

**Representative Lawanna Shurtliff** proposes to substitute the following bill:

**STALKING AMENDMENTS - CRIMINAL**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lawanna Shurtliff**

David L. Gladwell

AN ACT RELATING TO THE CODE OF CRIMINAL PROCEDURE; EXPANDING THE DEFINITION OF THE CRIME OF STALKING; ESTABLISHING PENALTIES; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**76-5-106.5**, as last amended by Chapter 10, Laws of Utah 1997

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **76-5-106.5** is amended to read:

**76-5-106.5. Definitions -- Crime of stalking.**

(1) As used in this section:

(a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.

(b) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(c) "Repeatedly" means on two or more occasions.

(2) A person is guilty of stalking who:

(a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person:

- 26 (i) to fear bodily injury to himself or a member of his immediate family; or
- 27 (ii) to suffer emotional distress to himself or a member of his immediate family;
- 28 (b) has knowledge or should have knowledge that the specific person:
- 29 (i) will be placed in reasonable fear of bodily injury to himself or a member of his
- 30 immediate family; or
- 31 (ii) will suffer emotional distress or a member of his immediate family will suffer
- 32 emotional distress; and
- 33 (c) whose conduct:
- 34 (i) induces fear in the specific person of bodily injury to himself or a member of his
- 35 immediate family; or
- 36 (ii) causes emotional distress in the specific person or a member of his immediate family.
- 37 (3) A person is also guilty of stalking who intentionally or knowingly violates a stalking
- 38 injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or intentionally or
- 39 knowingly violates a permanent criminal stalking injunction issued pursuant to this section.
- 40 [~~3~~] (4) Stalking is a class [~~B~~] A misdemeanor[-];
- 41 (a) upon the offender's first violation of Subsection (2); or
- 42 (b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a,
- 43 Stalking Injunction.
- 44 [~~4~~] (5) Stalking is a [~~class A misdemeanor~~] third degree felony if the offender:
- 45 (a) has been previously convicted of an offense of stalking;
- 46 (b) has been convicted in another jurisdiction of an offense that is substantially similar to
- 47 the offense of stalking; [~~or~~]
- 48 (c) has been previously convicted of any felony offense in Utah or of any crime in another
- 49 jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking or
- 50 a member of the victim's immediate family was also a victim of the previous felony offense; or
- 51 (d) violated a permanent criminal stalking injunction issued pursuant to Subsection (7).
- 52 [~~5~~] (6) Stalking is a felony of the [~~third~~] second degree if the offender:
- 53 (a) used a dangerous weapon as defined in Section 76-1-601 [~~under circumstances not~~
- 54 ~~amounting to a violation of Subsection 76-5-103(1)(a);~~] or used other means or force likely to
- 55 produce death or serious bodily injury, in the commission of the crime of stalking;
- 56 (b) has been previously convicted two or more times of the offense of stalking;

57 (c) has been convicted two or more times in another jurisdiction or jurisdictions of  
58 offenses that are substantially similar to the offense of stalking;

59 (d) has been convicted two or more times, in any combination, of offenses under  
60 Subsections (5)(~~(b)~~ and ~~(c)~~); or

61 (e) has been previously convicted two or more times of felony offenses in Utah or of  
62 crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in  
63 which the victim of the stalking was also a victim of the previous felony offenses.

64 (7) A conviction for stalking or a plea accepted by the court and held in abeyance for a  
65 period of time shall operate as an application for a permanent criminal stalking injunction limiting  
66 the contact of the defendant and the victim.

67 (a) A permanent criminal stalking injunction shall be issued without a hearing unless the  
68 defendant requests a hearing at the time of the verdict, finding, or plea of guilty, guilty and  
69 mentally ill, plea of no contest, or acceptance of plea in abeyance. **h THE COURT SHALL GIVE THE**  
69a **DEFENDANT NOTICE OF HIS RIGHT TO REQUEST A HEARING. h**

70 (i) If the defendant requests a hearing, it shall be held at the time of the verdict, finding,  
71 or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance  
72 unless the victim requests otherwise, or for good cause.

73 (ii) If the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or  
74 acceptance of plea in abeyance was entered in a justice court, a certified copy of the judgment and  
75 conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the  
76 victim in the district court as an application and request for hearing for a permanent criminal  
77 stalking injunction.

78 (b) A permanent criminal stalking injunction may grant the following relief:

79 (i) an order restraining the defendant from entering the residence, property, school, or place  
80 of employment of the victim and requiring the defendant to stay away from the victim and  
81 members of the victim's immediate family or household and to stay away from any specified place  
82 that is named in the order and is frequented regularly by the victim; and

83 (ii) an order restraining the defendant from making contact with the victim, including an  
84 order forbidding the defendant from personally or through an agent initiating any communication  
85 likely to cause annoyance or alarm, including personal, written, or telephone contact with the  
86 victim, the victim's employers, employees, fellow workers, or others with whom communication  
87 would be likely to cause annoyance or alarm to the victim.

88           (c) A permanent criminal stalking injunction may be dissolved upon application of the  
89 victim to the court which granted the order.

90           (d) Notice of permanent criminal stalking injunctions issued pursuant to this section shall  
91 be sent by the court to the statewide warrants network or similar system.

92           (e) A permanent criminal stalking injunction issued pursuant to this section shall be  
93 effective statewide.

94           (f) Violation of an injunction issued pursuant to this section shall constitute an offense of  
95 stalking. Violations may be enforced in a civil action initiated by the stalking victim, a criminal  
96 action initiated by a prosecuting attorney, or both.

97           (g) Nothing in this section shall preclude the filing of a criminal information for stalking  
98 based on the same act which is the basis for the violation of the stalking injunction issued pursuant  
99 to Title 77, Chapter 3a, Stalking Injunctions, or permanent criminal stalking injunction.