

§ 2709. Harassment and stalking.

(a) Harassment.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

1. strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same; or
2. follows the other person in or about a public place or places; or
3. engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose.

(b) Stalking.--A person commits the crime of stalking when he engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either of the following:

1. an intent to place the person in reasonable fear of bodily injury; or
2. an intent to cause substantial emotional distress to the person.

Webmaster notes: The constitutional right of free speech and address is a shield and not a constitutional sword with which to do harm to others. Therefore, the stalking penal statute in Pennsylvania is not unconstitutional as an impingement on free speech. *Commonwealth v. Schierscher*, 557 Pa.Superior Ct. 61, 668 A.2d 164 (1995).

Evidence of related prior bad acts is admissible where appellant has been charged with stalking. *Commonwealth v. Urrutia*, 439 Pa.Superior Ct. 227, 653 A.2d 706 (1995). The intent to "cause substantial emotional distress" may be inferred from a defendant's conduct.

*Commonwealth v. Miller*, 455 Pa.Superior Ct. 543, 689 A.2d 238 (1997).

Introduction in evidence of prior convictions of stalking does not constitute a violation of a defendant's protection from double jeopardy.

*Commonwealth v. Roefaro*, 456 Pa. Superior Ct. 588, 691 A.2d 472 (1997). Harassment is a lesser included offense of stalking.

*Commonwealth v. Reese*, 725 A.2d 190 (Pa. Superior Ct.: 1999).

The first act in a course of conduct constitutes a violation of this section, as much as the subsequent acts; in such a case, a 2 1/2 to 5 year imprisonment sentence for one count of stalking is not excessive and illegal, even though it may exceed the sentencing guidelines, where 8 subsequent incidents of harassment are demonstrated which might incur sentences cumulatively which would approximate the single penalty imposed. *Commonwealth v. Leach*, 729 A.2d 608 (Pa. Superior Ct.: 1999).

(c) Grading.--

1. An offense under subsection (a) shall constitute a summary offense.

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1. An offense under subsection (b) shall constitute a misdemeanor of the first degree.

2. A second or subsequent offense under subsection (b) or a first offense under subsection (b) if the person has been previously convicted of any crime of violence involving this same victim, family or household members, including, but not limited to, a violation of section 2701 (relating to simple assault), 2702 (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2901 (relating to kidnapping), 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse) or 3128 (relating to spousal sexual assault) [now repealed], an order issued under section 4954 (relating to protective orders) or an order issued under 23 Pa.C.S. § 6108 (relating to relief), shall constitute a felony of the third degree.

(d) False reports.--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

(e) Application of section.--This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L.1198, No.308), known as the Labor Anti-Injunction Act, or to any constitutionally protected activity.

(e.1) Course of conduct.--Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

(f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Course of conduct."

A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously.

"Emotional distress."

A temporary or permanent state of great physical or mental strain.

"Family or household member."

Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

[Webmaster note: Compare § 5504 of this title (relating to harassment and stalking by communication or address).]