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STALKING AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

The bill modifies the Criminal Code regarding the elements and penalties for the offense of stalking.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "course of conduct" to include contacting a victim by any means, acting through third parties, and sending or delivering items to the victim;
- ▶ includes as an element a victim's fear for the victim's own safety or the safety of third parties;
- ▶ defines "emotional distress";
- ▶ includes stalking by electronic communication as an offense;
- ▶ expands the reference to other parties whom the victim may fear for so the reference includes any third party, rather than only immediate family; and
- ▶ provides that the defendant may not claim as a defense that the victim did not give the defendant actual notice that the course of conduct was unwanted by the victim.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **76-3-203.5**, as last amended by Laws of Utah 2007, Chapters 229 and 339

30 **76-5-106.5**, as last amended by Laws of Utah 2001, Chapter 276

31

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

33 Section 1. Section **76-3-203.5** is amended to read:

34 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

35 (1) As used in this section:

36 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
37 United States, or any district, possession, or territory of the United States for which the
38 maximum punishment the offender may be subjected to exceeds one year in prison.

39 (b) "Habitual violent offender" means a person convicted within the state of any violent
40 felony and who on at least two previous occasions has been convicted of a violent felony and
41 committed to either prison in Utah or an equivalent correctional institution of another state or
42 of the United States either at initial sentencing or after revocation of probation.

43 (c) (i) "Violent felony" means any of the following offenses, or any attempt,
44 solicitation, or conspiracy to commit any of these offenses punishable as a felony:

45 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
46 Title 76, Chapter 6, Part 1, Property Destruction;

47 (B) assault by prisoner, Section 76-5-102.5;

48 (C) disarming a police officer, Section 76-5-102.8;

49 (D) aggravated assault, Section 76-5-103;

50 (E) aggravated assault by prisoner, Section 76-5-103.5;

51 (F) mayhem, Section 76-5-105;

52 (G) stalking, [~~Subsection~~] Subsection 76-5-106.5[(6)] (2) or (3);

53 (H) terroristic threat, Section 76-5-107;

54 (I) child abuse, Subsections 76-5-109(2)(a) and (b);

55 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

56 (K) abuse or neglect of disabled child, Section 76-5-110;

57 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

58 (M) endangerment of child or elder adult, Section 76-5-112.5;

- 59 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 60 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
- 61 5, Part 3, Kidnapping;
- 62 (P) rape, Section 76-5-402;
- 63 (Q) rape of a child, Section 76-5-402.1;
- 64 (R) object rape, Section 76-5-402.2;
- 65 (S) object rape of a child, Section 76-5-402.3;
- 66 (T) forcible sodomy, Section 76-5-403;
- 67 (U) sodomy on a child, Section 76-5-403.1;
- 68 (V) forcible sexual abuse, Section 76-5-404;
- 69 (W) aggravated sexual abuse of a child and sexual abuse of a child, Section
- 70 76-5-404.1;
- 71 (X) aggravated sexual assault, Section 76-5-405;
- 72 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 73 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 74 Burglary and Criminal Trespass;
- 75 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 76 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 77 (CC) tampering with a witness under Subsection 76-8-508(1);
- 78 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 79 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 80 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat
- 81 or by use of force theft by extortion has been committed pursuant to Subsections
- 82 76-6-406(2)(a), (b), and (i);
- 83 (GG) possession, use, or removal of explosive, chemical, or incendiary devices under
- 84 Subsections 76-10-306(3) through (6);
- 85 (HH) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 86 76-10-307;
- 87 (II) purchase or possession of a dangerous weapon or handgun by a restricted person
- 88 under Section 76-10-503;
- 89 (JJ) unlawful discharge of a firearm under Section 76-10-508;

90 (KK) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
91 (LL) bus hijacking under Section 76-10-1504; and
92 (MM) discharging firearms and hurling missiles under Section 76-10-1505; or
93 (ii) any felony violation of a criminal statute of any other state, the United States, or
94 any district, possession, or territory of the United States which would constitute a violent
95 felony as defined in this Subsection (1) if committed in this state.

