
**Community Safety, Justice, & Reentry
Committee**

HB 1696

Brief Description: Concerning stalking-related offenses.

Sponsors: Representatives Davis, Mosbrucker, Orwall, Griffey, Duerr, Reed, Leavitt, Barnard, Walen, Eslick, Ramel and Pollet.

Brief Summary of Bill

- Modifies the scope of conduct that constitutes the crime of Stalking and certain conditions and exceptions related to Stalking.
- Repeals the provision related to the crime of Cyberstalking.

Hearing Date: 2/6/23

Staff: Corey Patton (786-7388).

Background:

Stalking.

A person commits the crime of Stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime, the person:

- intentionally and repeatedly harasses or follows a victim;
- the victim is placed in reasonable fear that the person intends to injure the victim, another person, or property; and
- the person either intends to frighten, intimidate, or harass the victim, or knows or reasonably should know that the victim is afraid, intimidated, or harassed.

Stalking is a gross misdemeanor except under the following circumstances, in which case it is

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elevated to a class B felony ranked at seriousness level V:

- the perpetrator has previously been convicted in any state of any crime of harassment of the same victim, members of the victim's family or household, or any person specifically named in a protective order;
- the stalking violates any protective order protecting the victim;
- the perpetrator has previously been convicted of a gross misdemeanor or felony stalking offense;
- the perpetrator was armed with a deadly weapon;
- the victim is or was in a specified role or occupation, and the perpetrator stalked the victim to retaliate for an act the victim performed during the course of the victim's official duties or to influence the victim's performance of official duties; or
- the victim is a current, former, or prospective witness in an adjudicative proceeding, and the perpetrator stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

Attempts to contact or follow a person after being given actual notice that the person does not want to be contacted or followed constitute *prima facie* evidence of the perpetrator's intent to intimidate or harass. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication. It is a defense to Stalking that the defendant is a licensed private investigator acting within that capacity.

Cyberstalking.

A person commits the crime of Cyberstalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime, the person knowingly and without consent installs or monitors an electronic tracking device with the intent to track the location of a victim or installs or causes an electronic tracking device to be installed, placed, or used with the intent to track the location of the victim, and:

- the person knows or reasonably should know that knowledge of the installation or monitoring of the tracking device would cause the victim reasonable fear;
- the person has notice that the victim does not want to be contacted or monitored; or
- the victim has a protective order in effect protecting the victim from the person.

Cyberstalking is a gross misdemeanor except under the following circumstances, in which case it is elevated to a class C felony without a specified seriousness level:

- the perpetrator has previously been convicted in any state of any crime of harassment of the same victim, members of the victim's family or household, or any person specifically named in a protective order;
- there is a protective order in effect protecting the victim from contact with the perpetrator;
- the perpetrator has previously been convicted of a gross misdemeanor or felony stalking or cyberstalking offense;
- the victim is or was in a specified role or occupation, and the perpetrator stalked the victim to retaliate for an act the victim performed during the course of the victim's official duties or to influence the victim's performance of official duties; or
- the victim is a current, former, or prospective witness in an adjudicative proceeding, and

the perpetrator stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

Cyberstalking does not include the installation, placement, or use of an electronic tracking device by an order of a state or federal court, or by any of the following:

- a law enforcement officer, judicial officer, probation or parole officer, or other public employee when engaged in the lawful performance of official duties;
- a legal guardian designated to provide protective services to a disabled adult when used to track the location of the disabled adult;
- a parent or legal guardian of a minor when used to track the location of that minor, unless the parent or guardian is subject to a court order that prohibits them from assaulting, threatening, harassing, following, or contacting the minor;
- an employer, school, or other organization that owns the device on which the tracking device is installed and provides the device to a person for use in connection with the person's involvement with the employer, school, or organization, and the use of the tracking device is limited to recovering lost or stolen items; or
- an owner of fleet vehicles, when tracking such vehicles.

An "electronic tracking device" is an electronic device that permits a person to remotely determine or monitor the position and movement of another person, vehicle, device, or other personal possession. "Electronic device" includes computer code or other digital instructions that, once installed on a device, allow a person to remotely track the position of that device.

Classification of Crimes.

Crimes are classified as misdemeanors, gross misdemeanors, or class A, B, or C felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

Classification	Maximum Confinement	Maximum Fine
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

For most felony offenses, the Sentencing Reform Act determines a specific sentence range within the statutory maximum according to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the person's criminal history.

Summary of Bill:

The scope of conduct that constitutes the crime of Stalking and certain conditions and exceptions related to Stalking are modified.

A person commits the crime of Stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

- the person either (1) intentionally and repeatedly harasses or follows a victim, or (2) knowingly and without consent installs or monitors an electronic tracking device, or causes an electronic tracking device to be installed, placed, or used, with the intent to track the location of the victim;
- the victim suffers substantial emotional distress or is placed in fear that the person intends to injure the victim, another person, or property, or if the person's conduct involves the use of a tracking device, the victim's knowledge of the tracking device would reasonably elicit such emotional distress or fear; and
- the person either (1) intends to frighten, intimidate, harass, or inflict emotional distress upon the victim, (2) knows or reasonably should know that the victim is afraid, intimidated, harassed, or placed in emotional distress, or if the person's conduct involves the use of a tracking device, knows or reasonably should know that the victim's knowledge of the tracking device would elicit such reaction, or (3) attempts to or does contact, follow, track, or monitor the victim after being given actual notice that the victim does not want to be contacted, followed, tracked, or monitored.

"Actual notice" includes, in addition to any other form of actual notice, circumstances in which the victim has a protective order in effect protecting the victim from the person. The lack of intent to frighten, intimidate, or harass the victim or place the victim in emotional distress and the lack of actual notice from the victim do not constitute defenses to Stalking.

Stalking does not include the installation, placement, or use of an electronic tracking device by an order of a state or federal court, or by any of the following:

- a law enforcement officer, judicial officer, probation or parole officer, or other public employee when engaged in the lawful performance of official duties;
- a legal guardian designated to provide protective services to a disabled adult when used to track the location of the disabled adult;
- a parent or legal guardian of a minor when used to track the location of that minor, unless the parent or guardian is subject to a court order that prohibits them from assaulting, threatening, harassing, following, or contacting the minor;
- an employer, school, or other organization that owns the device on which the tracking device is installed and provides the device to a person for use in connection with the person's involvement with the employer, school, or organization, and the use of the tracking device is limited to recovering lost or stolen items; or
- an owner of fleet vehicles, when tracking such vehicles.

The provision related to the crime of Cyberstalking is repealed.

Appropriation: None.

Fiscal Note: Requested on January 31, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.