

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

7
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;
- 18 • a conviction of conspiracy to commit stalking;
- 19 • a conviction of solicitation to commit stalking; or
- 20 • a plea to any of the above accepted by the court and held in abeyance.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **76-5-106.5**, as last amended by Laws of Utah 2012, Chapter 383



28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

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:

(a) "Conviction" means:

(i) a verdict or conviction;

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

(iii) a plea of no contest; or

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

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

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

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

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

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

(A) approaches or confronts a person;

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

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

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

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

(F) 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.

(c) "Immediate family" means a spouse, parent, child, sibling, or any other person who

59 regularly resides in the household or who regularly resided in the household within the prior six
60 months.

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

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

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

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

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

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

72 (b) to suffer other emotional distress.

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

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

75 or

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

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

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

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

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

83 (6) Stalking is a class A misdemeanor:

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

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

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

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

89 (b) has been previously convicted in another jurisdiction of an offense that is

90 substantially similar to the offense of stalking;

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

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

97 (e) has been or is at the time of the offense a cohabitant, as defined in Section
98 78B-7-102, of the victim.

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

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

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

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

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

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

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

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

115 (9) (a) The following serve as an application for a permanent criminal stalking
116 injunction limiting the contact between the defendant and the victim:

117 (i) a conviction for:

118 (A) stalking;

119 (B) attempt to commit stalking;

120 (C) conspiracy to commit stalking; or

121 (D) solicitation to commit stalking; or
122 (ii) a plea to any of the offenses described in Subsection (9)(a)(i) accepted by the court
123 and held in abeyance for a period of time.

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

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

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

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

134 (a) an order:

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

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

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

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

148 (11) If the victim and defendant have minor children together, the court may consider
149 provisions regarding the defendant's exercise of custody and parent-time rights while ensuring
150 the safety of the victim and any minor children. If the court issues a permanent criminal
151 stalking injunction, but declines to address custody and parent-time issues, a copy of the

152 stalking injunction shall be filed in any action in which custody and parent-time issues are
153 being considered and that court may modify the injunction to balance the parties' custody and
154 parent-time rights.

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

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

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

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel