

CRIMES CODE (18 PA.C.S.) - AMEND HARASSMENT AND STALKING

Act of Dec. 9, 2002, P.L. 1759, No. 218

Cl. 18

Session of 2002

No. 2002-218

SB 1515

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the offense of harassment and stalking; and making conforming amendments to Titles 5, 18, 23 and 42.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2709 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2709. Harassment [and stalking].

(a) [Harassment] **Offense defined** .--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;

(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[.] ;

(4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;

(5) communicates repeatedly in an anonymous manner;

(6) communicates repeatedly at extremely inconvenient hours; or

(7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

[(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.]

(b.1) Venue.--

(1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.

(2) 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.

(c) Grading.--

(1) An offense under subsection (a) **(1), (2) or (3)** shall constitute a summary offense.

(2) (i) An offense under subsection [(b)] **(a) (4), (5), (6) or (7)** shall constitute a misdemeanor of the [first] **third** degree.

[(ii) 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), 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:

"Communicates." Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

"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.] 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.

["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.]

Section 2. Title 18 is amended by adding a section to read:

§ 2709.1. Stalking.

(a) Offense defined.--A person commits the crime of stalking when the person either:

(1) 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 an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or

(2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

(b) Venue.--

(1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.

(2) 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.

(c) Grading.--

(1) Except as otherwise provided for in paragraph (2), a first offense under this section shall constitute a misdemeanor of the first degree.

(2) A second or subsequent offense under this section or a first offense under subsection (a) if the person has been previously convicted of a crime of violence involving the same victim, family or household member, 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) or 3123 (relating to involuntary deviate sexual intercourse), 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.

(f) Definitions.--As used in this section, the following

words and phrases shall have the meanings given to them in this subsection:

"Communicates." To convey a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

"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. 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.

"Emotional distress." A temporary or permanent state of mental anguish.

"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.

Section 3. Sections 2710(a), 2711(a), 4954 and 4955(a)(2) of Title 18 are amended to read:

§ 2710. Ethnic intimidation.

(a) Offense defined.--A person commits the offense of ethnic intimidation if, with malicious intention toward the race, color, religion or national origin of another individual or group of individuals, he commits an offense under any other provision of this article or under Chapter 33 (relating to arson, criminal mischief and other property destruction) exclusive of section 3307 (relating to institutional vandalism) or under section 3503 (relating to criminal trespass) [or under section 5504 (relating to harassment by communication or address)] with respect to such individual or his or her property or with respect to one or more members of such group or to their property.

* * *

§ 2711. Probable cause arrests in domestic violence cases.

(a) General rule.--A police officer shall have the same right of arrest without a warrant as in a felony whenever he has probable cause to believe the defendant has violated section 2504 (relating to involuntary manslaughter), 2701 (relating to simple assault), 2702(a)(3), (4) and (5) (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2706 (relating to terroristic threats) or [2709(b) (relating to harassment and stalking)] **2709.1 (relating to stalking)** against a family or household member although the offense did not take place in the presence of the police officer. A police officer may not arrest a person pursuant to this section without first observing recent physical injury to the victim or other corroborative evidence. For the purposes of this subsection, the term "family or household member" has the meaning given that term in 23 Pa.C.S. § 6102 (relating to

definitions).

* * *

§ 4954. Protective orders.

Any court with jurisdiction over any criminal matter may, after a hearing and in its discretion, upon substantial evidence, which may include hearsay or the declaration of the prosecutor that a witness or victim has been intimidated or is reasonably likely to be intimidated, issue protective orders, including, but not limited to, the following:

(1) An order that a defendant not violate any provision of this subchapter or section 2709 (relating to harassment [and stalking]) **or 2709.1 (relating to stalking)** .

(2) An order that a person other than the defendant, including, but not limited to, a subpoenaed witness, not violate any provision of this subchapter.

(3) An order that any person described in paragraph (1) or (2) maintain a prescribed geographic distance from any specified witness or victim.

(4) An order that any person described in paragraph (1) or (2) have no communication whatsoever with any specified witness or victim, except through an attorney under such reasonable restrictions as the court may impose.

§ 4955. Violation of orders.

