

MAINE STATE LEGISLATURE

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No. 1873

S.P. 681

April 25, 2007

An Act To Amend the Laws Governing Stalking

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President EDMONDS of Cumberland.

Cosponsored by Speaker CUMMINGS of Portland and Senators: DIAMOND of Cumberland, HOBBS of York, McCORMICK of Kennebec, SHERMAN of Aroostook, STRIMLING of Cumberland, Representatives: CASAVANT of Biddeford, DUNN of Bangor, HILL of York, PLUMMER of Windham, SIMPSON of Auburn.

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

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

4 **§210-A. Stalking**

5 1. A person is guilty of stalking if:

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

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

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

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

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

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

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

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

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

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

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

35 (4) Has 2 or more prior convictions for any combination of offenses under the
36 following: Title 5, section 4659; Title 15, section 321; former Title 19, section
37 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary,
38 emergency, interim or final protective order issued by any other jurisdiction; or a
39 court-approved consent agreement.

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

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

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

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

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

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

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

40 E. ~~"Serious inconvenience" means that a person significantly modifies that person's~~
41 ~~actions or routines in an attempt to avoid the actor or because of the actor's course of~~
42 ~~conduct. "Serious inconvenience" includes, but is not limited to, changing a phone~~
43 ~~number, changing an electronic mail address, moving from an established residence,~~

1 changing daily routines, changing routes to and from work, changing employment or
2 work schedule or losing time from work or a job.

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

4 **5-D.** In using a sentencing alternative involving a term of imprisonment for a person
5 convicted of a Class C or higher crime, the victim of which was at the time of the
6 commission of the crime in fact being stalked by that person, a court shall assign special
7 weight to this objective fact in determining the basic sentence in the first step of the
8 sentencing process. The court shall assign special weight to any subjective victim impact
9 caused by the stalking in determining the maximum period of incarceration in the 2nd
10 step in the sentencing process. The court may not suspend that portion of the maximum
11 term of imprisonment based on objective or subjective victim impact in arriving at the
12 final sentence as the 3rd step in the sentencing process.

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

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

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

33 **SUMMARY**

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