

Senator Todd Weiler proposes the following substitute bill:

**CLARIFICATION OF STALKING INJUNCTIONS AND
PROTECTIVE ORDERS**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill allows a court with a petition for a stalking injunction to take into consideration any minor children the parties may have.

Highlighted Provisions:

This bill:

- ▶ allows a court to consider the defendant's parental rights when issuing a stalking injunction; and
- ▶ makes technical corrections.

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 2008, Chapter 356

77-3a-101, as last amended by Laws of Utah 2008, Chapter 3



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

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

28 **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties.**

29 (1) As used in this section:

30 (a) "Conviction" means:

31 (i) a verdict or conviction;

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

33 (iii) a plea of no contest; or

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

35 (b) "Course of conduct" means two or more acts directed at or toward a specific
36 person, including:

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

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

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

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

43 (A) approaches or confronts a person;

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

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

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

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

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

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

57 months.

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

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

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

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

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

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

69 (b) to suffer other emotional distress.

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

71 (a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions;

72 or

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

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

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

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

77 (5) An offense of stalking may be prosecuted under this section in any jurisdiction
78 where one or more of the acts that is part of the course of conduct was initiated or caused an
79 effect on the victim.

80 (6) Stalking is a class A misdemeanor:

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

82 (b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a,
83 Stalking Injunctions.

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

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

86 (b) has been previously convicted in another jurisdiction of an offense that is
87 substantially similar to the offense of stalking;

88 (c) has been previously convicted of any felony offense in Utah or of any crime in
89 another jurisdiction which if committed in Utah would be a felony, in which the victim of the
90 stalking offense or a member of the victim's immediate family was also a victim of the
91 previous felony offense;

92 (d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9);
93 or

94 (e) has been or is at the time of the offense a cohabitant, as defined in Section
95 78B-7-102, of the victim.

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

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

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

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

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

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

108 (f) has been previously convicted of an offense under Subsection (7)(d)~~;~~ or (e)~~;~~ or
109 ~~(f)~~.

110 (9) (a) A conviction for stalking or a plea accepted by the court and held in abeyance
111 for a period of time serves as an application for a permanent criminal stalking injunction
112 limiting the contact between the defendant and the victim.

113 (b) A permanent criminal stalking injunction shall be issued by the court [~~without a~~
114 ~~hearing unless the defendant requests a hearing~~] at the time of the conviction. ~~H~~→ [F] **The court**
114a **shall**

115 **give the defendant notice of the right to request a hearing. [F]**

116 [F] (c) **If the defendant requests a hearing under Subsection (9)(b), it shall be held at**
116a **the**
117 **time of the conviction unless the victim requests otherwise, or for good cause. [F]**

118 [F] (d) [F] [~~(c)~~] ←~~H~~ If the conviction was entered in a justice court, a certified
118a copy of the

119 judgment and conviction or a certified copy of the court's order holding the plea in abeyance
 120 ~~[must]~~ shall be filed by the victim in the district court as an application and request for a
 121 hearing for a permanent criminal stalking injunction.

122 (10) A permanent criminal stalking injunction ~~[may grant]~~ shall be issued by the
 123 district court granting the following relief ~~H→~~ where appropriate ~~←H~~ :

124 (a) an order:

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

127 (ii) requiring the defendant to stay away from the victim ~~H→~~ [and members of the victim's
 128 immediate family or household] ~~←H~~ , except as provided in Subsection (11), and to stay away from
 129 any specified place that is named in the order and is frequented regularly by the victim; ~~[and]~~

130 (b) an order restraining the defendant from making contact with or regarding the
 131 victim, including an order forbidding the defendant from personally or through an agent
 132 initiating any communication, except as provided in Subsection (11), likely to cause annoyance
 133 or alarm to the victim, including personal, written, or telephone contact with or regarding the
 134 victim, with the victim's employers, employees, coworkers, friends, associates, or others with
 135 whom communication would be likely to cause annoyance or alarm to the victim~~[-];~~ and

136 (c) any other orders the court considers necessary to protect the victim ~~H→~~ and members
 136a of the victim's immediate family or household ~~←H~~ .

137 (11) If the victim and defendant have minor children together, the court may consider
 138 provisions ~~H→~~ [that balance] regarding ~~←H~~ the defendant's ~~H→~~ exercise of ~~←H~~ custody and
 138a parent-time rights ~~H→~~ [and] while ensuring ~~←H~~ the ~~H→~~ [victim's] ~~←H~~ safety ~~H→~~ of the victim
 138b and any minor children ~~←H~~ .

139 If the court issues a permanent criminal stalking injunction, but declines to address custody and
 140 parent-time issues, a copy of the stalking injunction shall be filed in any action in which
 141 custody and parent-time issues are being considered and that court may modify the injunction
 142 to balance the parties' custody and parent-time rights.

