

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## An Act To Amend the Laws Governing Stalking

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 17-A MRSA §210-A**, as amended by PL 2001, c. 471, Pt. B, §9 and affected by §10 and c. 667, Pt. D, §§35 and 36, is further amended to read:

### § 210-A. Stalking

1. A person is guilty of stalking if:

A. The actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would ~~in fact cause both a reasonable person and that other specific person:~~

(1) ~~To suffer intimidation or serious inconvenience, annoyance or alarm~~ or emotional distress;

(2) ~~To fear bodily injury or to fear bodily injury to a member of that person's immediate family~~ close relation; ~~or~~

(3) ~~To fear death or to fear the death of a member of that person's immediate family~~ close relation;

(4) To fear damage or destruction to or tampering with property; or

(5) To fear injury to or the death of an animal owned by or in the possession and control of that specific person.

~~Violation of this paragraph is a Class D crime. The court shall impose a sentencing alternative involving a term of imprisonment of at least 60 days, of which 48 hours may not be suspended, and may order the person to attend an abuser education program approved by the court; or~~

C. The actor violates paragraph A and has ~~2 or more prior convictions,~~ at the time of the offense:

(1) Violates a condition of a court order in this State or any other jurisdiction in effect at the time of the crime that prohibits the actor from having contact with the person being stalked. As used in this paragraph, "any other jurisdiction" includes the Passamaquoddy Tribe, the Penobscot Nation and other federally recognized tribes;

(2) Has one or more prior convictions under this section or one or more prior convictions for engaging in substantially similar conduct to that contained in this section in any other jurisdiction;

(3) Has one or more prior convictions in this State or in any other jurisdiction for a crime involving threats of violence or violence against the person being stalked; or

(4) Has 2 or more prior convictions for any combination of offenses under the following: Title 5, section 4659; Title 15, section 321; former Title 19, section 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary, emergency, interim or final protective order issued by any other jurisdiction; or a court-approved consent agreement.

Violation of this paragraph is a Class C crime. ~~The court shall impose a sentencing alternative involving a term of imprisonment of at least 6 months, of which 14 days may not be suspended, and may order the person to attend an abuser education program approved by the court.~~

~~For the purposes of this paragraph, "prior conviction" means a conviction for a violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19, section 769; Title 19-A, section 4011; any other temporary, emergency, interim or final protective order; an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe; or a court-approved consent agreement. Section 9-A governs the use of prior convictions when determining a sentence except that, for purposes of this subsection, the prior convictions may have occurred at any time.~~

2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. ~~"Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying oral or written threats, threats implied by conduct or a combination of threats and conduct directed at or toward a person. For purposes of this section, "conveying oral or written threats" includes, but is not limited to, communicating or causing a communication to be initiated by mail or by mechanical or electronic means~~2 or more acts, including but not limited to acts in which the actor, by any action, method, device or means, directly or indirectly follows, monitors, tracks, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property. For purposes of this section, "course"~~Course of conduct" also includes, but is not limited to, threats implied by conduct and gaining unauthorized access to personal, medical, financial or other identifying or confidential information, including access by computer network, mail, telephone or written communication. "Course of conduct" does not include activity protected by the Constitution of Maine, the United States Constitution or by state or federal statute.~~

B. ~~"Immediate family"~~"Close relation" means a current or former spouse or domestic partner, parent, child, sibling, stepchild, stepparent or, grandparent, any person who regularly resides in the household or who within the prior 6 months regularly resided in the household, coworker or any person with a significant personal relationship to the person being stalked.

C. ~~"Repeatedly"~~ means on 2 or more occasions.

D. "Emotional distress" means mental or emotional suffering of the person being stalked as evidenced by anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of emotional distress or a mental health diagnosis.

E. "Serious inconvenience" means that a person significantly modifies that person's actions or routines in an attempt to avoid the actor or because of the actor's course of conduct. "Serious inconvenience" includes, but is not limited to, changing a phone number, changing an electronic mail address, moving from an established residence, changing daily routines, changing routes to and from work, changing employment or work schedule or losing time from work or a job.

**Sec. 2. 17-A MRS §1252, sub-§5-D** is enacted to read:

**5-D.** In using a sentencing alternative involving a term of imprisonment for a person convicted of a Class C or higher crime, the victim of which was at the time of the commission of the crime in fact being stalked by that person, a court shall assign special weight to this objective fact in determining the basic sentence in the first step of the sentencing process. The court shall assign special weight to any subjective victim impact caused by the stalking in determining the maximum period of incarceration in the 2nd step in the sentencing process. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd step in the sentencing process.

**Sec. 3. Legislative intent.** The Legislature finds that stalking is a serious problem in Maine and nationwide. Stalking can and does lead to death, sexual assault, physical assault and property damage. Stalking can involve persons who have had an intimate relationship as well as persons who have had no past relationship. Stalking can result in great stress and fear in the victim and often involves severe intrusions on the victim's personal privacy and autonomy. Stalking can have immediate and long-lasting impact on the quality of life and safety of the victim and persons close to the victim.

By enacting these amendments, the Legislature intends to better protect victims from being intentionally harassed, terrified, threatened or intimidated by individuals who use a wide variety of methods to track, threaten and harass their victims. The goal is to authorize effective criminal intervention before stalking behavior results in serious physical and emotional harm and to increase penalties for escalating stalking behavior. One amendment is intended to make clear that stalking is criminal whether or not the victim knows about the stalking conduct.

The new provisions are drafted broadly to capture all stalking activity, including a stalker's use of new technologies. Presently, some stalkers use Global Positioning Satellite technology to monitor actions, disposable cell phones to make untraceable calls and keyloggers to capture private information from computers. In the future, new technologies not currently imagined will be used to the same ends. The Legislature intends that the use of such new technology be covered by this legislation.

## **SUMMARY**

This bill amends the stalking laws by expanding the prohibited conduct and providing for additional aggravating factors that elevate an offense to a Class C crime. The bill removes specific sentencing requirements. This bill also requires judges to give special weight in sentencing to the fact that a Class C or higher crime was committed by a person while that person was stalking a victim.