

Senator Gene Davis proposes to substitute the following bill:

CIVIL STALKING AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: LaWanna Shurtliff

This act modifies the Code of Criminal Procedure to create a civil stalking injunction and a procedure for having one issued by a court. This act provides for a petition, hearing requirements for both parties, and allows for renewal of the injunction under certain conditions. This act takes effect on July 1, 2001.

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

AMENDS:

76-5-106.5, as last amended by Chapter 49, Laws of Utah 2000

77-3-1, as enacted by Chapter 15, Laws of Utah 1980

ENACTS:

77-3a-101, Utah Code Annotated 1953

77-3a-102, Utah Code Annotated 1953

77-3a-103, Utah Code Annotated 1953

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 -- Stalking -- Injunction -- Hearing.

(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



26 months.

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

28 (2) A person is guilty of stalking who:

29 (a) intentionally or knowingly engages in a course of conduct directed at a specific person

30 that would cause a reasonable person:

31 (i) to fear bodily injury to himself or a member of his immediate family; or

32 (ii) to suffer emotional distress to himself or a member of his immediate family;

33 (b) has knowledge or should have knowledge that the specific person:

34 (i) will be placed in reasonable fear of bodily injury to himself or a member of his

35 immediate family; or

36 (ii) will suffer emotional distress or a member of his immediate family will suffer

37 emotional distress; and

38 (c) whose conduct:

39 (i) induces fear in the specific person of bodily injury to himself or a member of his

40 immediate family; or

41 (ii) causes emotional distress in the specific person or a member of his immediate family.

42 (3) A person is also guilty of stalking who intentionally or knowingly violates a stalking

43 injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or intentionally or

44 knowingly violates a permanent criminal stalking injunction issued pursuant to this section.

45 (4) Stalking is a class A misdemeanor:

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

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

48 Stalking Injunctions.

49 (5) Stalking is a third degree felony if the offender:

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

51 (b) has been convicted in another jurisdiction of an offense that is substantially similar to

52 the offense of stalking;

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

54 jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking or

55 a member of the victim's immediate family was also a victim of the previous felony offense; or

56 (d) violated a permanent criminal stalking injunction issued pursuant to Subsection (7).

57 (6) Stalking is a felony of the second degree if the offender:

58 (a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force
59 likely to produce death or serious bodily injury, in the commission of the crime of stalking;

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

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

63 (d) has been convicted two or more times, in any combination, of offenses under
64 Subsection (5); or

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

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

71 (a) A permanent criminal stalking injunction shall be issued without a hearing unless the
72 defendant requests a hearing at the time of the verdict, finding, or plea of guilty, guilty and
73 mentally ill, plea of no contest, or acceptance of plea in abeyance. The court shall give the
74 defendant notice of his right to request a hearing.

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

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

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

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

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

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

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

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

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

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

105 Section 2. Section 77-3-1 is amended to read:

106 **77-3-1. Threatened offense -- Complaint.**

107 A complaint that a person has threatened to commit an offense against the person or
108 property of another, except in the case of stalking, may be made before any magistrate. Petitions
109 alleging the commission of stalking shall be handled pursuant to Title 77, Chapter 3a, Stalking
110 Injunctions.

111 Section 3. Section 77-3a-101 is enacted to read:

112 **CHAPTER 3a. STALKING INJUNCTIONS**

113 **77-3a-101. Civil stalking injunction -- Petition -- Ex parte injunction.**

114 (1) As used in this chapter, "stalking" means the crime of stalking as defined in Section
115 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers,
116 governmental investigators, or licensed private investigators, acting in their official capacity.

117 (2) Any person who believes that he or she is the victim of stalking may file a verified
118 written petition for a civil stalking injunction against the alleged stalker with the district court in

119 the district in which the petitioner or respondent resides or in which any of the events occurred.
120 A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent,
121 guardian, or custodian may file a petition on the minor's behalf.

122 (3) The Administrative Office of the Courts shall develop and adopt uniform forms for
123 petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other
124 necessary forms in accordance with the provisions of this chapter on or before July 1, 2001. The
125 office shall provide the forms to the clerk of each district court.

126 (a) All petitions, injunctions, ex parte injunctions, and any other necessary forms shall be
127 issued in the form adopted by the Administrative Office of the Courts.

128 (b) The offices of the court clerk shall provide the forms to persons seeking to proceed
129 under this chapter.

130 (4) The petition for a civil stalking injunction shall include:

131 (a) the name of the petitioner; however, the petitioner's address shall be disclosed to the
132 court for purposes of service, but, on request of the petitioner, the address may not be listed on the
133 petition, and shall be protected and maintained in a separate document or automated database, not
134 subject to release, disclosure, or any form of public access except as ordered by the court for good
135 cause shown;

136 (b) the name and address, if known, of the respondent;

137 (c) specific events and dates of the actions constituting the alleged stalking;

138 (d) if there is a prior court order concerning the same conduct, the name of the court in
139 which the order was rendered; and

140 (e) corroborating evidence of stalking, which may be in the form of a police report,
141 affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation
142 of stalking.

143 (5) If the court determines that there is reason to believe that an offense of stalking has
144 occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the
145 following:

146 (a) respondent may be enjoined from committing stalking;

147 (b) respondent may be restrained from coming near the residence, place of employment,
148 or school of the other party or specifically designated locations or persons;

149 (c) respondent may be restrained from contacting, directly or indirectly, the other party,

150 including personal, written or telephone contact with the other party, the other party's employers,
 151 employees, fellow workers or others with whom communication would be likely to cause
 152 annoyance or alarm to the other party; or

153 (d) any other relief necessary or convenient for the protection of the petitioner and other
 154 specifically designated persons under the circumstances.