96 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
97 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
98 under this section, the penalty for a:

- 99 (a) third degree felony is as if the conviction were for a first degree felony;
- 100 (b) second degree felony is as if the conviction were for a first degree felony; or
- 101 (c) first degree felony remains the penalty for a first degree penalty except:
 - 102 (i) the convicted person is not eligible for probation; and
 - 103 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
104 habitual violent offender as an aggravating factor in determining the length of incarceration.

105 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
106 provide notice in the information or indictment that the defendant is subject to punishment as a
107 habitual violent offender under this section. Notice shall include the case number, court, and
108 date of conviction or commitment of any case relied upon by the prosecution.

109 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
110 intends to deny that:

- 111 (A) the defendant is the person who was convicted or committed;
- 112 (B) the defendant was represented by counsel or had waived counsel; or
- 113 (C) the defendant's plea was understandingly or voluntarily entered.

114 (ii) The notice of denial shall be served not later than five days prior to trial and shall
115 state in detail the defendant's contention regarding the previous conviction and commitment.

116 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
117 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,
118 of the:

119 (i) defendant's previous convictions for violent felonies, except as otherwise provided
120 in the Utah Rules of Evidence; or

- 121 (ii) allegation against the defendant of being a habitual violent offender.
- 122 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
123 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
124 the jury, in which case the allegation shall be tried immediately to the court.
- 125 (c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this section
126 applies.
- 127 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
128 and the defendant shall be afforded an opportunity to present any necessary additional
129 evidence.
- 130 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this
131 section is applicable beyond a reasonable doubt.
- 132 (d) If any previous conviction and commitment is based upon a plea of guilty or no
133 contest, there is a rebuttable presumption that the conviction and commitment were regular and
134 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
135 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
136 to establish by a preponderance of the evidence that the defendant was then represented by
137 counsel or had lawfully waived [~~his~~] the right to have counsel present, and that [~~his~~] the
138 defendant's plea was understandingly and voluntarily entered.
- 139 (e) If the trier of fact finds this section applicable, the court shall enter that specific
140 finding on the record and shall indicate in the order of judgment and commitment that the
141 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
142 under this section.
- 143 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the
144 provisions of this section.
- 145 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
146 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part
147 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.
- 148 (6) The sentencing enhancement described in this section does not apply if:
- 149 (a) the offense for which the person is being sentenced is:
- 150 (i) a grievous sexual offense;
- 151 (ii) child kidnapping, Section 76-5-301.1;

- 152 (iii) aggravated kidnapping, Section 76-5-302; or
 153 (iv) forcible sexual abuse, Section 76-5-404; and
 154 (b) applying the sentencing enhancement provided for in this section would result in a
 155 lower maximum penalty than the penalty provided for under the section that describes the
 156 offense for which the person is being sentenced.

157 Section 2. Section **76-5-106.5** is amended to read:

158 **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties.**

159 (1) As used in this section:

160 (a) "Conviction" means:

161 (i) a verdict or conviction;

162 (ii) a plea of guilty or guilty and mentally ill;

163 (iii) a plea of no contest; or

164 (iv) the acceptance by the court of a plea in abeyance.

165 [~~(a)~~] (b) "Course of conduct" means [~~repeatedly maintaining a visual or physical~~
 166 ~~proximity to a person or repeatedly conveying verbal or written threats or threats implied by~~
 167 ~~conduct or a combination thereof directed at or toward a person.~~] two or more acts directed at
 168 or towards a specific person, including:

169 (i) acts in which the actor follows, monitors, observes, ~~H~~→ **photographs**, ←~~H~~ surveils,
 169a threatens, or
 170 communicates to or about a person, or interferes with a person's property:

171 (A) directly, indirectly, or through any third party; and

172 (B) by any action, method, device, or means; or

173 (ii) when the actor engages in any of the following acts or causes someone else to
 174 engage in any of these acts:

175 (A) approaches or confronts a person;

176 (B) appears at the person's workplace or contacts the person's employer or coworkers;

177 (C) appears at a person's residence or contacts a person's neighbors, or enters property
 178 owned, leased, or occupied by a person;

179 (D) sends material by any means to the person or for the purpose of obtaining or
 180 disseminating information about or communicating with the person to a member of the person's
 181 family or household, employer, coworker, friend, or associate of the person;

182 (E) places an object on or delivers an object to property owned, leased, or occupied by

183 a person, or to the person's place of employment with the intent that the object be delivered to
 184 the person; or

185 (F) uses a computer, the Internet, text messaging, or any other electronic means to
 186 commit an act that is a part of the course of conduct.