(a) Punishment.--Any person violating any order made pursuant to section 4954 (relating to protective orders) may be punished in any of the following ways:

* * *

(2) As a contempt of the court making such order. No finding of contempt shall be a bar to prosecution for a substantive offense under section 2709 (relating to harassment [and stalking]), **2709.1 (relating to stalking)**, 4952 (relating to intimidation of witnesses or victims) or 4953 (relating to retaliation against witness or victim), but:

(i) any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed on conviction of said substantive offense; and

(ii) any conviction or acquittal for any substantive offense under this title shall be a bar to subsequent punishment for contempt arising out of the same act.

* * *

Section 4. Section 5504 of Title 18 is repealed.

Section 5. Sections 5708(1) and (2) and 6105(b) of Title 18 are amended to read:

§ 5708. Order authorizing interception of wire, electronic or oral communications.

The Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, or the district attorney or, during the absence or incapacity of the district attorney, an assistant district attorney designated in writing by the district attorney of the county wherein the interception is to be made, may make written application to any Superior Court judge for an order authorizing the interception of a wire,

electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation involving suspected criminal activities when such interception may provide evidence of the commission of any of the following offenses, or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the following offenses:

(1) Under this title:

Section 911 (relating to corrupt organizations)
Section 2501 (relating to criminal homicide)
Section 2502 (relating to murder)
Section 2503 (relating to voluntary manslaughter)
Section 2702 (relating to aggravated assault)
Section 2706 (relating to terroristic threats)
[Section 2709(b) (relating to harassment and

stalking)]

Section 2709.1 (relating to stalking)

Section 2901 (relating to kidnapping)
Section 3121 (relating to rape)
Section 3123 (relating to involuntary deviate sexual intercourse)
Section 3124.1 (relating to sexual assault)
Section 3125 (relating to aggravated indecent assault)
Section 3301 (relating to arson and related offenses)
Section 3302 (relating to causing or risking catastrophe)
Section 3502 (relating to burglary)
Section 3701 (relating to robbery)
Section 3921 (relating to theft by unlawful taking or disposition)
Section 3922 (relating to theft by deception)
Section 3923 (relating to theft by extortion)
Section 4701 (relating to bribery in official and political matters)
Section 4702 (relating to threats and other improper influence in official and political matters)
Section 5512 (relating to lotteries, etc.)
Section 5513 (relating to gambling devices, gambling, etc.)
Section 5514 (relating to pool selling and bookmaking)
Section 6318 (relating to unlawful contact or communication with minor)

(2) Under this title, where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 910 (relating to manufacture, distribution or possession of devices for theft of telecommunications services)

Section 2709(a) (4), (5), (6) or (7) (relating to harassment)

Section 3925 (relating to receiving stolen property)
Section 3926 (relating to theft of services)
Section 3927 (relating to theft by failure to make

required disposition of funds received)
Section 3933 (relating to unlawful use of computer)
Section 4108 (relating to commercial bribery and
breach of duty to act disinterestedly)
Section 4109 (relating to rigging publicly exhibited
contest)
Section 4117 (relating to insurance fraud)
Section 4305 (relating to dealing in infant children)
Section 4902 (relating to perjury)
Section 4909 (relating to witness or informant taking
bribe)
Section 4911 (relating to tampering with public
records or information)
Section 4952 (relating to intimidation of witnesses
or victims)
Section 4953 (relating to retaliation against witness
or victim)
Section 5101 (relating to obstructing administration
of law or other governmental function)
Section 5111 (relating to dealing in proceeds of
unlawful activities)
Section 5121 (relating to escape)
[Section 5504 (relating to harassment by
communication or address)]
Section 5902 (relating to prostitution and related
offenses)
Section 5903 (relating to obscene and other sexual
materials and performances)
Section 7313 (relating to buying or exchanging
Federal food order coupons, stamps, authorization cards
or access devices)

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§ 6105. Persons not to possess, use, manufacture, control,
sell or transfer firearms.

