

18-3-602. Stalking - penalty - definitions - Vonnie's law.

(1) A person commits stalking if directly, or indirectly through another person, the person knowingly:

(a) Makes a credible threat to another person and, in connection with the threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or

(b) Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or

(c) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress. For purposes of this paragraph (c), a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress.

(2) For the purposes of this part 6:

(a) Conduct "in connection with" a credible threat means acts that further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat.

(b) "Credible threat" means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.

(c) "Immediate family" includes the person's spouse and the person's parent, grandparent, sibling, or child.

(d) "Repeated" or "repeatedly" means on more than one occasion.

(3) A person who commits stalking:

(a) Commits a class 5 felony for a first offense except as otherwise provided in subsection (5) of this section; or

(b) Commits a class 4 felony for a second or subsequent offense, if the offense occurs within seven years after the date of a prior offense for which the person was convicted.

(4) Stalking is an extraordinary risk crime that is subject to the modified presumptive sentencing range specified in section 18-1.3-401 (10).

(5) If, at the time of the offense, there was a temporary or permanent protection order, injunction, or condition of bond, probation, or parole or any other court order in effect against the person, prohibiting the behavior described in this section, the person commits a class 4 felony.

(6) Nothing in this section shall be construed to alter or diminish the inherent authority of the court to enforce its orders through civil or criminal contempt proceedings; however, before a criminal contempt proceeding is heard before the court, notice of the proceedings shall be provided to the district attorney for the judicial district of the court where the proceedings are to be heard and the district attorney for the judicial district in which the alleged act of criminal contempt occurred. The district attorney for either district shall be allowed to appear and argue for the imposition of contempt sanctions.

(7) A peace officer shall have a duty to respond as soon as reasonably possible to a report of stalking and to cooperate with the alleged victim in investigating the report.

(8) (a) When a person is arrested for an alleged violation of this section, the fixing of bail for the crime of stalking shall be done in accordance with section 16-4-105 (4), C.R.S., and a protection order shall issue in accordance with section 18-1-1001 (5).

(b) This subsection (8) shall be known and may be cited as "Vonnie's law".

(9) When a violation under this section is committed in connection with a violation of a court order, including but not limited to any protection order or any order that sets forth the conditions of a bond, any sentences imposed pursuant to this section and pursuant to section 18-6-803.5 or any sentence imposed in a contempt proceeding for violation of the court order shall be served consecutively and not concurrently.

Source: **L. 2010:** Entire part added with relocations, (HB 10-1233), ch. 88, p. 294, § 1, effective August 11. **L. 2012:** (5) amended and (8) and (9) added, (HB 12-1114), ch. 176, pp. 632, 631, § 4, 1, effective May 11. **L. 2014:** (8)(a) amended, (SB 14-212), ch. 397, p. 2000, § 8, effective July 1.

Editor's note: This section is similar to former § 18-9-111 (4)(b), (4)(c), (5), and (6), as they existed prior to 2010.

ANNOTATION

Annotator's note. Since § 18-3-602 is similar to § 18-9-111 as it existed prior to the 2010 amendments to this part, relevant cases construing that provision have been included in the annotations to this section.

Subsection (1)(c) held constitutional. *People v. Beauvais*, 2014 COA 143, 405 P.3d 269, rev'd on other grounds, 2017 CO 34, 393 P.3d 509.

Under subsection (1)(c), a true threat is a form of communication that, considered in context and under the totality of the circumstances, a foreseeable recipient would reasonably perceive as a serious expression of intent to commit an act of unlawful violence. A true threat is not protected speech under the first amendment of the federal or state constitution. *People v. Counterman*, 2021 COA 97, 497 P.3d 1039.

Subsection (4)(a)(II) held constitutional. By burdening only those communications furthering, promoting, or advancing an expressed credible threat, subsection (4)(a)(II) does not reach protected conduct. *People v. Baer*, 973 P.2d 1225 (Colo. 1999) (decided prior to 1999 amendment to subsection (4)).

Nor is the provision void for vagueness since a person of ordinary intelligence can know what conduct is proscribed. *People v. Baer*, 973 P.2d 1225 (Colo. 1999) (decided prior to 1999 amendment to subsection (4)).

Requiring a jury to determine "reasonableness" does not make subsection (4)(b)(III) unconstitutionally vague. The statute prohibits contact that inflicts "serious emotional distress" and provides an objective "reasonable person" standard to measure whether the emotional distress inflicted upon the victim was "serious". Thus, it provides notice that conduct that would cause a reasonable person serious emotional distress is prohibited. The only uncertainty raised by the statute is whether the conduct would cause a reasonable person serious emotional distress, and the determination of "reasonableness" is a question for the jury. *People v. Yascavage*, 80 P.3d 899 (Colo. App. 2003), aff'd on other grounds, 101 P.3d 1090 (Colo. 2004).

