

CIVIL STALKING OFFENSE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Timothy D. Hawkes

LONG TITLE

General Description:

This bill provides an exception to course of conduct for reasonable daily activities and enforcing laws and court orders.

Highlighted Provisions:

This bill:

- ▶ provides an exception for course of conduct for reasonable daily activities; and
- ▶ allows a person to contact a government agency to investigate or enforce a law or court order.

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 2012, Chapter 383

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.

(1) As used in this section:



28 (a) "Conviction" means:
29 (i) a verdict or conviction;
30 (ii) a plea of guilty or guilty and mentally ill;
31 (iii) a plea of no contest; or
32 (iv) the acceptance by the court of a plea in abeyance.
33 (b) (i) "Course of conduct" means two or more acts directed at or toward a specific
34 person, including:
35 [~~(A)~~] (A) acts in which the actor follows, monitors, observes, photographs, surveils,
36 threatens, or communicates to or about a person, or interferes with a person's property:
37 [~~(A)~~] (I) directly, indirectly, or through any third party; and
38 [~~(B)~~] (II) by any action, method, device, or means; or
39 [~~(A)~~] (B) when the actor engages in any of the following acts or causes someone else to
40 engage in any of these acts:
41 [~~(A)~~] (I) approaches or confronts a person;
42 [~~(B)~~] (II) appears at the person's workplace or contacts the person's employer or
43 coworkers;
44 [~~(C)~~] (III) appears at a person's residence or contacts a person's neighbors, or enters
45 property owned, leased, or occupied by a person;
46 [~~(D)~~] (IV) sends material by any means to the person or for the purpose of obtaining or
47 disseminating information about or communicating with the person to a member of the person's
48 family or household, employer, coworker, friend, or associate of the person;
49 [~~(E)~~] (V) places an object on or delivers an object to property owned, leased, or
50 occupied by a person, or to the person's place of employment with the intent that the object be
51 delivered to the person; or
52 [~~(F)~~] (VI) uses a computer, the Internet, text messaging, or any other electronic means
53 to commit an act that is a part of the course of conduct.
54 (ii) "Course of conduct" does not mean reasonable daily activity or requesting a
55 government agency in the ordinary course of business to investigate or enforce laws or court
56 orders.
57 (c) "Immediate family" means a spouse, parent, child, sibling, or any other person who
58 regularly resides in the household or who regularly resided in the household within the prior six

59 months.

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

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

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

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

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

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

71 (b) to suffer other emotional distress.

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

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

74 or

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

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

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

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

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

82 (6) Stalking is a class A misdemeanor:

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

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

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

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

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

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

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

96 (e) has been or is at the time of the offense a cohabitant, as defined in Section
97 78B-7-102, of the victim.

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

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

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

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

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

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

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

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

114 (b) A permanent criminal stalking injunction shall be issued by the court at the time of
115 the conviction. The court shall give the defendant notice of the right to request a hearing.

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

118 (d) If the conviction was entered in a justice court, a certified copy of the judgment and
119 conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by
120 the victim in the district court as an application and request for a hearing for a permanent

121 criminal stalking injunction.

122 (10) A permanent criminal stalking injunction shall be issued by the district court
123 granting the following relief where appropriate:

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, except as provided in
128 Subsection (11), and to stay away from any specified place that is named in the order and is
129 frequented regularly by the victim;

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 and members of
137 the victim's immediate family or household.

138 (11) If the victim and defendant have minor children together, the court may consider
139 provisions regarding the defendant's exercise of custody and parent-time rights while ensuring
140 the safety of the victim and any minor children. If the court issues a permanent criminal
141 stalking injunction, but declines to address custody and parent-time issues, a copy of the
142 stalking injunction shall be filed in any action in which custody and parent-time issues are
143 being considered and that court may modify the injunction to balance the parties' custody and
144 parent-time rights.

145 (12) Except as provided in Subsection (11), a permanent criminal stalking injunction
146 may be modified, dissolved, or dismissed only upon application of the victim to the court
147 which granted the injunction.

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

150 (14) A permanent criminal stalking injunction issued pursuant to this section has effect
151 statewide.

152 (15) (a) Violation of an injunction issued pursuant to this section constitutes a third
153 degree felony offense of stalking under Subsection (7).

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

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

Legislative Review Note
Office of Legislative Research and General Counsel