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

190 ~~[(c) "Repeatedly" means on two or more occasions.]~~

191 (d) "Emotional distress" means significant mental or psychological suffering, whether
 192 or not medical or other professional treatment or counseling is required.

193 (e) "Reasonable person" means a reasonable person in the victim's circumstances.

194 (f) "Stalking" means an offense as described in Subsection (2) or (3).

195 (g) "Text messaging" means a communication in the form of electronic text or one or
 196 more electronic images sent by the actor from a telephone or computer to another person's
 197 telephone or computer by addressing the communication to the recipient's telephone number.

198 (2) A person is guilty of stalking who ~~[:-(a)]~~ intentionally or knowingly engages in a
 199 course of conduct directed at a specific person ~~[that]~~ and knows or should know that the course
 200 of conduct would cause a reasonable person:

201 ~~[(i) to fear bodily injury to himself or a member of his immediate family; or]~~

202 (a) to fear for the person's own safety or the safety of a third person; or

203 ~~[(ii)]~~ (b) to suffer other emotional distress ~~[to himself or a member of his immediate~~
 204 ~~family;].~~

205 ~~[(b) has knowledge or should have knowledge that the specific person:]~~

206 ~~[(i) will be placed in reasonable fear of bodily injury to himself or a member of his~~
 207 ~~immediate family; or]~~

208 ~~[(ii) will suffer emotional distress or a member of his immediate family will suffer~~
 209 ~~emotional distress; and]~~

210 ~~[(c) whose conduct:]~~

211 ~~[(i) induces fear in the specific person of bodily injury to himself or a member of his~~
 212 ~~immediate family; or]~~

213 ~~[(ii) causes emotional distress in the specific person or a member of his immediate~~

214 family.]

215 (3) A person is [~~also~~] guilty of stalking who intentionally or knowingly violates;

216 (a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking

217 Injunctions[;]; or [~~intentionally or knowingly violates~~]

218 (b) a permanent criminal stalking injunction issued pursuant to this section.

219 (4) In any prosecution under this section, it is not a defense that the actor:

220 (a) was not given actual notice that the course of conduct was unwanted; or

221 (b) did not intend to cause the victim fear or other emotional distress.

222 (5) An offense of stalking may be prosecuted under this section in any jurisdiction

223 where one or more of the acts that is part of the course of conduct was initiated or caused an

224 effect on the victim.

225 [~~(4)~~] (6) Stalking is a class A misdemeanor:

226 (a) upon the offender's first violation of Subsection (2); or

227 (b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a,

228 Stalking Injunctions.

229 [~~(5)~~] (7) Stalking is a third degree felony if the offender:

230 (a) has been previously convicted of an offense of stalking;

231 (b) has been previously convicted in another jurisdiction of an offense that is

232 substantially similar to the offense of stalking;

233 (c) has been previously convicted of any felony offense in Utah or of any crime in

234 another jurisdiction which if committed in Utah would be a felony, in which the victim of the

235 stalking offense or a member of the victim's immediate family was also a victim of the

236 previous felony offense; [~~or~~]

237 (d) violated a permanent criminal stalking injunction issued pursuant to Subsection

238 [~~(7)~~] (9); or

239 (e) has been or is at the time of the offense a cohabitant, as defined in Section

240 78B-7-102, of the victim.

