct that occurs outside of the jurisdiction but affects a victim inside the jurisdiction can be prosecuted. Wash. Rev. Code §§ 9A.04.030 (1)(5), 9A.46.030.</p>
<p>Any unique provisions, elements, or requirements?</p>	<p>No.</p>
<p>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)</p>	<p>Stalking is a class B felony under Wash. Rev. Code § 9A.46.110 (5)(b) and a gross misdemeanor under Wash. Rev. Code § 9A.46.110 (5)(a).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a class B felony if the offender:</p> <ul style="list-style-type: none"> - Has previously been convicted in any jurisdiction of any crime of harassment with the same victim, the same victim’s family, or anyone named in a protective order;

	<ul style="list-style-type: none"> - Violates a protective order by stalking the protected person; - Has previously been convicted of a gross misdemeanor/felony stalking offense for stalking another person; - Was armed with a deadly weapon; - Stalks a victim who works for a specific government agency and the stalking was an act of retaliation for an act conducted while the victim was performing a duty; or - Stalks a victim who is a prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony <p>Wash. Rev. Code § 9A.46.110 (5)(b).</p>
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Statutes

WASH. REV. CODE ANN. § 9A.46.055 (WEST 2023). COURT-INITIATED STALKING NO-CONTACT ORDERS

- (1) (a) When any person charged with or arrested for stalking as defined in RCW 9A.46.110 or any other stalking-related offense under RCW 9A.46.060 is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, and the victim does not qualify for a domestic violence protection order under chapter 7.105 RCW, the court authorizing release may issue, by telephone, a stalking no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.
- (b) In issuing the order, the court shall consider the provisions of RCW 9.41.800.
- (c) The stalking no-contact order shall also be issued in writing as soon as possible.
- (2) (a) At the time of arraignment or whenever a motion is brought to modify the conditions of the defendant's release, the court shall determine whether a stalking no-contact order shall be issued or extended. If a stalking no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring, including real-time global positioning system monitoring with victim notification. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring

services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring, including costs relating to real-time global positioning system monitoring with victim notification.

- (b) A stalking no-contact order issued by the court in conjunction with criminal charges shall terminate if the defendant is acquitted or the charges are dismissed, unless the victim files an independent action for a stalking protection order. If the victim files an independent action for a civil stalking protection order, the order may be continued by the court until a full hearing is conducted pursuant to chapter 7.105 RCW.
- (3) (a) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 7.105 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."
- (b) A certified copy of the order shall be provided to the victim at no charge.
- (4) If a stalking no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed.
- (5) Whenever an order prohibiting contact is issued pursuant to subsection (2) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year unless a different expiration date is specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.
- (6) (a) When a defendant is found guilty of stalking as defined in RCW 9A.46.110 or any other stalking-related offense under RCW 9A.46.060 and a condition of the sentence restricts the defendant's ability to have contact with the victim, and the victim does not qualify for a domestic violence protection order under chapter 7.105 RCW, the condition shall be recorded as a stalking no-contact order.
- (b) The written order entered as a condition of sentencing shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 7.105 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A final stalking no-contact order entered in conjunction with a criminal prosecution shall remain in effect for a period of five years from the date of entry.

(d) A certified copy of the order shall be provided to the victim at no charge.

(7) A knowing violation of a court order issued under subsection (1), (2), or (6) of this section is punishable under RCW 7.105.450.

(8) Whenever a stalking no-contact order is issued, modified, or terminated under subsection (1), (2), or (6) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year unless a different expiration date is specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (2) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

WASH. REV. CODE ANN. § 9A.46.020 (WEST 2023). DEFINITION – PENALTIES

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. “Words or conduct” includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2) (a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

- (b) A person who harasses another is guilty of a class C felony if any of the following apply:
- (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order;
 - (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person;
 - (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or
 - (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties.

For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat.

- (3) Any criminal justice participant who is a target for threats or harassment prohibited under subsection (2)(b)(iii) or (iv) of this section, and any family members residing with him or her, shall be eligible for the address confidentiality program created under RCW 40.24.030.
- (4) For purposes of this section, a criminal justice participant includes any
- (a) federal, state, or local law enforcement agency employee;
 - (b) federal, state, or local prosecuting attorney or deputy prosecuting attorney;
 - (c) staff member of any adult corrections institution or local adult detention facility;
 - (d) staff member of any juvenile corrections institution or local juvenile detention facility;
 - (e) community corrections officer, probation, or parole officer;
 - (f) member of the indeterminate sentence review board;
 - (g) advocate from a crime victim/witness program; or
 - (h) defense attorney.

- (5) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

WASH. REV. CODE ANN. § 9A.46.040 (WEST 2023). COURT-ORDERED REQUIREMENTS UPON PERSON CHARGED WITH CRIME--VIOLATION

- (1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may issue an order pursuant to this chapter and require that the defendant:
- (a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;
 - (b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.
- (2) Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under this chapter. A certified copy of the order shall be provided to the victim by the clerk of the court.
- (3) If the defendant is charged with the crime of stalking or any other stalking-related offense under RCW 9A.46.060, and the court issues an order protecting the victim, the court shall issue a stalking no-contact order pursuant to RCW 9A.46.055.

WASH. REV. CODE ANN. § 9A.46.080 (WEST 2023). ORDER RESTRICTING CONTACT--VIOLATION

The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest.

WASH. REV. CODE ANN. § 9A.46.110 (WEST 2023). STALKING

- (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
 - (a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and
 - (b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
 - (c) The stalker either:
 - (i) Intends to frighten, intimidate, or harass the person; or
 - (ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.
- (2) (a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and
- (b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.
- (3) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.
- (4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.
- (5) (a) Except as provided in (b) of this subsection, a person who stalks another person is guilty of a gross misdemeanor.
- (b) A person who stalks another is guilty of a class B felony if any of the following applies:
 - (i) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order;
 - (ii) the stalking violates any protective order protecting the person being stalked;

- (iii) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person;
- (iv) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.825, while stalking the person;
- (v) (A) the stalker's victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community corrections' officer; an employee, contract staff person, or volunteer of a correctional agency; court employee, court clerk, or courthouse facilitator; or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and

(B) the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or
- (vi) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

- (a) "Correctional agency" means a person working for the department of natural resources in a correctional setting or any state, county, or municipally operated agency with the authority to direct the release of a person serving a sentence or term of confinement and includes but is not limited to the department of corrections, the indeterminate sentence review board, and the department of social and health services.
- (b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."
- (c) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.
- (d) "Harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause

substantial emotional distress to the petitioner, or when the course of conduct would cause a reasonable parent to fear for the well-being of his or her child.

- (e) “Protective order” means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.
- (f) “Repeatedly” means on two or more separate occasions.

WASH. REV. CODE ANN. § 9A.90.130 (WEST 2023). CYBERSTALKING

- (1) A person commits the crime of cyberstalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
 - (a) The person knowingly and without consent:
 - (i) Installs or monitors an electronic tracking device with the intent to track the location of another person; or
 - (ii) Causes an electronic tracking device to be installed, placed, or used with the intent to track the location of another person; and
 - (b) (i) The person knows or reasonably should know that knowledge of the installation or monitoring of the tracking device would cause the other person reasonable fear;
 - (ii) The person has notice that the other person does not want to be contacted or monitored by him or her; or
 - (iii) The other person has a protective order in effect protecting him or her from the person.
- (2) (a) It is not a defense to the crime of cyberstalking that the person was not given actual notice that the other person did not want the person to contact or monitor him or her; and
- (b) It is not a defense to the crime of cyberstalking that the person did not intend to frighten, intimidate, or harass the other person.
- (3) (a) Except as provided in (b) of this subsection, a person who cyberstalks another person is guilty of a gross misdemeanor.
- (b) A person who cyberstalks another person is guilty of a class C felony if any of the following applies:

- (i) The person has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order;
 - (ii) There is a protective order in effect protecting the victim from contact with the person;
 - (iii) The person has previously been convicted of a gross misdemeanor or felony stalking offense for stalking another person;
 - (iv) The person has previously been convicted of a gross misdemeanor or felony cyberstalking offense for cyberstalking another person;
 - (v) (A) The victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community corrections officer; employee, contract staff person, or volunteer of a correctional agency; court employee, court clerk, or courthouse facilitator; or employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and

