

HB 1696 - S COMM AMD

By Committee on Law & Justice

NOT ADOPTED 03/31/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 9A.46.110 and 2021 c 215 s 111 are each amended to
4 read as follows:

5 (1) A person commits the crime of stalking if, without lawful
6 authority (~~and under circumstances not amounting to a felony attempt~~
7 ~~of another crime~~):

8 (a) (~~He or she intentionally~~) The person:

9 (i) Intentionally and repeatedly harasses or repeatedly follows
10 another person; or

11 (ii) Knowingly and without consent installs or monitors an
12 electronic tracking device, or causes an electronic tracking device
13 to be installed, placed, or used, with the intent to track the
14 location of another person; and

15 (b) The person being harassed (~~or~~), followed, tracked, or
16 monitored suffers substantial emotional distress or is placed in fear
17 that the stalker intends to injure (~~the person~~) him or her, or
18 another person, or his or her property (~~of the person~~) or the
19 property of another person, or, in the circumstances identified in
20 (a)(ii) of this subsection, the victim's knowledge of the tracking
21 device would reasonably elicit substantial emotional distress or
22 fear. The feeling of substantial emotional distress or fear must be
23 one that a reasonable person in the same situation would experience
24 under all the circumstances; and

25 (c) The stalker (~~either~~):

26 (i) Intends to frighten, intimidate, (~~or~~) harass, or inflict
27 substantial emotional distress upon the person; (~~or~~)

28 (ii) Knows or reasonably should know that the person is afraid,
29 intimidated, (~~or~~) harassed, or placed in substantial emotional
30 distress, or in the circumstances identified in (a)(ii) of this
31 subsection, that the person's knowledge of the tracking device would

1 elicit such reaction, even if the stalker did not intend to place the
2 person in fear or substantial emotional distress or intimidate or
3 harass the person; or

4 (iii) Contacts, follows, tracks, or monitors, or attempts to
5 contact, follow, track, or monitor the person after being given
6 actual notice that the person does not want to be contacted,
7 followed, tracked, or monitored.

8 (2) (a) It is not a defense to the crime of stalking under
9 subsection (1) (c) (i) of this section that the stalker was not given
10 actual notice that the person did not want the stalker to contact
11 ~~((~~or~~)), follow ((~~the person~~)), track, or monitor him or her;~~ and

12 (b) It is not a defense to the crime of stalking under subsection
13 (1) (c) (ii) or (iii) of this section that the stalker did not intend
14 to frighten, intimidate, or harass the person or place the person in
15 substantial emotional distress.

16 (3) It shall be a defense to the crime of stalking that the
17 defendant is a licensed private investigator acting within the
18 capacity of his or her license as provided by chapter 18.165 RCW.

19 ~~((Attempts to contact or follow the person after being given~~
20 ~~actual notice that the person does not want to be contacted or~~
21 ~~followed constitutes prima facie evidence that the stalker intends to~~
22 ~~intimidate or harass the person. "Contact" includes, in addition to~~
23 ~~any other form of contact or communication, the sending of an~~
24 ~~electronic communication to the person.)) The provisions of this
25 section do not apply to the installation, placement, or use of an
26 electronic tracking device by any of the following:~~

27 (a) A law enforcement officer, judicial officer, probation or
28 parole officer, or other public employee when any such person is
29 engaged in the lawful performance of official duties and in
30 accordance with state or federal law;

31 (b) The installation, placement, or use of an electronic tracking
32 device authorized by an order of a state or federal court;

33 (c) A legal guardian for a disabled adult or a legally authorized
34 individual or organization designated to provide protective services
35 to a disabled adult when the electronic tracking device is installed,
36 placed, or used to track the location of the disabled adult for which
37 the person is a legal guardian or the individual or organization is
38 designated to provide protective services;

39 (d) A parent or legal guardian of a minor when the electronic
40 tracking device is installed, placed, or used to track the location

1 of that minor unless the parent or legal guardian is subject to a
2 court order that orders the parent or legal guardian not to assault,
3 threaten, harass, follow, or contact that minor;

4 (e) An employer, school, or other organization, who owns the
5 device on which the tracking device is installed and provides the
6 device to a person for use in connection with the person's
7 involvement with the employer, school, or other organization and the
8 use of the device is limited to recovering lost or stolen items; or

9 (f) The owner of fleet vehicles, when tracking such vehicles. For
10 the purposes of this section, "fleet vehicle" means any of the
11 following:

12 (i) One or more motor vehicles owned by a single entity and
13 operated by employees or agents of the entity for business or
14 government purposes;

15 (ii) Motor vehicles held for lease or rental to the general
16 public; or

17 (iii) Motor vehicles held for sale, or used as demonstrators,
18 test vehicles, or loaner vehicles, by motor vehicle dealers.

19 (5) (a) Except as provided in (b) of this subsection, a person who
20 stalks another person is guilty of a gross misdemeanor.

21 (b) A person who stalks another person is guilty of a class B
22 felony if any of the following applies:

23 (i) The stalker has previously been convicted in this state or
24 any other state of any crime of harassment, as defined in RCW
25 9A.46.060, of the same victim or members of the victim's family or
26 household or any person specifically named in a protective order;

27 (ii) ~~((the))~~ The stalking violates any protective order
28 protecting the ~~((person being stalked))~~ victim;

29 (iii) ~~((the))~~ The stalker has previously been convicted of a
30 gross misdemeanor or felony stalking offense under this section for
31 stalking another person;

32 (iv) ~~((the))~~ The stalker was armed with a deadly weapon, as
33 defined in RCW 9.94A.825, while stalking the ~~((person))~~ victim;

34 (v) (A) ~~((the stalker's))~~ The victim is or was a law enforcement
35 officer; judge; juror; attorney; victim advocate; legislator;
36 community corrections' officer; an employee, contract staff person,
37 or volunteer of a correctional agency; court employee, court clerk,
38 or courthouse facilitator; or an employee of the child protective,
39 child welfare, or adult protective services division within the
40 department of social and health services; and

1 (B) (~~the~~) The stalker stalked the victim to retaliate against
2 the victim for an act the victim performed during the course of
3 official duties or to influence the victim's performance of official
4 duties; or

5 (vi) (~~the stalker's~~) The victim is a current, former, or
6 prospective witness in an adjudicative proceeding, and the stalker
7 stalked the victim to retaliate against the victim as a result of the
8 victim's testimony or potential testimony.

9 (6) As used in this section:

10 (a) "Actual notice" includes, in addition to any other form of
11 actual notice, circumstances in which the other person has a
12 protective order in effect protecting him or her from the person.

13 (b) "Contact" includes, in addition to any other form of contact
14 or communication, the sending of an electronic communication to the
15 other person.

16 (c) "Correctional agency" means a person working for the
17 department of natural resources in a correctional setting or any
18 state, county, or municipally operated agency with the authority to
19 direct the release of a person serving a sentence or term of
20 confinement and includes but is not limited to the department of
21 corrections, the indeterminate sentence review board, and the
22 department of social and health services.

23 (~~(b)~~) (d) "Course of conduct" means a pattern of conduct
24 composed of a series of acts over a period of time, however short,
25 evidencing a continuity of purpose. "Course of conduct" includes, in
26 addition to any other form of communication, contact, or conduct, the
27 sending of an electronic communication, but does not include
28 constitutionally protected free speech. Constitutionally protected
29 activity is not included within the meaning of "course of conduct."

30 (~~(e)~~) (e) "Electronic tracking device" means an electronic
31 device that permits a person to remotely determine or monitor the
32 position and movement of another person, vehicle, device, or other
33 personal possession. As used in this subsection (6)(e), "electronic
34 device" includes computer code or other digital instructions that
35 once installed on a digital device, allows a person to remotely track
36 the position of that device.

37 (f) "Follows" means deliberately maintaining visual or physical
38 proximity to a specific person over a period of time. A finding that
39 the (~~alleged~~) stalker repeatedly and deliberately appears at the
40 person's home, school, place of employment, business, or any other

1 location to maintain visual or physical proximity to the person is
2 sufficient to find that the ~~((alleged))~~ stalker follows the person.
3 It is not necessary to establish that the ~~((alleged))~~ stalker follows
4 the person while in transit from one location to another.

5 ~~((d))~~ (g) "Harasses" means a knowing and willful course of
6 conduct directed at a specific person which seriously alarms, annoys,
7 harasses, or is detrimental to such person, and which serves no
8 legitimate or lawful purpose. ~~((The course of conduct shall be such
9 as would cause a reasonable person to suffer substantial emotional
10 distress, and shall actually cause substantial emotional distress to
11 the petitioner, or when the course of conduct would cause a
12 reasonable parent to fear for the well-being of his or her child.~~

13 ~~(e))~~ (h) "Protective order" means any temporary or permanent
14 court order prohibiting or limiting violence against, harassment of,
15 contact or communication with, or physical proximity to another
16 person.

17 ~~((f))~~ (i) "Repeatedly" means on two or more separate occasions.

18 (j) "Substantial emotional distress" means a mental, emotional,
19 or physical reaction such as anxiety, apprehension, or loss of
20 ability to concentrate or other symptoms, whether or not medical or
21 other professional treatment or counseling is sought or required,
22 which degrades the victim's quality of life.

23 NEW SECTION. Sec. 2. RCW 9A.90.130 (Cyberstalking) and 2022 c
24 231 s 3 are each repealed."

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25 On page 1, line 1 of the title, after "offenses;" strike the
26 remainder of the title and insert "amending RCW 9A.46.110; and
27 repealing RCW 9A.90.130."

EFFECT: Removes the provision stating that a person's acts do not
constitute the crime of stalking if the acts amount to a felony
attempt of another crime.

Amends the term "emotional distress" to "substantial emotional
distress" throughout the bill.

Defines the term "substantial emotional distress".

--- **END** ---