* * *

(b) Enumerated offenses.--The following offenses shall apply
to subsection (a):

Section 908 (relating to prohibited offensive weapons).
Section 911 (relating to corrupt organizations).
Section 912 (relating to possession of weapon on school
property).
Section 2502 (relating to murder).
Section 2503 (relating to voluntary manslaughter).
Section 2504 (relating to involuntary manslaughter) if
the offense is based on the reckless use of a firearm.
Section 2702 (relating to aggravated assault).
Section 2703 (relating to assault by prisoner).
Section 2704 (relating to assault by life prisoner).
[Section 2709 (relating to harassment and stalking) if
the offense relates to stalking.]
Section 2709.1 (relating to stalking).
Section 2901 (relating to kidnapping).
Section 2902 (relating to unlawful restraint).
Section 2910 (relating to luring a child into a motor
vehicle).

Section 3121 (relating to rape).
Section 3123 (relating to involuntary deviate sexual intercourse).
Section 3125 (relating to aggravated indecent assault).
Section 3301 (relating to arson and related offenses).
Section 3302 (relating to causing or risking catastrophe).
Section 3502 (relating to burglary).
Section 3503 (relating to criminal trespass) if the offense is graded a felony of the second degree or higher.
Section 3701 (relating to robbery).
Section 3702 (relating to robbery of motor vehicle).
Section 3921 (relating to theft by unlawful taking or disposition) upon conviction of the second felony offense.
Section 3923 (relating to theft by extortion) when the offense is accompanied by threats of violence.
Section 3925 (relating to receiving stolen property) upon conviction of the second felony offense.
Section 4912 (relating to impersonating a public servant) if the person is impersonating a law enforcement officer.
Section 4952 (relating to intimidation of witnesses or victims).
Section 4953 (relating to retaliation against witness or victim).
Section 5121 (relating to escape).
Section 5122 (relating to weapons or implements for escape).
Section 5501(3) (relating to riot).
Section 5515 (relating to prohibiting of paramilitary training).
Section 6110.1 (relating to possession of firearm by minor).
Section 6301 (relating to corruption of minors).
Section 6302 (relating to sale or lease of weapons and explosives).

Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

* * *

Section 6. Section 3304(a) of Title 5 is amended to read:
§ 3304. Issuance of registration to certain persons prohibited.

(a) Prior criminal acts.--The commission shall not issue athletic agent registration to or renew the athletic agent registration of a person who has been convicted of any of the following offenses, or any comparable offense in another jurisdiction, within ten years of the date of application:

(1) An offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) An offense under the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

Section 902 (relating to criminal solicitation).

Section 908 (relating to prohibited offensive weapons).

Section 2502 (relating to murder).

Section 2709(a) (4), (5), (6) or (7) (relating to harassment).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 3121 (relating to rape).

Section 3126 (relating to indecent assault).

Section 3923 (relating to theft by extortion).

Section 4109 (relating to rigging publicly exhibited contest).

Section 4302 (relating to incest).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

Section 4701 (relating to bribery in official and political matters).

Section 4902 (relating to perjury).

Section 5501 (relating to riot).

[Section 5504 (relating to harassment by communication or address).]

Section 5512 (relating to lotteries, etc.).

Section 5513 (relating to gambling devices, gambling, etc.).

Section 5514 (relating to pool selling and bookmaking).

Section 5901 (relating to open lewdness).

Section 5902 (relating to prostitution and related offenses).

Section 5903 (relating to obscene and other sexual materials and performances).

Section 5904 (relating to public exhibition of insane or deformed person).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

Section 7107 (relating to unlawful actions by athlete agents).

* * *

Section 7. Sections 5303(b.1) (2), 6108(a) (9) and 6344(c) (2) of Title 23 are amended to read:

§ 5303. Award of custody, partial custody or visitation.