Subsections (4)(b)(I) and (4)(b)(III) are not unconstitutionally vague or overbroad. The definition of "credible threat" does not substantially burden speech and is specifically sufficient to provide guidance to the public. The term "serious emotional distress" sets forth an identifiable objective standard for measuring the proscribed conduct and therefore is not unconstitutionally vague. *People v. Cross*, 114 P.3d 1 (Colo. App. 2004), rev'd on other grounds, 127 P.3d 71 (Colo. 2006); *People v. Richardson*, 181 P.3d 340 (Colo. App. 2007); *People v. Pellegrin*, 2021 COA 118, 500 P.3d 384.

Application of former § 18-9-111 (4)(b)(II) to sender of e-mails that constituted true threats does not violate sender's first amendment rights. *People v. Chase*, 2013 COA 27, 411 P.3d 740.

No equal protection violation for convictions for felony stalking and misdemeanor harassment by computer because the statutory provisions proscribe different although related criminal conduct. *People v. Chase*, 2013 COA 27, 411 P.3d 740.

Right to access to courts does not include right to file lawsuits in abusive manner; therefore, the stalking convictions that were based, in part, on defendant filing 13 frivolous lawsuits against the victim did not violate the defendant's right to access the courts. *People v. Richardson*, 181 P.3d 340 (Colo. App. 2007).

Because the elements of violation of a mandatory restraining order and the elements of harassment by stalking are not the same, the subsequent prosecution of defendant did not violate

double jeopardy protections. *People v. Carey*, 198 P.3d 1223 (Colo. App. 2008).

A defendant does not need to know that his or her conduct would cause a reasonable person serious emotional distress. This reading of subsection (4)(b)(III) would impart a nonexistent requirement that the defendant must intend to cause serious emotional distress. The defendant must only be aware of his or her conduct, and the result of that conduct is evaluated under an objective standard to which his or her specific intent is irrelevant. *People v. Yascavage*, 80 P.3d 899 (Colo. App. 2003), *aff'd*, 101 P.3d 1090 (Colo. 2004).

It is not each individual act of stalking that must cause a reasonable person to suffer emotional distress, but the combined acts of the defendant that would cause such a result. *People v. Folsom*, 2017 COA 146M, 431 P.3d 652.

The mens rea of knowingly in the crime of emotional distress harassment by stalking does not apply to the element that the stalker be aware that his or her conduct would cause serious emotional distress to a reasonable person. Generally, the mental state applies to all elements of an offense unless the legislative intent is to limit its application. The general assembly recognized the stalker may be oblivious to reality of the emotional distress he or she is causing, and, therefore, it would be absurd to allow a defendant so out-of-touch with reality to avoid criminal prosecution. *People v. Cross*, 127 P.3d 71 (Colo. 2006).

A person commits the offense of stalking if he or she knowingly engages in conduct that causes a reasonable person to fear for his or her safety or the safety of his or her family or intimates. *People v. Chase*, 2013 COA 27, 411 P.3d 740.

Harassment is not a lesser included offense of stalking because it fails the single distinction test set forth in § 18-1-408 (5)(c). Harassment and stalking differ in more than one respect. *People v. Pellegrin*, 2021 COA 118, 500 P.3d 384.

An electronic surveillance device installed on the victim's car "repeatedly" stored information about her movements thereby allowing the defendant to gain information about her on repeated occasions, and therefore satisfying the requirements of this section. *People v. Sullivan*, 53 P.3d 1181 (Colo. App. 2002).

The phrase "in connection with" indicates an intention by the general assembly that a continued relationship between the credible threat and the repeated communications is contemplated. *People v. Baer*, 973 P.2d 1225 (Colo. 1999) (decided prior to 1999 amendment to subsection (4)).

A person must directly, or indirectly through another person, knowingly make a credible threat to another person and repeatedly make any form of communication with the recipient of the threat. *People v. Baer*, 973 P.2d 1225 (Colo. 1999) (decided prior to 1999 amendment to subsection (4)).

The repeated communications may occur before, during, or after the credible threat but they must be connected to the threat. *People v. Baer*, 973 P.2d 1225 (Colo. 1999) (decided prior to 1999 amendment to subsection (4)).

Whether the repeated communications are "in connection with" the threat is a matter of fact just as the existence of a credible threat itself. *People v. Baer*, 973 P.2d 1225 (Colo. 1999) (decided prior to 1999 amendment to subsection (4)).

Under subsection (1)(a), the term "contacts" includes phone and text message communications. *People v. Burgandine*, 2020 COA 142, 484 P.3d 739.