(B) The person cyberstalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or
 - (vi) The victim is a current, former, or prospective witness in an adjudicative proceeding, and the person cyberstalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.
- (4) The provisions of this section do not apply to the installation, placement, or use of an electronic tracking device by any of the following:
- (a) A law enforcement officer, judicial officer, probation or parole officer, or other public employee when any such person is engaged in the lawful performance of official duties and in accordance with state or federal law;
 - (b) The installation, placement, or use of an electronic tracking device authorized by an order of a state or federal court;
 - (c) A legal guardian for a disabled adult or a legally authorized individual or organization designated to provide protective services to a disabled adult when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services;
 - (d) A parent or legal guardian of a minor when the electronic tracking device is installed, placed, or used to track the location of that minor unless the parent or legal guardian is subject to a

court order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor;

- (e) An employer, school, or other organization, who owns the device on which the tracking device is installed and provides the device to a person for use in connection with the person's involvement with the employer, school, or other organization and the use of the device is limited to recovering lost or stolen items; or
- (f) The owner of fleet vehicles, when tracking such vehicles. For the purposes of this section, "fleet vehicle" means any of the following:
 - (i) One or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes;
 - (ii) Motor vehicles held for lease or rental to the general public; or
 - (iii) Motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

WASH. REV. CODE ANN. § 9.61.230 (WEST 2023). TELEPHONE HARASSMENT

- (1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:
 - (a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or
 - (b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or
 - (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household;is guilty of a gross misdemeanor, except as provided in subsection (2) of this section.
- (2) The person is guilty of a class C felony punishable according to chapter 9A.20 RCW if either of the following applies:
 - (a) That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state; or

- (b) That person harasses another person under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

WASH. REV. CODE ANN. § 9.61.240 (WEST 2023). TELEPHONE HARASSMENT – PERMITTING TELEPHONE TO BE USED

Any person who knowingly permits any telephone under his or her control to be used for any purpose prohibited by RCW 9.61.230 shall be guilty of a misdemeanor.

WASH. REV. CODE ANN. § 9.61.250 (WEST 2023). TELEPHONE HARASSMENT – OFFENSE, WHERE DEEMED COMMITTED

Any offense committed by use of a telephone as set forth in RCW 9.61.230 may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received.

Relevant Case Law

***State v. Ainslie*, 11 P.3d 318 (Wash. Ct. App. 2000)**

Defendant was convicted of stalking and appealed, arguing that there was insufficient evidence that he followed the victim, that the victim's fear objectively reasonable, and that he knew or reasonably should have known that his conduct was frightening to the victim. The Court of Appeals affirmed the conviction, finding there was sufficient evidence of following, reasonable fear, and knowledge of reasonable fear. Evidence proved that the defendant regularly parked in front of the mailboxes near the victim's house and got out of his car just as the victim was walking toward him. The defendant was also seen in the victim's yard. This was sufficient to prove the defendant followed the victim. Further, an unknown man repeatedly parking within sight of a 14-year-old girl, approaching the girl while she was walking alone, and continuing to park near her home after being chased away is sufficient to elicit fear that is objectively reasonable. Lastly, the defendant knew or should have known that his conduct caused the victim fear because he continued the conduct even after he was told by the police and the victim's father that the conduct was alarming and scared the girls in the neighborhood.

***State v. Askham*, 86 P.3d 1224 (Wash. Ct. App. 2004)**

Defendant was convicted of stalking and other crimes and appealed arguing, *inter alia*, there was insufficient evidence to support his convictions. The victim in this case was the defendant's ex-girlfriend's new boyfriend who worked for a state university. The defendant sent emails to the victim's employer accusing the victim of visiting pornography sites and racist websites on a state computer. The defendant also posted on a public website two photoshopped images of the victim's

face pasted onto a picture of a man receiving oral sex from a young male. The Pullman Police Department and the university president's office were also mailed hard copies of the photoshopped images with a note: "Do you want a man like this, who is also a white supremacist [sic], working for your University?" The Court of Appeals affirmed the stalking conviction reiterating that the trial court here found the defendant guilty of stalking based on the entire course of harassing conduct. The defendant repeatedly and intentionally harassed the victim, the victim was reasonably placed in fear that the person intended to injure his livelihood and reputation, the victim experienced substantial emotional distress, and the defendant's the course of conduct would have caused substantial emotional distress to a reasonable person.

***State v. Becklin*, 182 P.3d 944 (Wash. 2008)**

Defendant was convicted of stalking and appealed arguing that the trial court's response to a jury question was improper. At trial, the state presented evidence that the defendant had directed several of his friends to follow the victim and report back to him regarding her activities. During deliberations, the jury asked if stalking could be accomplished through a third party to which the trial court answered "yes." The Court of Appeals concluded that the trial court's answer to the jury's question was improper because it was an incorrect statement of the law. The state petitioned the Supreme Court for review. The Supreme Court reversed the Court of Appeals and held that the trial court's answer to the jury's question accurately communicated that stalking encompasses the act of directing others to harass a victim.

***State v. Kohonen*, 370 P.3d 16 (Wash. Ct. App. 2016)**

Juvenile was adjudicated delinquent of cyberstalking after she posted two tweets to her personal Twitter account. On appeal the defense argued that there was insufficient evidence to prove that the tweets were "true threats" made with the intent to "harass, intimidate, torment, or embarrass" another person. The Court of Appeals reversed the juvenile's conviction of cyberstalking and found that juvenile's twitter activity was not a "true threat" when nobody who saw the tweet considered it to be a true threat. "True threats are not said in jest, idle talk, or political argument and they depend on the entirety of the circumstances." Carrying out the threat is not necessary for something to be a true threat. All that matters are whether the speaker could reasonably have known that the threat would be interpreted as a serious expression of intention.

***State v. Mireles*, 482 P.3d 942 (Wash. Ct. App. 2021)**

Defendant appealed his conviction and argued the cyberstalking statute is unconstitutional because it is facially overbroad and facially invalid. The statute regulates speech in the public forum because it criminalizes "electronic communications," which includes internet-based communications made "with intent to harass, intimidate, torment, or embarrass." On review of the statute, the Court of Appeals noted that while the Supreme Court has upheld restriction on speech that harasses, intimidates, or torments, the Supreme Court has made clear that "speech does not lose its protected character ... simply because it embarrasses others." The Court struck the term "embarrass" from RCW 9.61.260 and concluded this was a sufficient limiting construction to eliminate the identified overbreadth of the statute as enacted. The Court of Appeals concluded the statute as limited was constitutional and therefore upheld the defendant's conviction.

Stalking, Harassment, & Related Offenses: West Virginia

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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WEST VIRGINIA

Summary

What constitutes a "course of conduct" / pattern of behavior?	<p>“Course of conduct” means a pattern of conduct composed of two or more acts in which a defendant directly, indirectly, or through a third party by any action, method, device, or means:</p> <ul style="list-style-type: none">- Follows, monitors, observes, surveils, or threatens a specific person or persons;- Engages in other nonconsensual contact and/or communications, including contact through electronic communication, with a specific person or persons; or- Interferes with or damages a person's property or pet <p>W. Va. Code § 61-2-9a(h)(2).</p>
What types of threats are required (credible, explicit, implicit, bodily injury?)	<p>Threat is not required but can be a part of the course of conduct. W. Va. Code § 61-2-9a (b), (h)(2)(A).</p> <p>If there is a threat, it must be a credible threat of bodily injury with the apparent ability to carry out the threat and the threat can be made by conduct. W. Va. Code § 61-2-9a(h)(3); <i>State v. Keiffer</i>, 163 S.E. 841 (W. Va. 1932) (Conduct may constitute a threat just as effectively as spoken words).</p>
What is the required intent of the offender? (i.e., does the offender have to intend to create fear in the victim?)	<p>Offender must intend to cause the other person to fear for life or personal safety, the safety of others, or suffer emotional distress. W. Va. Code § 61-2-9a(a).</p>
Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?	<p>Yes, course of conduct includes conduct direct at a specific person <i>or persons</i> and includes fear for personal safety of others. W. Va. Code § 61-2-9a(a), (2)(A)(B), (h)(4); <i>See also State v. Malfregeot</i>, 685 S.E.2d 237, 240 (W. Va. 2009) (In reviewing whether the defendant harassed the victim, which involves defendant engaging in a course of conduct, the court considered</p>

	that the defendant stopped by the victim's lunch table three or four times per week, every week, to talk with her and the other students who were present and the defendant asked another student for the victim's personal cell phone number).
What type of victim fear is required? (for safety, of bodily injury, etc.)?	Fear for his or her personal safety, the safety of others, or to cause him or her to suffer substantial emotional distress. W. Va. Code § 61-2-9a (a),(h)(4). If stalking by credible threat, then fear of bodily injury. W. Va. Code § 61-2-9a(h)(3).
Does fear include emotional distress?	Yes. W. Va. Code § 61-2-9a (a),(h)(4).
Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?	Reasonable person standard. W. Va. Code § 61-2-9a (a),(h)(3)-(4).
If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)	What constitutes reasonable fear is case specific. <i>State v. Malfregeot</i> , 685 S.E.2d 237, 244 (W. Va. 2009) (“At trial, evidence was introduced that showed that the appellant's actions were directed specifically toward L.L., were willful, repeated, and would have caused a reasonable person mental injury or emotional distress. On several occasions, the appellant, a fifty-year-old teacher, placed his arm around L.L., a thirteen-year-old student. He also held her hand, he rubbed her shoulders, and he flipped her hair. He further displayed photographs of her in his classroom in spite of her repeated requests that they be removed. He then called her personal cell phone under false pretenses and left a message that a reasonable person could interpret as an attempt to lure L.L. to the school on a non-school day. The next day at school he showed L.L. that he had saved her phone number on his phone.”).