* * *

(b.1) Consideration of criminal charge.--

* * *

(2) In evaluating any request for temporary custody or modification of a custody, partial custody or visitation order, the court shall consider whether the parent who is or has been charged with an offense listed below poses a risk of harm to the child:

(i) 18 Pa.C.S. Ch. 25;

(ii) 18 Pa.C.S. § 2702 (relating to aggravated assault);

(iii) 18 Pa.C.S. § 2706 (relating to terroristic threats);

(iv) 18 Pa.C.S. § [2709(b) (relating to harassment and] **2709.1 (relating to stalking);**

(v) 18 Pa.C.S. § 2901;
(vi) 18 Pa.C.S. § 2902;
(vii) 18 Pa.C.S. § 2903 (relating to false imprisonment);
(viii) 18 Pa.C.S. § 3121;
(ix) 18 Pa.C.S. § 3122.1;
(x) 18 Pa.C.S. § 3123;
(xi) 18 Pa.C.S. § 3124.1;
(xii) 18 Pa.C.S. § 3125;
(xiii) 18 Pa.C.S. § 3126;
(xiv) 18 Pa.C.S. § 3127;
(xv) 18 Pa.C.S. § 3301 (relating to arson and related offenses);
(xvi) 18 Pa.C.S. § 4302;
(xvii) 18 Pa.C.S. § 4304;
(xviii) 18 Pa.C.S. § 6312; and
(xix) 23 Pa.C.S. § 6114 (relating to contempt for violation of order or agreement).

* * *

§ 6108. Relief.

(a) General rule.--The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

* * *

(9) Directing the defendant to refrain from stalking or harassing the plaintiff and other designated persons as defined in 18 Pa.C.S. [§] §§ 2709 (relating to harassment [and stalking]) **and 2709.1 (relating to stalking)** .

* * *

§ 6344. Information relating to prospective child-care personnel.

* * *

(c) Grounds for denying employment.--

* * *

(2) In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted of one or more of the following offenses under Title 18 (relating to crimes and offenses) or an equivalent crime under Federal law or the law of another state:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

[Section 2709 (relating to harassment and stalking).]

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).
Section 4303 (relating to concealing death of child).
Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

The attempt, solicitation or conspiracy to commit any of the offenses set forth in this paragraph.

* * *

Section 8. Section 3573(c)(1) of Title 42 is amended to read:

§ 3573. Municipal corporation portion of fines, etc.

* * *

(c) Summary offenses.--Fines, forfeited recognizances and other forfeitures imposed, lost or forfeited under the following provisions of law shall, when any such offense is committed in a municipal corporation, be payable to such municipal corporation:

(1) Under the following provisions of Title 18 (relating to crimes and offenses):

[Section 2709 (relating to harassment).]

Section 3304 (relating to criminal mischief).

Section 3503 (relating to criminal trespass).

Section 3929 (relating to retail theft).

Section 4105 (relating to bad checks).

Section 5503 (relating to disorderly conduct).

Section 5505 (relating to public drunkenness).

Section 5511 (relating to cruelty to animals).

Section 6308 (relating to purchase, consumption, possession or transportation of intoxicating beverages).

Section 6501 (relating to scattering rubbish).

* * *

Section 9. (1) Except as otherwise provided for in paragraph (2), any reference in any act or part of an act to 18 Pa.C.S. § 2709 without specification as to subsection (a) or (b) of that section shall be deemed to include a reference to 18 Pa.C.S. § 2709.1 as if fully set forth in that act or part of that act.

(2) Any reference in any act or part of an act to 18 Pa.C.S. § 2709(b) shall be deemed a reference to 18 Pa.C.S. § 2709.1 as if fully set forth in that act or part of that act.

Section 10. (1) Except as otherwise provided for in paragraph (2) or (3), any reference in any act or part of an act to 18 Pa.C.S. § 5504 without specification as to subsection (a) or (a.1) of that section shall be deemed a reference to 18 Pa.C.S. §§ 2709(a)(4), (5), (6) and (7) and 2709.1 as if fully set forth in that act or part of that act.

(2) Any reference in any act or part of an act to 18 Pa.C.S. § 5504(a) shall be deemed a reference to 18 Pa.C.S. § 2709(a)(4), (5), (6) and (7) as if fully set forth in that act or part of that act.

(3) Any reference in any act or part of an act to 18 Pa.C.S. § 5504(a.1) shall be deemed a reference to 18 Pa.C.S. § 2709.1 as if fully set forth in that act or part of that act.

Section 11. This act shall take effect in 60 days.

APPROVED--The 9th day of December, A. D. 2002.

MARK S. SCHWEIKER