

1                   **PERMANENT CRIMINAL STALKING INJUNCTION**

2                                   **AMENDMENTS**

3   2017 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Todd Weiler**

6                                   House Sponsor: Rebecca P. Edwards

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8   **LONG TITLE**

9   **General Description:**

10           This bill amends provisions related to offenses that serve as an application for a  
11 permanent criminal stalking injunction.

12   **Highlighted Provisions:**

13           This bill:

14           ▶ extends an application for a permanent criminal stalking injunction against a person  
15 in the following instances:

- 16           • a conviction of stalking;
- 17           • a conviction of attempt to commit stalking; or
- 18           • a plea to any of the above accepted by the court and held in abeyance.

19   **Money Appropriated in this Bill:**

20           None

21   **Other Special Clauses:**

22           None

23   **Utah Code Sections Affected:**

24   AMENDS:

25           **76-5-106.5**, as last amended by Laws of Utah 2012, Chapter 383

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

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

29           **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties.**

30 (1) As used in this section:

31 (a) "Conviction" means:

32 (i) a verdict or conviction;

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

34 (iii) a plea of no contest; or

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

36 (b) "Course of conduct" means two or more acts directed at or toward a specific

37 person, including:

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

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

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

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

44 (A) approaches or confronts a person;

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

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

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

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

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

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

58 months.

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

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

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

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

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

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

70 (b) to suffer other emotional distress.

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

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

73 or

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

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

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

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

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

81 (6) Stalking is a class A misdemeanor:

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

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

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

- 86 (a) has been previously convicted of an offense of stalking;
- 87 (b) has been previously convicted in another jurisdiction of an offense that is
- 88 substantially similar to the offense of stalking;
- 89 (c) has been previously convicted of any felony offense in Utah or of any crime in
- 90 another jurisdiction which if committed in Utah would be a felony, in which the victim of the
- 91 stalking offense or a member of the victim's immediate family was also a victim of the
- 92 previous felony offense;
- 93 (d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9);
- 94 or
- 95 (e) has been or is at the time of the offense a cohabitant, as defined in Section
- 96 78B-7-102, of the victim.
- 97 (8) Stalking is a second degree felony if the offender:
- 98 (a) used a dangerous weapon as defined in Section 76-1-601 or used other means or
- 99 force likely to produce death or serious bodily injury, in the commission of the crime of
- 100 stalking;
- 101 (b) has been previously convicted two or more times of the offense of stalking;
- 102 (c) has been convicted two or more times in another jurisdiction or jurisdictions of
- 103 offenses that are substantially similar to the offense of stalking;
- 104 (d) has been convicted two or more times, in any combination, of offenses under
- 105 Subsection (7)(a), (b), or (c);
- 106 (e) has been previously convicted two or more times of felony offenses in Utah or of
- 107 crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies,
- 108 in which the victim of the stalking was also a victim of the previous felony offenses; or
- 109 (f) has been previously convicted of an offense under Subsection (7)(d) or (e).
- 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 (9) (a) The following serve as an application for a permanent criminal stalking

114 injunction limiting the contact between the defendant and the victim:

115       (i) a conviction for:

116           (A) stalking; or

117           (B) attempt to commit stalking; or

118       (ii) a plea to any of the offenses described in Subsection (9)(a)(i) accepted by the court  
119 and held in abeyance for a period of time.

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

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

124       (d) If the conviction was entered in a justice court, a certified copy of the judgment and  
125 conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by  
126 the victim in the district court as an application and request for a hearing for a permanent  
127 criminal stalking injunction.

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

130       (a) an order:

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

133           (ii) requiring the defendant to stay away from the victim, except as provided in  
134 Subsection (11), and to stay away from any specified place that is named in the order and is  
135 frequented regularly by the victim;

136       (b) an order restraining the defendant from making contact with or regarding the  
137 victim, including an order forbidding the defendant from personally or through an agent  
138 initiating any communication, except as provided in Subsection (11), likely to cause annoyance  
139 or alarm to the victim, including personal, written, or telephone contact with or regarding the  
140 victim, with the victim's employers, employees, coworkers, friends, associates, or others with  
141 whom communication would be likely to cause annoyance or alarm to the victim; and

142 (c) any other orders the court considers necessary to protect the victim and members of  
143 the victim's immediate family or household.

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

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

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

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

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

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

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