

Effective 5/4/2022

Effective until 5/1/2024

76-5-106.5 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 coworker;
 - (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.

(b) 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.