	<i>State v. Lewis</i> , No. 12-0830, 2013 WL 3242791 (W. Va. June 28, 2013) (The circuit court properly considered whether petitioner's conduct would cause a reasonable person mental injury or emotional distress after being warned not to associate with the victim and the victim's sensitivity in this regard).
Must the victim tell the defendant to stop in order to constitute stalking?	No. Courts have upheld stalking conviction where victim did not tell defendant to stop. <i>State v. Malfregeot</i> , 685 S.E.2d 237, 240 (W. Va. 2009) (“She said that she did not tell the appellant that his conduct made her feel uncomfortable because he was a teacher, an authority figure, and that she felt embarrassed and intimidated by the age difference between the two.”).
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Yes. The statute explicitly states “causing a third person to so act” and conduct “through a third party by any action” W. Va. Code § 61-2-9a (a), (h)(2).
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	Technology-facilitated stalking is covered by the regular statute. W. Va. Code § 61-2-9a (h)(2)(A)-(B). Other statutes criminalize similar conduct such harassment via telephone or other electronic communication. W. Va. Code §§ 61-8-16; 61-3C-14a.
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?)	There is no residency requirement and conduct that occurs outside of the jurisdiction may be prosecuted. W. Va. Code §§ 61-11-10, 61-11-11; 61-11-12.
Any unique provisions, elements, or requirements?	Yes. Stalking is prosecuted under the harassment statute and there is no specific “stalking” statute.
Gradation of crimes (list out statues in order of declining gradation and say what type of	Stalking is either a misdemeanor or a felony with a range of punishments.

<p>felony it is - felony, "wobbler" / felony under special circumstances, misdemeanor)</p>	<p>The punishment for misdemeanor stalking/harassment is a \$1,000 fine and/or up to 6 months jail.</p> <p>The punishment for misdemeanor stalking/harassment in violation of a court order is a \$2,000 to \$5,000 fine and/or 90 days to a year in jail.</p> <p>The punishment for felony stalking/harassment is a \$3,000 to \$10,000 fine and/or 1 to 5 years in prison or, if felony based on intent to cause victim to self-harm/commit suicide, punishment is 2 to 10 years in prison.</p> <p>W. Va. Code § 61-2-9a (a)-(f).</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Punishment for misdemeanor stalking/harassment increases if the conduct violated a court order.</p> <p>Stalking/harassment becomes a felony if the offender:</p> <ul style="list-style-type: none"> - Has previously been convicted of stalking/harassment; - Violated a protective order where subject in the protective order is the victim; - Harasses with the intent to cause the victim to self-harm/commit suicide or knows that such harassment is likely to lead victim to self-harm/commit suicide <p>W. Va. Code § 61-2-9a (a)-(f).</p>

Statutes

W. VA. CODE ANN. § 53-8-4 (WEST 2023). PETITION SEEKING RELIEF

(a) *Underlying acts.* -- A petitioner may seek relief under this article by filing with a magistrate court a petition that alleges the commission of any of the following acts against the petitioner by the respondent:

- (1) A sexual offense or attempted sexual offense as defined in section one of this article;

- (2) A violation of subsection (a), section nine-a, article two, chapter sixty-one of this code;¹ or
- (3) repeated credible threats of bodily injury when the person making the threats knows or has reason to know that the threats cause another person to reasonably fear for his or her safety.

(b) *Contents.* –

The petition shall:

- (1) Be verified and provide notice to the petitioner that an individual who knowingly provides false information in the petition is guilty of a misdemeanor and, on conviction, is subject to the penalties specified in subsection (d) of this section;
 - (2) Subject to the provisions of subsection (c) of this section, contain the address of the petitioner; and
 - (3) Include all information known to the petitioner of:
 - (A) The nature and extent of the act specified in subsection (a) of this section for which the relief is being sought, including information known to the petitioner concerning previous harm or injury resulting from an act specified in subsection (a) of this section by the respondent;
 - (B) Each previous and pending action between the parties in any court; and
 - (C) The whereabouts of the respondent.
- (c) *Address may be stricken.* -- If, in a proceeding under this article, a petitioner alleges, and the court finds, that the disclosure of the address of the petitioner would risk further harm to the petitioner or a member of the petitioner's household, that address may be stricken from the petition and omitted from all other documents filed with, or transferred to, a court.
- (d) *Providing false information.* -- An individual who knowingly provides false information in a petition filed under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$1,000 or confined in jail not more than ninety days, or both.
- (e) *Withdrawal or dismissal of a petition prior to adjudication operates as a dismissal without prejudice.* -- No action for a personal safety order may be dismissed because the respondent is being prosecuted for a crime against the petitioner. For any action commenced under this article, dismissal of a case or a finding of not guilty, does not require dismissal of the action for a civil protection order.

¹ Harassment/stalking statute
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- (f) *Venue.* -- The action may be heard in the county in which any underlying act occurred for which relief is sought in the petition, in the county in which the respondent is living, or in the county in which the petitioner is living, either temporarily or permanently.

W. VA. CODE ANN. § 53-8-10 (WEST 2023). STATEMENT CONCERNING VIOLATIONS

A temporary personal safety order and final personal safety order issued under this article shall state that a violation of the order may result in:

- (1) Criminal prosecution; and
- (2) Incarceration, fine or both.

W. VA. CODE ANN. § 53-8-11 (WEST 2023). PENALTIES

- (a) *Fines or incarceration.* -- An individual who fails to comply with the relief granted in a temporary personal safety order or a final personal safety order entered pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall:

- (1) For a first offense, be fined not more than \$1,000 or confined in jail not more than ninety days, or both; and
- (2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail not more than one year, or both.

- (b) *Arrest.* -- A law-enforcement officer shall arrest with or without a warrant and take into custody an individual who the officer has probable cause to believe is in violation of a temporary or final personal safety order in effect at the time of the violation.

W. VA. CODE ANN. § 61-2-9A (WEST 2023). STALKING, HARASSMENT; PENALTIES; DEFINITIONS

- (a) *Stalking.* -- Any person who engages in a course of conduct directed at another person with the intent to cause the other person to fear for his or her personal safety, the safety of others, or suffer substantial emotional distress, or causes a third person to so act, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, confined in jail for not more than six months, or both fined and confined.

- (b) *Harassment.* -- Any person who harasses or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, or fined not more than \$1,000, or both fined and confined.
- (c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court, or family court judge, in effect and entered pursuant to § 48-5-501, § 48-5-601, or § 48-27-403 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than 90 days nor more than one year, or fined not less than \$2,000 nor more than \$5,000, or both fined and confined.
- (d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section is a felony punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than \$3,000 nor more than \$10,000, or both fined and imprisoned.
- (e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect for injunctive relief pursuant to the provisions of § 48-5-608 or § 48-27-501 of this code, who has been served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, shall be guilty of a felony and, upon conviction thereof, be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not less than \$3,000 nor more than \$10,000, or both fined and imprisoned.
- (f) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect pursuant to the provisions of § 53-8-7 of this code, who has been previously served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, is guilty of a felony and, upon conviction thereof, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than \$3,000 nor more than \$10,000, or both fined and confined.
- (g) Notwithstanding any provision of this code to the contrary, any person who harasses another person with the intent to cause the person to physically injure himself or herself, or to take his or her own life, or who continues to harass another, knowing or having reason to know that the person is likely to physically injure himself or herself, or to take his or her own life based, in whole or in part, on such harassment or stalking, is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two years nor more than 10 years.
- (h) For the purposes of this section:
- (1) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition;