241 [~~(6)~~] (8) Stalking is a second degree felony [~~of the second degree~~] if the offender:

242 (a) used a dangerous weapon as defined in Section 76-1-601 or used other means or

243 force likely to produce death or serious bodily injury, in the commission of the crime of

244 stalking;

245 (b) has been previously convicted two or more times of the offense of stalking;

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

248 (d) has been convicted two or more times, in any combination, of offenses under
249 Subsection ~~[(5)]~~ (7)(a), (b), or (c); ~~[or]~~

250 (e) has been previously convicted two or more times of felony offenses in Utah or of
251 crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies,
252 in which the victim of the stalking was also a victim of the previous felony offenses~~[-]; or~~

253 (f) has been previously convicted of an offense under Subsection (7)(d), (e), or (f).

254 ~~[(7)]~~ (9) (a) A conviction for stalking or a plea accepted by the court and held in
255 abeyance for a period of time ~~[shall operate]~~ serves as an application for a permanent criminal
256 stalking injunction limiting the contact ~~[of]~~ between the defendant and the victim.

257 ~~[(a)]~~ (b) A permanent criminal stalking injunction shall be issued by the court without
258 a hearing unless the defendant requests a hearing at the time of the ~~[verdict, finding, or plea of~~
259 ~~guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance]~~ conviction.
260 The court shall give the defendant notice of ~~[his]~~ the right to request a hearing.

261 ~~[(i)]~~ (c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at
262 the time of the ~~[verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or~~
263 ~~acceptance of plea in abeyance]~~ conviction unless the victim requests otherwise, or for good
264 cause.

265 ~~[(ii)]~~ (d) If the ~~[verdict, finding, or plea of guilty, guilty and mentally ill, plea of no~~
266 ~~contest, or acceptance of plea in abeyance]~~ conviction was entered in a justice court, a certified
267 copy of the judgment and conviction or a certified copy of the court's order holding the plea in
268 abeyance must be filed by the victim in the district court as an application and request for a
269 hearing for a permanent criminal stalking injunction.

270 ~~[(b)]~~ (10) A permanent criminal stalking injunction may grant the following relief:

271 ~~[(i)]~~ (a) an order:

272 (i) restraining the defendant from entering the residence, property, school, or place of
273 employment of the victim; and

274 (ii) requiring the defendant to stay away from the victim and members of the victim's
275 immediate family or household and to stay away from any specified place that is named in the

276 order and is frequented regularly by the victim; and

277 ~~[(ii)]~~ (b) an order restraining the defendant from making contact with or regarding the
278 victim, including an order forbidding the defendant from personally or through an agent
279 initiating any communication likely to cause annoyance or alarm to the victim, including
280 personal, written, or telephone contact with or regarding the victim, with the victim's
281 employers, employees, ~~[fellow workers]~~ coworkers, friends, associates, or others with whom
282 communication would be likely to cause annoyance or alarm to the victim.

283 ~~[(e)]~~ (11) A permanent criminal stalking injunction may be dissolved or dismissed only
284 upon application of the victim to the court which granted the ~~[order]~~ injunction.

285 ~~[(d)]~~ (12) Notice of permanent criminal stalking injunctions issued pursuant to this
286 section shall be sent by the court to the statewide warrants network or similar system.

287 ~~[(e)]~~ (13) A permanent criminal stalking injunction issued pursuant to this section
288 ~~[shall be effective]~~ has effect statewide.

289 ~~[(f)]~~ (14) (a) Violation of an injunction issued pursuant to this section ~~[shall constitute~~
290 ~~an]~~ constitutes a third degree felony offense of stalking under Subsection (7).

291 (b) Violations may be enforced in a civil action initiated by the stalking victim, a
292 criminal action initiated by a prosecuting attorney, or both.

293 ~~[(g) Nothing in this]~~ (15) This section ~~[shall preclude]~~ does not preclude the filing of a
294 criminal information for stalking based on the same act which is the basis for the violation of
295 the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a
296 permanent criminal stalking injunction.

Legislative Review Note
as of **2-14-08 9:22 AM**

Office of Legislative Research and General Counsel

H.B. 493 - Stalking Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