155 (6) Within ten days of service of the ex parte civil stalking injunction, the respondent is
 156 entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

157 (a) A hearing requested by the respondent shall be held within ten days from the date the
 158 request is filed with the court unless the court finds compelling reasons to continue the hearing.
 159 The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show
 160 by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

161 (b) An ex parte civil stalking injunction issued under this section shall state on its face:

162 (i) that the respondent is entitled to a hearing, upon written request within ten days of the
 163 service of the order;

164 (ii) the name and address of the district court where the request may be filed;

165 (iii) that if the respondent fails to request a hearing within ten days of service, the ex parte
 166 civil stalking injunction is automatically modified to a civil stalking injunction without further
 167 notice to the respondent and that the civil stalking injunction expires three years after service of
 168 the ex parte civil stalking injunction; and

169 (iv) that if the respondent requests, in writing, a hearing after the ten-day period after
 170 service, the court shall set a hearing within a reasonable time from the date requested.

171 (7) At the hearing, the court may modify, revoke, or continue the injunction. § ~~[-The burden~~
 172 is on the respondent to show good cause why the civil stalking injunction should be dissolved or
 173 modified:

174 —— (a) ~~If the court finds that the respondent has shown good cause, then the]~~ THE § burden is on
 174a the
 175 petitioner to show by a preponderance of the evidence that stalking of the petitioner by the
 176 respondent has occurred.

177 § ~~(b) If the court finds that the respondent has failed to show good cause why the civil~~
 178 stalking injunction should be dissolved or modified, then the civil stalking injunction shall
 179 continue in effect.] §

180 (8) The ex parte civil stalking injunction and civil stalking injunction shall include the

181 following statement: "Attention. This is an official court order. If you disobey this order, the court
182 may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and
183 any other crime you may have committed in disobeying this order."

184 (9) The ex parte civil stalking injunction shall be served on the respondent within 90 days
185 from the date it is signed. An ex parte civil stalking injunction is effective upon service. If no
186 hearing is requested in writing by the respondent within ten days of service of the ex parte civil
187 stalking injunction, the ex parte civil stalking injunction automatically becomes a civil stalking
188 injunction without further notice to the respondent and expires three years from the date of service
189 of the ex parte civil stalking injunction.

190 (10) If the respondent requests a hearing after the ten-day period after service, the court
191 shall set a hearing within a reasonable time from the date requested. At the hearing, the burden
192 is on the respondent to show good cause why the civil stalking injunction should be dissolved or
193 modified.

194 (11) Within 24 hours after the affidavit or acceptance of service has been returned,
195 excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking
196 injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of
197 service or acceptance of service in the statewide network for warrants or a similar system.

198 (a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction
199 shall not depend upon its entry in the statewide system and, for enforcement purposes, a certified
200 copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid
201 existing order of the court for a period of three years from the date of service of the ex parte civil
202 stalking injunction on the respondent.

203 (b) Any changes or modifications of the ex parte civil stalking injunction are effective
204 upon service on the respondent. The original ex parte civil stalking injunction continues in effect
205 until service of the changed or modified civil stalking injunction on the respondent.

206 (12) Within 24 hours after the affidavit or acceptance of service has been returned,
207 excluding weekends and holidays, the clerk of the court shall enter a copy of the changed or
208 modified civil stalking injunction and proof of service or acceptance of service in the statewide
209 network for warrants or a similar system.

210 (13) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at
211 any time upon application of the petitioner to the court which granted it.

212 (14) The court clerk shall provide, without charge, to the petitioner one certified copy of
213 the injunction issued by the court and one certified copy of the proof of service of the injunction
214 on the respondent. Charges may be imposed by the clerk's office for any additional copies,
215 certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.

216 (15) The remedies provided in this chapter for enforcement of the orders of the court are
217 in addition to any other civil and criminal remedies available. The district court shall hear and
218 decide all matters arising pursuant to this section.

219 (16) After a hearing with notice to the affected party, the court may enter an order
220 requiring any party to pay the costs of the action, including reasonable attorney's fees.

221 (17) This chapter does not apply to protective orders or ex parte protective orders issued
222 pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, or to preliminary injunctions issued
223 pursuant to an action for dissolution of marriage or legal separation.

224 Section 4. Section **77-3a-102** is enacted to read:

225 **77-3a-102. Fees -- Service of process.**

226 (1) Ex parte civil stalking injunctions and civil stalking injunctions shall be served by a
227 sheriff or constable.

228 (2) All service shall be in accordance with applicable law.

229 (3) Fees may not be imposed by a court clerk, constable, or law enforcement agency for:

230 (a) filing a petition under this chapter;

231 (b) obtaining an ex parte civil stalking injunction; or

232 (c) service of a civil stalking injunction, ex parte or otherwise.

233 Section 5. Section **77-3a-103** is enacted to read:

234 **77-3a-103. Enforcement.**

235 (1) A peace or law enforcement officer shall, without a warrant, arrest a person if the peace
236 or law enforcement officer has probable cause to believe that the person has violated an ex parte
237 civil stalking injunction or civil stalking injunction issued pursuant to this chapter or has violated
238 a permanent criminal stalking injunction issued pursuant to Section 76-5-106.5, whether or not the
239 violation occurred in the presence of the officer.

240 (2) A violation of an ex parte civil stalking injunction or of a civil stalking injunction
241 issued pursuant to this chapter constitutes the criminal offense of stalking as defined in Section
242 76-5-106.5 and is also a violation of the civil stalking injunction. Violations may be enforced by

243 a civil action initiated by the petitioner, a criminal action initiated by a prosecuting attorney, or
244 both.

245 Section 6. **Effective date.**

246 This act takes effect on July 1, 2001.