- (2) “Course of conduct” means a pattern of conduct composed of two or more acts in which a defendant directly, indirectly, or through a third party by any action, method, device, or means:
- (A) Follows, monitors, observes, surveils, or threatens a specific person or persons;
 - (B) Engages in other nonconsensual contact and/or communications, including contact through electronic communication, with a specific person or persons; or
 - (C) Interferes with or damages a person's property or pet;
- (3) “Credible threat” means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;
- (4) “Harasses” means a willful course of conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress and which serves no legitimate or lawful purpose;
- (5) “Immediate family” means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and
- (6) “Repeatedly” means on two or more occasions.
- (i) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended, shall have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.
- (j) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed 10 years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.
- (k) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.
- (l) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.
- (m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation with representatives of labor, licensed domestic violence programs, and rape crisis centers which

meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to § 29A-3-1 *et seq.* of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

W. VA. CODE ANN. § 61-3C-14A (WEST 2023). OBSCENE, ANONYMOUS, HARASSING, AND THREATENING COMMUNICATIONS BY COMPUTER, CELL PHONES, AND ELECTRONIC COMMUNICATION DEVICES; PENALTY

- (a) It is unlawful for any person, with the intent to harass or abuse another person, to use a computer, mobile phone, personal digital assistant or other electronic communication device to:
- (1) Make contact with another person without disclosing his or her identity with the intent to harass or abuse;
 - (2) Make contact with a person after being requested by the person to desist from contacting them: *Provided*, that a communication made by a lender or debt collector to a consumer, regarding an overdue debt of the consumer that does not violate chapter forty-six-a of this code, does not violate this subsection;
 - (3) Threaten to commit a crime against any person or property; or
 - (4) Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material.
- (b) For purposes of this section:
- (1) “Electronic communication device” means and includes a telephone, wireless phone, computer, pager or any other electronic or wireless device which is capable of transmitting a document, image, voice, e-mail or text message using such device in an electronic, digital or analog form from one person or location so it may be viewed or received by another person or persons at other locations.
 - (2) “Use of a computer, mobile phone, personal digital assistant or other electronic communication device” includes, but is not limited to, the transmission of text messages, electronic mail, photographs, videos, images or other nonvoice data by means of an electronic communication system, and includes the transmission of such data, documents, messages and images to another’s computer, e-mail account, mobile phone, personal digital assistant or other electronic communication device.
 - (3) “Obscene material” means material that:

- (A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;
 - (B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals, or sadomasochistic sexual abuse; and
 - (C) A reasonable person would find, taken as a whole, lacks literary, artistic, political or scientific value.
- (c) It is unlawful for any person to knowingly permit a computer, mobile phone or personal digital assistant or other electronic communication device under his or her control to be used for any purpose prohibited by this section.
 - (d) Any offense committed under this section may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.
 - (e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than six months, or both fined and confined. For a second or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both fined and confined.

W. VA. CODE ANN. § 61-3C-14c (WEST 2023). CYBERBULLYING OR SPECIFIC ACTS OF ELECTRONIC HARASSMENT OF MINORS; DEFINITIONS; PENALTIES; EXCEPTIONS

- (a) It is unlawful for a person to knowingly and intentionally use a computer or computer network, as defined in § 61-3C-3, to engage in conduct with the intent to harass, intimidate, or bully a minor, including, but not limited to:
 - (1) Posting, disseminating or encouraging others to post or disseminate private, personal, or sexual information pertaining to a minor on the Internet; or
 - (2) Posting obscene material, as defined in § 61-3C-14a of this code, in a real or doctored image of a minor on the Internet;
- (b) For the purposes of this section:
 - (1) “Harass, intimidate or bully” means any intentional gesture, or any intentional electronic, written, verbal, or physical act, communication, transmission or threat that:

(A) A reasonable person under the circumstances should know the act will have the effect of any one or more of the following:

(i) Physically harming a minor;

(ii) Damaging a minor's property;

(iii) Placing a minor in reasonable fear of harm to his or her person; or

(iv) Placing a minor in reasonable fear of damage to his or her property; or

(B) Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or emotionally abusive environment for a minor.

(2) "Minor" means an individual under the age of 18 years old.

(c) This section does not apply to a peaceful activity intended to:

(1) Express a political view; or

(2) Provide information to others with no intent to harass, intimidate, or bully.

(d) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail for a period not to exceed one year, or both confined and fined.

W. VA. CODE ANN. § 61-8-16 (WEST 2023). OBSCENE, ANONYMOUS, HARASSING, REPEATED AND THREATENING PHONE CALLS; PENALTY

(a) It is unlawful for any person with intent to harass or abuse another by means of telephone to:

(1) Make any comment, request, suggestion or proposal which is obscene; or

(2) Make a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number; or

(3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or

(5) Threaten to commit a crime against any person or property.

- (b) It shall be unlawful for any person to knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.
- (c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.
- (d) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500, or confined in jail not more than six months, or both fined and confined.

W. VA. CODE ANN. § 61-11-11 (WEST 2023). OFFENSE COMMITTED ON COUNTY BOUNDARY

An offense committed on the boundary of any two counties may be alleged to have been committed, and may be prosecuted and punished, in either county.

Relevant Case Law

***State v. Malfregeot*, 685 S.E.2d 237 (W. Va. 2009)**

The defendant, a teacher, was convicted of stalking/harassing a 13-year-old student. The defendant appealed, arguing there was insufficient evidence that his acts constituted “following” and “harassment.” The Supreme Court of Appeals of West Virginia upheld the conviction and concluded that the defendant’s acts of going to the victim’s locker on a daily basis, following her to the lunch room, following her to gym class, and calling her cell phone during after school hours constituted a “following.” Further, evidence supported that the defendant harassed the victim. “At trial, evidence was introduced that showed that the appellant's actions were directed specifically toward L.L., were willful, repeated, and would have caused a reasonable person mental injury or emotional distress. On several occasions, the appellant, a fifty-year-old teacher, placed his arm around L.L., a thirteen-year-old student. He also held her hand, he rubbed her shoulders, and he flipped her hair. He further displayed photographs of her in his classroom in spite of her repeated requests that they be removed.”

***T.W.J. v. L.S.A.*, No. 15-0817, 2016 WL 5846616 (W. Va. Oct. 6, 2016)**

The respondent appealed the family court’s ruling granting a protective order against him. The family court found that the petitioner’s evidence established that the defendant fired a gun, forced himself into the victim’s car where he planted drugs, threatened to burn her belongings, stalked the victim, and attempted to videotape her in compromising positions while in bed with him. These acts were against the victim’s will and caused her to be reasonably fearful for her safety. The petitioner denied these allegations and indicated that he was over 700 miles away when some of the incidents allegedly occurred. However, the family court found the victim to be more credible. The Supreme

Court of Appeals of West Virginia affirmed the granting of the protective order and found that the family court entered sufficient findings of fact and conclusions of law.

Stalking, Harassment, & Related Offenses: Wisconsin

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
and is being furnished strictly for informational purposes.

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WISCONSIN

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>“Course of conduct” means a series of 2 or more acts carried out over time, however short or long, that show a continuity of purpose, including any of the following:</p> <ul style="list-style-type: none">- Maintaining a visual or physical proximity to the victim;- Approaching or confronting the victim;- Appearing at the victim's workplace or contacting the victim's employer or coworkers;- Appearing at the victim's home or contacting the victim's neighbors;- Entering property owned, leased, or occupied by the victim;- Contacting the victim by telephone, text message, electronic message, electronic mail, or other means of electronic communication or causing the victim's telephone or electronic device or any other person's telephone or electronic device to ring or generate notifications repeatedly or continuously, regardless of whether a conversation ensues;- Photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the victim. This subdivision applies regardless of where the act occurs;- Sending to the victim any physical or electronic material or contacting the victim by any means, including any message, comment, or other content posted on any Internet site or web application;- Sending to a member of the victim's family or household, or any current or former employer of the victim, or any current or former coworker of the victim, or any friend of the victim any physical or electronic material or contacting such person by any means, including any message, comment, or
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	<p>other content posted on any Internet site or web application for the purpose of obtaining information about, disseminating information about, or communicating with the victim;</p> <ul style="list-style-type: none"> - Placing an object on or delivering an object to property owned, leased, or occupied by the victim; - Delivering an object to a member of the victim's family or household or an employer, coworker, or friend of the victim or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the victim; - Causing a person to engage in any of the acts described above <p>Wis. Stat. § 940.32 (1)(a)(1)-(10).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threat is not required. <i>See State v. Sveum</i>, 584 N.W.2d 137 (Wis. Ct. App. 1998)(stalking statute does not require that the defendant threaten the victim).</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 intentionally engage in a course of conduct directed at a specific person. Wis. Stat. § 940.32 (2)(a)-(c); <i>See also State v. Hemmingway</i>, 825 N.W.2d 303 (Wis. Ct. App. 2012) (to support a stalking conviction, the state must prove that the defendant intentionally engaged in a course of conduct directed at someone that he knows (or should know) will instill fear in her, does instill fear in her, and would instill such fear in a reasonable person under similar circumstances).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes. Course of conduct includes contacting the victim's employers, coworker, neighbors, family, or friends. Wis. Stat. § 940.32 (a)(3),(4),(7m)(9); <i>See also, e.g., State v. Burrows</i>, 925 N.W.2d 789 (Wis. Ct. App. 2019) (Defendant sent a letter, written from the perspective of a female, to the victim's employer. The letter informed the employer that it needed to do something about the "blond</p>

