

**STALKING REVISIONS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Candice B. Pierucci**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill amends provisions related to stalking.

**Highlighted Provisions:**

This bill:

- defines terms; and
- modifies the acts that constitute stalking in relation to sending electronic communications.

**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 2018, Chapter 255

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*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 -- Duties of law enforcement officer.**

(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) "Course of conduct" means two or more acts directed at or toward a specific
- 34 person, including:
- 35 (i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens,
- 36 or communicates to or about a person, or interferes with a person's property:
- 37 (A) directly, indirectly, or through any third party; and
- 38 (B) by any action, method, device, or means; or
- 39 (ii) when the actor engages in any of the following acts or causes someone else to
- 40 engage in any of these acts:
- 41 (A) approaches or confronts a person;
- 42 (B) appears at the person's workplace or contacts the person's employer or coworkers;
- 43 (C) appears at a person's residence or contacts a person's neighbors, or enters property
- 44 owned, leased, or occupied by a person;
- 45 (D) sends material by any means to the person or for the purpose of obtaining or
- 46 disseminating information about or communicating with the person to a member of the person's
- 47 family or household, employer, coworker, friend, or associate of the person;
- 48 (E) places an object on or delivers an object to property owned, leased, or occupied by
- 49 a person, or to the person's place of employment with the intent that the object be delivered to
- 50 the person; or
- 51 ~~[(F) uses a computer, the Internet, text messaging, or any other electronic means to~~
- 52 ~~commit an act that is a part of the course of conduct.]~~
- 53 [(F) sends excessive or unwanted electronic communications.]
- 54 (c) "Electronic communication" means the same as that term is defined in Section
- 55 76-9-201.
- 56 ~~[(c)]~~ (d) "Emotional distress" means significant mental or psychological suffering,
- 57 whether or not medical or other professional treatment or counseling is required.
- 58 ~~[(d)]~~ (e) "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 months.

~~[(e)]~~ (f) "Reasonable person" means a reasonable person in the victim's circumstances.

(g) "Excessive or unwanted electronic communications" means:

(i) five or more electronic communications sent to a specific person, regardless of whether the person responds;

(ii) two electronic communications sent to a specific person after the person requests that the sender not contact the person; or

(iii) one electronic communication sent to a specific person if the communication includes a threat.

~~[(f)]~~ (h) "Stalking" means an offense as described in Subsection (2) or (3).

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

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

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

(b) to suffer other emotional distress.

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

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

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

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

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

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

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

(6) Stalking is a class A misdemeanor:

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

(i) a conviction for:

(A) stalking; or

121 (B) attempt 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.

170 (17) (a) A law enforcement officer who responds to an allegation of stalking shall use  
171 all reasonable means to protect the victim and prevent further violence, including:

172 (i) taking action that, in the officer's discretion, is reasonably necessary to provide for  
173 the safety of the victim and any family or household member;

174 (ii) confiscating the weapon or weapons involved in the alleged stalking;

175 (iii) making arrangements for the victim and any child to obtain emergency housing or  
176 shelter;

177 (iv) providing protection while the victim removes essential personal effects;

178 (v) arranging, facilitating, or providing for the victim and any child to obtain medical  
179 treatment; and

180 (vi) arranging, facilitating, or providing the victim with immediate and adequate notice  
181 of the rights of victims and of the remedies and services available to victims of stalking, in  
182 accordance with Subsection (17)(b).

(b) (i) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this section and Title 77, Chapter 3a, Stalking Injunctions.

(ii) The written notice shall also include:

(A) a statement that the forms needed in order to obtain a stalking injunction are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled; and

(B) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance.

(c) If a weapon is confiscated under this Subsection (17), the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a stalking injunction is not issued or once the stalking injunction is terminated.