

STALKING AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies the elements for the offense of stalking.

Highlighted Provisions:

This bill:

- ▶ changes the definition of "course of conduct" required for the offense of stalking by:
 - increasing the number of acts necessary to constitute a course of conduct; and
 - requiring that the acts constituting the course of conduct evidence a continuity of purpose.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-106.5, as last amended by Laws of Utah 2020, Chapter 142

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. Stalking -- Definitions -- Injunction -- Penalties -- Duties of law enforcement officer.

(1) As used in this section:

(a) "Course of conduct" means ~~two~~ three or more acts directed at or toward a specific person evidencing a continuity of purpose, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

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

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

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

35 (A) approaches or confronts a person;

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

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

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

42 (E) places an object on or delivers an object to property owned, leased, or occupied by
43 a person, or to the person's place of employment with the intent that the object be delivered to
44 the person; or

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

47 (b) "Emotional distress" means significant mental or psychological suffering, whether
48 or not medical or other professional treatment or counseling is required.

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

52 (d) "Reasonable person" means a reasonable person in the victim's circumstances.

53 (e) "Stalking" means an offense as described in Subsection (2) or (3).

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

57 (2) A person is guilty of stalking who intentionally or knowingly engages in a course of
58 conduct directed at a specific person and knows or should know that the course of conduct
59 would cause a reasonable person:

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

61 (b) to suffer other emotional distress.

62 (3) A person is guilty of stalking who intentionally or knowingly violates:

63 (a) a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking

64 Injunctions; or

65 (b) a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9,

66 Criminal Stalking Injunctions.

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

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

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

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

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

72 effect on the victim.

73 (6) Stalking is a class A misdemeanor:

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

75 (b) if the offender violated a stalking injunction issued under Title 78B, Chapter 7, Part

76 7, Civil Stalking Injunctions.

77 (7) Stalking is a third degree felony if the offender:

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

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

80 substantially similar to the offense of stalking;

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

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

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

84 previous felony offense;

85 (d) violated a permanent criminal stalking injunction issued under Title 78B, Chapter

86 7, Part 9, Criminal Stalking Injunctions; or

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

88 78B-7-102, of the victim.

89 (8) Stalking is a second degree felony if the offender:

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

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

92 stalking;

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

94 (c) has been convicted two or more times in another jurisdiction or jurisdictions of

95 offenses that are substantially similar to the offense of stalking;

96 (d) has been convicted two or more times, in any combination, of offenses under
97 Subsection (7)(a), (b), or (c);

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

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

102 (9) (a) A permanent criminal stalking injunction limiting the contact between the
103 defendant and victim may be filed in accordance with Section 78B-7-902.

104 (b) This section does not preclude the filing of criminal information for stalking based
105 on the same act which is the basis for the violation of the stalking injunction issued under Title
106 78B, Chapter 7, Part 7, Civil Stalking Injunctions, or a permanent criminal stalking injunction
107 issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

108 (10) (a) A law enforcement officer who responds to an allegation of stalking shall use
109 all reasonable means to protect the victim and prevent further violence, including:

110 (i) taking action that, in the officer's discretion, is reasonably necessary to provide for
111 the safety of the victim and any family or household member;

112 (ii) confiscating the weapon or weapons involved in the alleged stalking;

113 (iii) making arrangements for the victim and any child to obtain emergency housing or
114 shelter;

115 (iv) providing protection while the victim removes essential personal effects;

116 (v) arranging, facilitating, or providing for the victim and any child to obtain medical
117 treatment; and

118 (vi) arranging, facilitating, or providing the victim with immediate and adequate notice
119 of the rights of victims and of the remedies and services available to victims of stalking, in
120 accordance with Subsection (10)(b).

121 (b) (i) A law enforcement officer shall give written notice to the victim in simple
122 language, describing the rights and remedies available under this section and Title 78B,
123 Chapter 7, Part 7, Civil Stalking Injunctions.

124 (ii) The written notice shall also include:

125 (A) a statement that the forms needed in order to obtain a stalking injunction are

126 available from the court clerk's office in the judicial district where the victim resides or is
127 temporarily domiciled; and

128 (B) a list of shelters, services, and resources available in the appropriate community,
129 together with telephone numbers, to assist the victim in accessing any needed assistance.

130 (c) If a weapon is confiscated under this Subsection (10), the law enforcement agency
131 shall return the weapon to the individual from whom the weapon is confiscated if a stalking
132 injunction is not issued or once the stalking injunction is terminated.