	<p>where” that worked there as “[t]hat bitch has been screwing my man.”); <i>State v. Ardell</i>, 915 N.W.2d 455, 458 (Wis. Ct. App 2018) (“The words ‘directed at’ do not require the state to prove that the defendant actually intended for the communications to reach the victim. The statute expressly encompasses communications to a third party, and we decline to interpret the statute so strictly that its purpose is defeated.”).</p> <p>The statute also includes fear of bodily injury to a family or household member. Wis. Stat. § 940.32(2)(a)-(c).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Suffer serious emotional distress and/or fear bodily injury or death to herself or a member of her family/household. Wis. Stat. § 940.32(2)(a)-(c).</p>
<p>Does fear include emotional distress?</p>	<p>Yes. Wis. Stat. § 940.32(2)(a)-(c). To suffer serious emotional distress “means to feel terrified, intimidated, threatened, harassed, or tormented.” Wis. Stat. § 940.32(10)(d).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Both. The offender must engage in a course of conduct that would cause a reasonable person to suffer serious emotional distress/ fear under Wis. Stat. § 940.32(2)(a) and must also actually cause the specific victim to suffer serious emotional distress/fear under Wis. Stat. § 940.32(2)(b)-(c).</p> <p>Courts also interpret the fear standard. In one case the Court discusses fear element from the victim’s perspective and then from a reasonable person’s perspective. <i>See State v. Grover</i>, 896 N.W.2d 391 (Wis. Ct. App. 2017)(“From S.W.’s perspective, a person he did not know was purposely seeing him nearly every day and obviously following him as he worked his shift for unknown reasons [...] Grover contends that the State failed to show that a reasonable person would have suffered serious emotional distress. Grover characterizes S.W.’s fears as</p>

	<p>‘unreasonable’ fears of ‘some unknown risk’ in his imagined vision of the world.’ We disagree [...] S.W.’s fear was reasonable under the circumstances.”).</p>
<p>If reasonable person standard is required, what constitutes a reasonable fear? (<i>Look to case law</i>)</p>	<p>What constitutes reasonable fear is case specific.</p> <p><i>State v. Jones</i>, 918 N.W.2d 127 (Wis. Ct. App. 2018) (Defendant’s prior battery conviction was relevant because it was direct evidence that related to an element of stalking: a reasonable person in the same circumstances as the victim—having previously been kicked in the face while holding her infant son—would have feared bodily harm to herself or her child).</p> <p><i>State v. Sveum</i>, 584 N.W.2d 137, 144 (Wis. Ct. App. 1998) (“Johnson received several hang-up telephone calls on April 16, 1996. Sveum told Walls that he made the calls, and Walls relayed this information to Johnson. When asked how the phone calls made her feel, Johnson testified: ‘Scared. It was happening again.’ She also testified that she ‘was very afraid’ that Sveum would hurt her. Based on this evidence, a reasonable jury could conclude that Johnson knew that Sveum placed the phone calls and that the calls induced fear in Johnson.”).</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 includes “causing a person to engage” in any of the proscribed acts. Wis. Stat. § 940.32 (1)(a)(10). It is also an aggravating factor to “gains access or causes another person to gain access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation. Wis. Stat. § 940.32 (2m)(c).</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 by the regular stalking statute under course of conduct which includes “contacting the victim by telephone, text message, electronic message, electronic mail, or other means of electronic communication [...]. Wis. Stat. § 940.32 (1)(a)(6)-(7m), (2m)(c).</p> <p>Other statutes criminalize acts related to technology-facilitates stalking such as unlawful use of a telephone, unlawful use of computerized communication systems, invasion of privacy, and use of a drone, and use of global positioning devices. Wis. Stat. §§ 947.012, 947.0125, 942.10, 940.315, 940.315.</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>There is no residency requirement. Wis. Stat. Ann. § 940.3 (1). Further, conduct that occurs outside of the jurisdiction can be prosecuted. Wis. Stat. § 939.03.</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 under Wis. Stat. § 940.32(2),(2e) is a Class I felony.</p> <p>Stalking under Wis. Stat. § 940.32(2m) is a Class H felony.</p> <p>Stalking under Wis. Stat. § 940.32(3) is a Class F felony.</p>
<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a Class H felony if the offender:</p> <ul style="list-style-type: none"> - Has a previous conviction for a violent crime, stalking, or harassment; - Has a previous conviction for a crime within 7 years with the same victim; - Gains access to an electronic record that contains the victim’s personal information in order to facilitate the stalking; - Violates a wiretapping law to facilitate the stalking; OR - Stalks a victim who is less than 18 years old. <p>Wis. Stat. § 940.32(2m)</p>

	<p>Stalking becomes a Class F felony if the offender:</p>
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- Causes bodily harm to the victim member of victim's family/household;
 - Has a previous conviction for a violent crime, stalking, or harassment with the same victim within 7 years;
 - Uses a dangerous weapon.
- Wis. Stat. § 940.32(3).

Statutes

Wis. STAT. ANN. § 940.315 (WEST 2023). GLOBAL POSITIONING DEVICES

(1) Whoever does any of the following is guilty of a Class A misdemeanor:

- (a) Places a global positioning device or a device equipped with global positioning technology on a vehicle owned or leased by another person without that person's consent.
- (b) Intentionally obtains information regarding another person's movement or location generated by a global positioning device or a device equipped with global positioning technology that has been placed without that person's consent.

(2) This section does not apply to a motor vehicle manufacturer or a person, acting within the scope of his or her employment, who installs an in-vehicle communication or telematics system, to a device installed by or with the permission of the vehicle owner for automobile insurance rating, underwriting, or claims handling purposes, to a law enforcement officer acting in his or her official capacity, to a parent or guardian acting to track the movement or location of his or her minor child or his or her ward, to a lienholder or agent of a lienholder acting to track the movement or location of a motor vehicle in order to repossess the motor vehicle, or to an employer or business owner acting to track the movement or location of a motor vehicle owned, leased, or assigned for use by the employer or business owner.

Wis. STAT. ANN. § 940.32 (WEST 2023). STALKING

(1) In this section:

- (a) "Course of conduct" means a series of 2 or more acts carried out over time, however short or long, that show a continuity of purpose, including any of the following:
 1. Maintaining a visual or physical proximity to the victim.

2. Approaching or confronting the victim.
3. Appearing at the victim's workplace or contacting the victim's employer or coworkers.
4. Appearing at the victim's home or contacting the victim's neighbors.
5. Entering property owned, leased, or occupied by the victim.
6. Contacting the victim by telephone, text message, electronic message, electronic mail, or other means of electronic communication or causing the victim's telephone or electronic device or any other person's telephone or electronic device to ring or generate notifications repeatedly or continuously, regardless of whether a conversation ensues.
- 6m. Photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the victim. This subdivision applies regardless of where the act occurs.
7. Sending to the victim any physical or electronic material or contacting the victim by any means, including any message, comment, or other content posted on any Internet site or web application.
- 7m. Sending to a member of the victim's family or household, or any current or former employer of the victim, or any current or former coworker of the victim, or any friend of the victim any physical or electronic material or contacting such person by any means, including any message, comment, or other content posted on any Internet site or web application for the purpose of obtaining information about, disseminating information about, or communicating with the victim.
8. Placing an object on or delivering an object to property owned, leased, or occupied by the victim.
9. Delivering an object to a member of the victim's family or household or an employer, coworker, or friend of the victim or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the victim.
10. Causing a person to engage in any of the acts described in subs. 1. to 9.

(am) "Domestic abuse" has the meaning given in s. 813.12(1)(am).

(ap) "Domestic abuse offense" means an act of domestic abuse that constitutes a crime.

(c) "Labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing,

maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

- (cb) “Member of a family” means a spouse, parent, child, sibling, or any other person who is related by blood or adoption to another.
- (cd) “Member of a household” means a person who regularly resides in the household of another or who within the previous 6 months regularly resided in the household of another.
- (cg) “Personally identifiable information” has the meaning given in s. 19.62(5).
- (cr) “Record” has the meaning given in s. 19.32(2).
- (d) “Suffer serious emotional distress” means to feel terrified, intimidated, threatened, harassed, or tormented.