143 ~~[(H) A]~~ (12) Except as provided in Subsection (11), a permanent criminal stalking
 144 injunction may be modified, dissolved, or dismissed only upon application of the victim to the
 145 court which granted the injunction.

146 ~~[(H2)]~~ (13) Notice of permanent criminal stalking injunctions issued pursuant to this
 147 section shall be sent by the court to the statewide warrants network or similar system.

148 ~~[(H3)]~~ (14) A permanent criminal stalking injunction issued pursuant to this section has
 149 effect statewide.

150 [~~(14)~~] (15) (a) Violation of an injunction issued pursuant to this section constitutes a
151 third degree felony offense of stalking under Subsection (7).

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

154 [~~(15)~~] (16) This section does not preclude the filing of a criminal information for
155 stalking based on the same act which is the basis for the violation of the stalking injunction
156 issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking
157 injunction.

158 Section 2. Section **77-3a-101** is amended to read:

159 **77-3a-101. Civil stalking injunction -- Petition -- Ex parte injunction.**

160 (1) As used in this chapter, "stalking" means the crime of stalking as defined in Section
161 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers,
162 governmental investigators, or licensed private investigators, acting in their official capacity.

163 (2) Any person who believes that he or she is the victim of stalking may file a verified
164 written petition for a civil stalking injunction against the alleged stalker with the district court
165 in the district in which the petitioner or respondent resides or in which any of the events
166 occurred. A minor with his or her parent or guardian may file a petition on his or her own
167 behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

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

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

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

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

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

181 the court for good cause shown;

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

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

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

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

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

192 ~~[(a)]~~ (i) respondent may be enjoined from committing stalking;

193 ~~[(b)]~~ (ii) respondent may be restrained from coming near the residence, place of
194 employment, or school of the other party or specifically designated locations or persons;

195 ~~[(c)]~~ (iii) respondent may be restrained from contacting, directly or indirectly, the other
196 party, including personal, written or telephone contact with the other party, the other party's
197 employers, employees, fellow workers or others with whom communication would be likely to
198 cause annoyance or alarm to the other party; or

199 ~~[(d)]~~ (iv) any other relief necessary or convenient for the protection of the petitioner
200 and other specifically designated persons under the circumstances.

201 (b) If the petitioner and respondent have minor children, the court shall follow the
202 provisions of Section 78B-7-106 ~~H→~~ [while considering provisions that balance] and take into
202a consideration ~~←H~~ the respondent's
203 custody and parent-time rights ~~H→~~ [and] while ensuring ~~←H~~ the ~~H→~~ [victim's] ~~←H~~ safety
203a ~~H→~~ of the victim and the minor children ~~←H~~ . If the court issues a civil stalking
204 injunction, but declines to address custody and parent-time issues, a copy of the stalking
205 injunction shall be filed in any action in which custody and parent-time issues are being
206 considered.

207 (6) Within 10 days of service of the ex parte civil stalking injunction, the respondent is
208 entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

209 (a) A hearing requested by the respondent shall be held within 10 days from the date
210 the request is filed with the court unless the court finds compelling reasons to continue the
211 hearing. The hearing shall then be held at the earliest possible time. The burden is on the

212 petitioner to show by a preponderance of the evidence that stalking of the petitioner by the
213 respondent has occurred.

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

215 (i) that the respondent is entitled to a hearing, upon written request within 10 days of
216 the service of the order;

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

218 (iii) that if the respondent fails to request a hearing within 10 days of service, the ex
219 parte civil stalking injunction is automatically modified to a civil stalking injunction without
220 further notice to the respondent and that the civil stalking injunction expires three years after
221 service of the ex parte civil stalking injunction; and

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

224 (7) At the hearing, the court may modify, revoke, or continue the injunction. The
225 burden is on the petitioner to show by a preponderance of the evidence that stalking of the
226 petitioner by the respondent has occurred.

227 (8) The ex parte civil stalking injunction and civil stalking injunction shall include the
228 following statement: "Attention. This is an official court order. If you disobey this order, the
229 court may find you in contempt. You may also be arrested and prosecuted for the crime of
230 stalking and any other crime you may have committed in disobeying this order."

231 (9) The ex parte civil stalking injunction shall be served on the respondent within 90
232 days from the date it is signed. An ex parte civil stalking injunction is effective upon service.
233 If no hearing is requested in writing by the respondent within 10 days of service of the ex parte
234 civil stalking injunction, the ex parte civil stalking injunction automatically becomes a civil
235 stalking injunction without further notice to the respondent and expires three years from the
236 date of service of the ex parte civil stalking injunction.

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

241 (11) Within 24 hours after the affidavit or acceptance of service has been returned,
242 excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking

243 injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of
244 service or acceptance of service in the statewide network for warrants or a similar system.

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

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

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

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

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

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

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

269 (17) This chapter does not apply to protective orders or ex parte protective orders
270 issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or to preliminary
271 injunctions issued pursuant to an action for dissolution of marriage or legal separation.