Trial court erred in not instructing the jury that defendant must knowingly engage in conduct taken in connection with the threat. *People v. Suazo*, 87 P.3d 124 (Colo. App. 2003).

The defendant could not have been charged with a violation of subsection (4) until all of the elements of the crime are completed. *People v. Bastian*, 981 P.2d 203 (Colo. App. 1998).

The defendant may be charged with increased penalties because of amendments to subsection (4) that became effective in July of 1995 when the defendant did not consummate following the victim until August, but had committed elements of the offense prior to July. *People v. Bastian*, 981 P.2d 203 (Colo. App. 1998).

The phrase "under surveillance" includes electronic surveillance that records a person's whereabouts as that person moves from one location to another and allows the stalker to access that information either simultaneously or shortly thereafter. *People v. Sullivan*, 53 P.3d 1181 (Colo. App. 2002).

Defendant's statement that he was going to kill the victim if she did not see him was sufficient evidence to support a finding that he had made a credible threat. *People v. Suazo*, 87 P.3d 124 (Colo. App. 2003).

Evidence sufficient to support a finding that contact was made in connection with a credible threat. Defendant called the victim repeatedly on one day and threatened that he would kill her if she did not see him. Following this threat, defendant contacted the victim numerous times in person and by telephone and repeatedly asked to see her. This evidence is sufficient to support a finding that the contact was made in connection with a credible threat. *People v. Suazo*, 87 P.3d 124 (Colo. App. 2003).

Serious emotional distress was supported by the evidence where the victim testified that she suspected the defendant was stalking her for over a month, that she was concerned about constantly being watched, that she took alternate routes to her destinations, that she was uncomfortable and had stomach aches, that she had trouble sleeping and was anxious, and that she took a leave of absence from work to enter a safe house for her safety. *People v. Sullivan*, 53 P.3d 1181 (Colo. App. 2002).

Evidence sufficient to support a finding beyond a reasonable doubt of serious emotional distress where the victim testified that defendant's behavior caused her to change her work schedule, take days off from work, and feel unsafe; she was nervous and had trouble sleeping; and she felt she was constantly being watched by defendant. The statute is clear that serious emotional distress need not be such as would compel professional treatment or a breakdown. *People v. Cross*, 114 P.3d 1 (Colo. App. 2004), rev'd on other grounds, 127 P.3d 71 (Colo. 2006).

Evidence sufficient to establish a "credible threat". The credible threat does not need to be separate from the harassing behavior or verbal. Therefore, evidence that the defendant was only at the victim's place of employment when the victim was there, the defendant would approach and make eye contact with the victim, and the defendant found out where the victim went to church and attended that church was sufficient to establish a "credible threat". *People v. Cross*, 114 P.3d 1 (Colo. App. 2004), rev'd on other grounds, 127 P.3d 71 (Colo. 2006).

Evidence sufficient to establish that e-mails, with their implicit and explicit threats, would have caused a reasonable person in recipients' position to fear for their safety and the safety of others. *People v. Chase*, 2013 COA 27, 411 P.3d 740.

Court's instruction for harassment by stalking was appropriate. The court instructed the jury that "knowingly" applied to both the credible threat and to the conduct in connection with the threat. *People v. Cross*, 114 P.3d 1 (Colo. App. 2004), rev'd on other grounds, 127 P.3d 71 (Colo. 2006).

The penalty provision in subsection (5)(a.5) establishes a sentencing enhancer. Since the statute does not prescribe a burden of proof, the prosecution is required to prove the prior conviction by only a preponderance of the evidence, and the court may properly determine the issue without the jury. Therefore, the court erred in admitting the prior conviction into evidence as an element of the harassment by stalking offense. The error required reversal since the evidence was highly prejudicial and had no or little probative value. *People v. Cross*, 114 P.3d 1 (Colo. App. 2004), rev'd on other grounds, 127 P.3d 71 (Colo. 2006).

Defendant's course of conduct amounted to a single crime for which the general assembly has not authorized multiple punishments. The plain words of the statute define the unit of prosecution for the crime of stalking as a continuous course of conduct by which one repeatedly follows, approaches, contacts, or places another under surveillance. Furthermore, the statute requires that the acts constituting stalking must be performed "repeatedly". Consequently, per victim, stalking can occur only when there is conduct comprising two or more occurrences of the specified acts. *People v. Herron*, 251 P.3d 1190 (Colo. App. 2010).

An extended time frame alone does not render numerous contacts with the victim factually distinct when contacts with the victim were related to the common desire to reconcile and resume a relationship, and, most significantly, the prosecution did not treat the acts as legally separable at trial. *People v. Wagner*, 2018 COA 68, 434 P.3d 731.