(2) Whoever meets all of the following criteria is guilty of a Class I felony:

- (a) The actor intentionally engages in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household.
- (b) The actor knows or should know that at least one of the acts that constitute the course of conduct will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.
- (c) The actor's acts cause the specific person to suffer serious emotional distress or induce fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

(2e) Whoever meets all of the following criteria is guilty of a Class I felony:

- (a) After having been convicted of sexual assault under s. 940.225, 948.02, 948.025, or 948.085 or a domestic abuse offense, the actor engages in any of the acts listed in sub. (1)(a)1. to 10., if the act is directed at the victim of the sexual assault or the domestic abuse offense.
- (b) The actor knows or should know that the act will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.

(c) The actor's act causes the specific person to suffer serious emotional distress or induces fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

(2m) Whoever violates sub. (2) is guilty of a Class H felony if any of the following applies:

(a) The actor has a previous conviction for a violent crime, as defined in s. 939.632(1)(e)1., or a previous conviction under this section or s. 947.013(1r), (1t), (1v), or (1x).

(b) The actor has a previous conviction for a crime, the victim of that crime is the victim of the present violation of sub. (2), and the present violation occurs within 7 years after the prior conviction.

(c) The actor intentionally gains access or causes another person to gain access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation.

(d) The person violates s. 968.31(1) or 968.34(1) in order to facilitate the violation.

(e) The victim is under the age of 18 years at the time of the violation.

(3) Whoever violates sub. (2) is guilty of a Class F felony if any of the following applies:

(a) The act results in bodily harm to the victim or a member of the victim's family or household.

(b) The actor has a previous conviction for a violent crime, as defined in s. 939.632(1)(e)1., or a previous conviction under this section or s. 947.013(1r), (1t), (1v) or (1x), the victim of that crime is the victim of the present violation of sub. (2), and the present violation occurs within 7 years after the prior conviction.

(c) The actor uses a dangerous weapon in carrying out any of the acts listed in sub. (1)(a)1. to 9.

(3m) A prosecutor need not show that a victim received or will receive treatment from a mental health professional in order to prove that the victim suffered serious emotional distress under sub. (2)(c) or (2e)(c).

(4) (a) This section does not apply to conduct that is or acts that are protected by the person's right to freedom of speech or to peaceably assemble with others under the state and U.S. constitutions, including, but not limited to, any of the following:

1. Giving publicity to and obtaining or communicating information regarding any subject, whether by advertising, speaking or patrolling any public street or any place where any person or persons may lawfully be.

2. Assembling peaceably.

3. Peaceful picketing or patrolling.

(b) Paragraph (a) does not limit the activities that may be considered to serve a legitimate purpose under this section.

(5) This section does not apply to conduct arising out of or in connection with a labor dispute.

(6) The provisions of this statute are severable. If any provision of this statute is invalid or if any application thereof is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

Wis. STAT. ANN. § 940.48 (WEST 2023). VIOLATION OF COURT ORDERS

Whoever violates an order issued under s. 940.47 may be punished as follows:

(1) If applicable, the person may be prosecuted under ss. 940.42 to 940.45.

(2) As a contempt of court under ch. 785. A finding of contempt is not a bar to prosecution under ss. 940.42 to 940.45, but:

(a) Any person who commits a contempt of court is entitled to credit for any punishment imposed therefor against any sentence imposed on conviction under ss. 940.42 to 940.45; and

(b) Any conviction or acquittal for any substantive offense under ss. 940.42 to 940.45 is a bar to subsequent punishment for contempt arising out of the same act.

(3) By the revocation of any form of pretrial release or forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant to custody. After hearing and on substantial evidence, the revocation may be made whether the violation of order complained of has been committed by the defendant personally or was caused or encouraged to have been committed by the defendant.

Wis. STAT. ANN. § 942.10 (WEST 2023). USE OF A DRONE

Whoever uses a drone, as defined in s. 175.55(1)(a), with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy is guilty of Class A misdemeanor. This section does not apply to a law enforcement officer authorized to use a drone pursuant to s. 175.55(2).

Wis. STAT. ANN. § 944.25 (WEST 2023). SENDING OBSCENE OR SEXUALLY EXPLICIT ELECTRONIC MESSAGES

(1) In this section:

- (a) “Electronic mail solicitation” means an electronic mail message, including any attached program or document, that is sent for the purpose of encouraging a person to purchase property, goods, or services.
- (b) “Obscene material” has the meaning given in s. 944.21(2)(c).
- (c) “Sexually explicit conduct” has the meaning given in s. 948.01(7).

(2) Whoever sends an unsolicited electronic mail solicitation to a person that contains obscene material or a depiction of sexually explicit conduct without including the words “ADULT ADVERTISEMENT” in the subject line of the electronic mail solicitation is guilty of a Class A misdemeanor.

Wis. STAT. ANN. § 947.012 (WEST 2023). UNLAWFUL USE OF TELEPHONE

(1) Whoever does any of the following is guilty of a Class B misdemeanor:

- (a) With intent to frighten, intimidate, threaten, abuse or harass, makes a telephone call and threatens to inflict injury or physical harm to any person or the property of any person.
- (b) With intent to frighten, intimidate, threaten or abuse, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.
- (c) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to abuse or threaten any person at the called number.

(2) Whoever does any of the following is subject to a Class B forfeiture:

- (a) With intent to harass or offend, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.
- (b) Makes or causes the telephone of another repeatedly to ring, with intent to harass any person at the called number.
- (c) Makes repeated telephone calls, whether or not conversation ensues, with intent solely to harass any person at the called number.

- (d) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number.
- (e) Knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section.

Wis. STAT. ANN. § 947.0125 (WEST 2023). UNLAWFUL USE OF COMPUTERIZED COMMUNICATION SYSTEMS

(1) In this section, “message” means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature, or any transfer of a computer program, as defined in s. 943.70(1)(c).

(2) Whoever does any of the following is guilty of a Class B misdemeanor:

- (a) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message to the person on an electronic mail or other computerized communication system and in that message threatens to inflict injury or physical harm to any person or the property of any person.
- (b) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message threatens to inflict injury or physical harm to any person or the property of any person.
- (c) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.
- (d) With intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.
- (e) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.
- (f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

(3) Whoever does any of the following is subject to a Class B forfeiture:

- (a) With intent to harass, annoy or offend another person, sends a message to the person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.
- (b) With intent to harass, annoy or offend another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.
- (c) With intent solely to harass another person, sends repeated messages to the person on an electronic mail or other computerized communication system.
- (d) With intent solely to harass another person, sends repeated messages on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the messages.
- (e) With intent to harass or annoy another person, sends a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.
- (f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to harass or annoy another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.
- (g) Knowingly permits or directs another person to send a message prohibited by this section from any computer terminal or other device that is used to send messages on an electronic mail or other computerized communication system and that is under his or her control.

Wis. STAT. ANN. § 947.013 (WEST 2023). HARASSMENT

(1) In this section:

- (a) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
- (b) “Credible threat” means a threat made with the intent and apparent ability to carry out the threat.
- (c) “Personally identifiable information” has the meaning given in s. 19.62(5).
- (d) “Record” has the meaning given in s. 19.32(2).

- (1m) Whoever, with intent to harass or intimidate another person, does any of the following is subject to a Class B forfeiture:
- (a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.
 - (b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.
- (1r) Whoever violates sub. (1m) under all of the following circumstances is guilty of a Class A misdemeanor:
- (a) The act is accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm.
 - (b) The act occurs while the actor is subject to an order or injunction under s. 813.12, 813.122 or 813.125 that prohibits or limits his or her contact with the victim.
- (1t) Whoever violates sub. (1r) is guilty of a Class I felony if the person has a prior conviction under this subsection or sub. (1r), (1v), or (1x) or s. 940.32(2), (2e), (2m), or (3) involving the same victim and the present violation occurs within 7 years of the prior conviction.
- (1v) Whoever violates sub. (1r) is guilty of a Class H felony if he or she intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation under sub. (1r).
- (1x) Whoever violates sub. (1r) under all of the following circumstances is guilty of a Class H felony:
- (a) The person has a prior conviction under sub. (1r), (1t) or (1v) or this subsection or s. 940.32(2), (2e), (2m), or (3).
 - (b) The person intentionally gains access to a record in order to facilitate the current violation under sub. (1r).
- (2) This section does not prohibit any person from participating in lawful conduct in labor disputes under s. 103.53.

Relevant Case Law

***State v. Sveum*, 584 N.W. 2d 137 (Wis. Ct. App. 1998)**

Defendant was convicted of stalking and other crimes and appealed arguing, *inter alia*, that the evidence was insufficient to support his harassment and stalking convictions when the victim was not aware of the entire course of conduct, but rather only of some of the acts, and therefore she could not have been induced into fear by such conduct. The course of conduct included the defendant looking into the victim's car with a flashlight, ringing the victim's doorbell and calling repeatedly at 3 in the morning, threatening to kill the victim and ruin her future relationships, calling the victim and hanging up even when she changed her phone number, monitoring the victim's daily routine, monitoring the victim's credit card balances, and taking items from the victim's garbage. The Court of Appeals affirmed the stalking conviction and noted that the stalking statute states that the *acts* of the defendant, rather than the entire course of conduct, must induce fear.

***Lukas v. Hompe*, No. 08-CV-429-BBC, 2009 WL 1563608 (W.D. Wis. June 4, 2009)**

Defendant appealed his convictions for stalking and other crimes arguing, *inter alia*, that there was insufficient evidence to support his stalking conviction. Specifically, the defendant argued that the state never proved that he intended to cause the victim fear of bodily injury or death or that the victim feared bodily injury or death. He further argues that the evidence could have been rebutted by a showing that the victim expressed love for the defendant and still wanted to spend time with him. The Court of Appeals reiterated that "a victim can continue to feel love for a person who is causing her to fear that she or her family members may suffer bodily injury or death at his hands." Further, the Court of Appeals rejected the defendant's argument that because he was in jail, he did not pose a threat to the victim. The victim's fear was reasonable because defendant's incarceration was not expected to be permanent at the time and the defendant told the victim that if she did not take a certain action, "there's going to be fucking hell to pay when I get out."

***State v. Eichorn*, 783 N.W.2d 902 (Wis. Ct. App. 2010)**

Defendant, who was 66 years old, was convicted of stalking a 17-year-old and appealed, arguing that there was insufficient evidence to support his conviction. The stalking occurred when the victim was waiting at a bus stop and the defendant drove up and asked the victim if he could give her a ride. The defendant asked the victim 5 times if she wanted a ride and she told him to leave her alone. Once the victim was on the bus, the defendant followed the bus and stopped at the victim's stop and asked the victim again if she needed a ride. The victim was both terrified and intimidated by the defendant's conduct. The victim also testified that she was scared that her life was in danger, and ran to her aunt's house and banged on the door to be let in. The victim also dropped her late-night class so that she would no longer be at the bus stop later in the day. The defendant argued that because he never threatened the victim or made sexually suggestive comments to her, and because he was older and not physically threatening, that the victim and a reasonable person would not suffer emotional distress from his conduct. The Court of Appeals affirmed the conviction and found that the fear element was proven beyond a reasonable doubt. The defendant should have known that approaching the victim at the bus stop where she was alone and a stranger to him, and then pestering or cajoling her to get into his car would cause her to "feel terrified, intimidated, threatened, [or] harassed."

Stalking, Harassment, & Related Offenses: Wyoming

Current as of June 2023

The information provided here does not constitute legal advice or advocacy
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WYOMING

Summary

<p>What constitutes a "course of conduct" / pattern of behavior?</p>	<p>“Course of conduct” means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose. Wyo. Stat. § 6-2-506 (a)(i). There can be no “course of conduct” if there was no intent to harass. <i>Hawes v. State</i>, 335 P.3d 1073 (Wyo. 2014).</p>
<p>What types of threats are required (credible, explicit, implicit, bodily injury?)</p>	<p>Threats are not required but threats are one kind of act that falls under the definition of “harass” when determining course of conduct and can include verbal threats or written threats. Wyo. Stat. § 6-2-506 (a)(ii).</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>The offender must intend to harass the victim. Wyo. Stat. § 6-2-506(b); <i>See also Bittleston v. State</i>, 442 P.3d 1287 (Wyo. 2019) (Stalking is a specific intent crime; that means the prosecution must prove that a defendant, with the intent to harass, engaged in a course of conduct reasonably likely to harass).</p> <p>Specific intent can be inferred from conduct. <i>Beeson v. State</i>, 512 P.3d 986 (Wyo. 2022).</p>
<p>Do offender actions toward persons <i>other than</i> the victim help establish course of conduct?</p>	<p>Yes, the stalking statute includes fear for the safety of another person. Wyo. Stat. § 6-2-506(A)(ii)(B).</p>
<p>What type of victim fear is required? (for safety, of bodily injury, etc.)?</p>	<p>Substantial emotional distress, substantial fear for one’s safety, substantial fear for the safety of another, substantial fear for the destruction of one’s property. Wyo. Stat. § 6-2-506(a)(ii).</p>
<p>Does fear include emotional distress?</p>	<p>Yes. Wyo. Stat. Ann. § 6-2-506(a)(ii)(A).</p>
<p>Is the fear requirement a subjective (victim must feel fear) or objective standard (reasonable person standard), or both?</p>	<p>Reasonable person standard. Wyo. Stat. Ann. § 6-2-506 (a)(ii)(A)-(C).</p>

If reasonable person standard is required, what constitutes a reasonable fear? (*Look to case law*)

What constitutes reasonable fear is case specific.

Dean v. State, 339 P.3d 509, 515 (Wyo. 2014)
(From the evidence, a jury could reasonably infer that he intended to engage in a course of conduct reasonably likely to harass Mrs. Dean, including but not limited to verbal threats, written threats, vandalism or nonconsensual physical contact, which he knew or should have known would cause a reasonable person to suffer substantial emotional distress. Taking the State's evidence as true, Mr. Dean physically threatened Mrs. Dean and ransacked the bedrooms in her home on one occasion. On another occasion he followed and watched her and her kids without their knowledge and then called and described what she was wearing, where they had been and in what order they had been there. After a discussion in which Mrs. Dean referred to him as a walking time bomb, Mr. Dean left a clock on her office desk set at a time shortly after she got off work. He attempted to break into Mrs. Dean's house late at night. He repeatedly called and texted her and showed up at her office despite having been told to leave her alone.”)

Dugan v. State, 451 P.3d 731, 740 (Wyo. 2019)
(“The evidence showed Mr. Dugan engaged in a course of conduct by sending a series of letters to the victim which contained explicit descriptions of sex acts he wanted to perform with the victim. Mr. Dugan knew his letters were unwanted and improper. Law enforcement warned Mr. Dugan to stop writing to the victim, but he continued to do so. This evidence showed he had a specific intent to harass and knew or should have known his letters would cause a reasonable person to suffer substantial emotional distress. The evidence also showed the victim found the letters seriously alarming. She stated she felt ‘sick to her stomach,’ ‘nervous and scared.’”).

Must the victim tell the defendant to stop in order to constitute stalking?	No. There is no published case law that addresses this and the statutory law is silent.
Is stalking by proxy included? (i.e., getting a third person to stalk the victim)	Maybe. The statute is broad and can be interpreted to include stalking by proxy under course of conduct by “Communicating, anonymously or otherwise, or causing a communication with another person.” Wyo. Stat. § 6-2-506(b)(i). However, there is no published case law that addresses stalking through a third person.
Is technology-facilitated stalking covered by regular stalking statutes and accompanying case law, or is it covered under a separate offense?	<p>Technology-facilitated stalking is covered by the regular stalking statute which includes communication by “electronic, mechanical, telegraphic, telephonic” means. Wyo. Stat. § 6-2-506 (b)(i). The statute also covers “Using any electronic, digital or global positioning system device or other electronic means to place another person under surveillance.” Wyo. Stat. § 6-2-506 (b)(iv).</p> <p>Other statutes criminalize similar conduct such as harassing/threatening phone calls. Wyo. Stat. § 6-6-103.</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?)	There is no residency requirement. Wyo. Stat. Ann. § 6-2-506 (f),(g (“An act that indicates a course of conduct but occurs in more than one (1) jurisdiction may be used by any jurisdiction in which the act occurred as evidence of a continuing course of conduct.”).
Any unique provisions, elements, or requirements?	No.
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)	Stalking is a misdemeanor under Wyo. Stat. § 6-2-506(d) and a felony under Wyo. Stat. § 6-2-506(e).

<p>What aggravating circumstances elevate the gradation of a stalking offense?</p>	<p>Stalking becomes a felony if the offender:</p> <ul style="list-style-type: none"> - Was previously convicted of stalking or a similar crime in another jurisdiction within 5 years of this offense; - Caused serious bodily harm to the victim or another person when committing the offense; - Violated condition of probation, parole, or bail when committing the offense; or - Violated a protection order when committing the offense. <p>Wyo. Stat. § 6-2-506(e).</p>
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Statutes

WYO. STAT. ANN. § 6-2-506 (WEST 2023). STALKING; PENALTY

(a) As used in this section:

- (i) “Course of conduct” means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose;
- (ii) “Harass” means to engage in a course of conduct, including but not limited to verbal threats, written threats, lewd or obscene statements or images, vandalism or nonconsensual physical contact, directed at a specific person that the defendant knew or should have known would cause:
 - (A) A reasonable person to suffer substantial emotional distress;
 - (B) A reasonable person to suffer substantial fear for their safety or the safety of another person; or
 - (C) A reasonable person to suffer substantial fear for the destruction of their property.

(b) Unless otherwise provided by law, a person commits the crime of stalking if, with intent to harass another person, the person engages in a course of conduct reasonably likely to harass that person, including but not limited to any combination of the following:

- (i) Communicating, anonymously or otherwise, or causing a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses;
- (ii) Following a person, other than within the residence of the defendant;

- (iii) Placing a person under surveillance by remaining present outside his or her school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant;
 - (iv) Using any electronic, digital or global positioning system device or other electronic means to place another person under surveillance or to surveil another person's internet or wireless activity without authorization from the other person; or
 - (v) Otherwise engaging in a course of conduct that harasses another person.
- (c) This section does not apply to an otherwise lawful demonstration, assembly or picketing.
- (d) Except as provided under subsection (e) of this section, stalking is a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than seven hundred fifty dollars (\$750.00), or both. If a person sentenced under this subsection is placed on probation, the court may, notwithstanding any other provision of law, impose a term of probation exceeding the maximum one (1) year imprisonment, provided the term of probation, including extensions, shall not exceed three (3) years.
- (e) A person convicted of stalking under subsection (b) of this section is guilty of felony stalking punishable by imprisonment for not more than ten (10) years, if:
- (i) The act or acts leading to the conviction occurred within five (5) years of the completion of the sentence, including all periods of incarceration, parole and probation, of a prior conviction under this subsection, or under subsection (b) of this section, or under a substantially similar law of another jurisdiction;
 - (ii) The defendant caused serious bodily harm to the victim or another person in conjunction with committing the offense of stalking;
 - (iii) The defendant committed the offense of stalking in violation of any condition of probation, parole or bail; or
 - (iv) The defendant committed the offense of stalking in violation of a temporary or permanent order of protection issued pursuant to W.S. 7-3-508, 7-3-509, 35-21-104 or 35-21-105 or pursuant to a substantially similar law of another jurisdiction.
- (f) An offense under this section may be deemed to have been committed at the place where any:
- (i) Act within the course of conduct that constitutes stalking was initiated; or
 - (ii) Communication within the course of conduct that constitutes stalking was received by the victim then present in Wyoming; or

(iii) Act within the course of conduct that constitutes stalking caused an effect on the victim then present in Wyoming.

(g) An act that indicates a course of conduct but occurs in more than one (1) jurisdiction may be used by any jurisdiction in which the act occurred as evidence of a continuing course of conduct.

WYO. STAT. ANN. § 6-4-404 (WEST 2023). VIOLATION OF DOMESTIC VIOLENCE ORDER OF PROTECTION; PENALTY

(a) Any person who willfully violates a protection order issued pursuant to W.S. 35-21-104 or 35-21-105 or valid injunction or order for protection against domestic violence as defined in W.S. 35-21-109(a), is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

(b) Repealed by Laws 2018, ch. 97, § 2.

WYO. STAT. ANN. § 6-6-103 (WEST 2023). TELEPHONE CALLS; UNLAWFUL ACTS; PENALTIES; COMMUNICATING A THREAT OF BODILY INJURY OR DEATH; PLACE OF COMMISSION OF CRIME

(a) A person commits a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both, if he telephones another anonymously or under a false or fictitious name and uses obscene, lewd or profane language or suggests a lewd or lascivious act with intent to terrify, intimidate, threaten, harass, annoy or offend.

(b) A person commits a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both, if:

(i) By repeated anonymous telephone calls, he disturbs the peace, quiet or privacy of persons where the calls were received; or

(ii) He telephones or otherwise electronically or in writing communicates with a person and threatens to:

(A) Inflict death to the person, to the person's immediate family or to anyone at the school in which the person is a student or employee; or

(B) Inflict injury or physical harm to the person, to the person's immediate family or to property of the person.

(c) A crime under this section is committed at the place where the calls or other electronic or written communications either originated or were received.

(d) For purposes of this section, “immediate family” means a spouse, parent, sibling, child or other person living in the person's household.

Relevant Case Law

***Hawes v. State*, 335 P.3d 1073 (Wyo. 2014)**

Defendant was convicted of stalking and kidnapping his estranged wife and appealed, arguing, *inter alia*, that there was insufficient evidence to prove that he engaged in a course of conduct. The Supreme Court reversed the stalking conviction, finding that driving down the road in front of the victim’s home was not sufficient to constitute a course of conduct because the defendant did not have the “intent to harass.” The state presented no evidence to dispute the defendant’s explanation that he was on his way home but argued that the defendant intended to harass the victim because when the victim asked him if he was driving down her road, the defendant said that “he was watching her.” The Supreme Court of Wyoming stated that it could not conclude that watching someone during a chance encounter in a small Wyoming town gave rise to a reasonable inference that the defendant had an intent to harass the victim.

***Dean v. State*, 339 P.3d 509 (Wyo. 2014)**

Defendant was convicted of stalking his estranged wife in violation of a protection order. The defendant had previously been convicted of felony assault against the same victim and the victim was fearful that the defendant would hurt her when she filed for divorce. The defendant went to the victim’s office and threatened her, causing the office to go into lockdown. While in lockdown, the defendant repeatedly called the victim’s office. Despite the issuance of a protection order, the defendant continued to call and text the victim. Once arrested for violating the order, the defendant repeatedly called the victim from jail. On appeal, the defendant argued that the state failed to prove beyond a reasonable doubt that he acted with the intent to harass and that the evidence showed only that he acted with the intent to show his wife that he loved her and wanted to save his marriage. The Supreme Court of Wyoming affirmed the conviction and held a jury could reasonably infer that the defendant intended to engage in a course of conduct reasonably likely to harass the victim, including but not limited to verbal threats, written threats, vandalism, or nonconsensual physical contact, which he knew or should have known would cause a reasonable person to suffer substantial emotional distress.

***Dugan v. State*, 451 P.3d 731 (Wyo. 2019)**

Defendant was convicted of stalking and appealed arguing, *inter alia*, that the evidence was insufficient to show he harassed the victim. The defendant sent multiple sexually explicit letters to the victim at her place of work. The defendant also followed and watched the victim. The victim stated the letters made her feel “sick and nervous and scared.” The defendant knew his letters were unwanted and improper because law enforcement had warned the defendant to stop writing to the victim. Despite the warning, the defendant continued to send the letters. The Supreme Court of Wyoming affirmed the conviction finding that the evidence showed he had a specific intent to harass

and knew or should have known his letters would cause a reasonable person to suffer substantial emotional distress.

***Bittleston v. State*, 442 P.3d 1287 (Wyo. 2019)**

Defendant was convicted of stalking and other crimes and appealed arguing, inter alia, that there was insufficient evidence to support his stalking conviction. After the victim broke off her relationship with the defendant, the defendant sent the victim hundreds of threatening and derogatory text messages and voicemails. The defendant also broke into the victim's home, tore pages out of her journal, and stole her key fob. The defendant did not dispute that the state proved that the victim felt threatened by his actions. Rather, he argued that the state failed to prove his specific intent to harass the victim and cause her substantial emotional distress or substantial fear. The Supreme Court of Wyoming affirmed the conviction and found that, aside from the defendant following the victim and breaking into her home, the menacing content of the text messages alone was sufficient for a rational trier of fact to reasonably infer that the defendant intended to cause the victim substantial emotional distress and substantial fear.

***Beeson v. State*, 512 P.3d 986 (Wyo. 2022)**

Defendant pled guilty to one count of misdemeanor stalking and one count of strangulation of a household member. During the change of plea hearing, he provided "yes" answers to questions regarding the factual basis for charges but did not give detailed explanations. The district court accepted his plea, finding a factual basis on both counts. Defendant appealed, arguing that there was not enough factual basis on either count. In affirming the lower court, the Wyoming Supreme Court reasoned in part that specific intent can be inferred from a defendant's conduct, words, and surrounding circumstances. The court stated that the mind of an alleged offender can be understood from their actions and the reasonable inferences drawn from the case's circumstances. In this case, the court found that the defendant's admitted actions, including sending messages to cause emotional distress and manipulate the victim, supported the inference of intent to harass.