

Amendment No. 337

Assembly Amendment to Assembly Bill No. 309 (BDR 15-994)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

BFG/BAW



Date: 4/13/2009

A.B. No. 309—Revises provisions relating to the crime of stalking. (BDR 15-994)



ASSEMBLY BILL NO. 309—ASSEMBLYMEN KOIVISTO, MCCLAIN, MANENDO, LESLIE, BOBZIEN; AIZLEY, ANDERSON, ARBERRY, ATKINSON, CLABORN, CONKLIN, DONDERO LOOP, HAMBRICK, HOGAN, HORNE, KIHUEN, KIRKPATRICK, MASTROLUCA, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL, PARNELL, SEGERBLOM, SMITH AND SPIEGEL

MARCH 12, 2009

JOINT SPONSORS: SENATORS CARLTON, BREEDEN, PARKS, COPENING, WIENER; COFFIN, MATHEWS, SCHNEIDER AND WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the crime of stalking. (BDR 15-994)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to crimes; revising provisions relating to the crime of stalking; increasing the penalties for the crime of stalking; ~~revising the provisions relating to orders for protection against stalking, aggravated stalking and harassment;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[This bill revises provisions relating to the crime of stalking.] Existing law prohibits stalking and authorizes the issuance of a temporary or extended order restricting certain conduct related to the crime of stalking, aggravated stalking or harassment. (NRS 200.575, 200.591) Section 1 of this bill criminalizes includes within the definition of the crime of stalking a course of conduct which would cause a reasonable person to feel fearful for the safety of a third person [or to suffer other emotional distress] and which actually causes a victim to feel such fear. [or to suffer such emotional distress.] Section 1 also increases the penalty for a first offense for the crime of stalking from a misdemeanor to a gross misdemeanor and makes a subsequent offense a category D felony. [~~
~~—]. Additionally, section 1 [of this bill] adds text messaging to the existing crime of stalking with the use of a communication device, which is punishable as a category C felony. [Finally, section 1 provides that it is not a defense to prosecution for stalking that the person was not given notice that the course of conduct was unwanted or that the person did not intend to cause the victim to feel terrorized, frightened, intimidated, harassed or fearful for the safety of a third person or to suffer other emotional distress.]~~

~~Section 2 of this bill authorizes the issuance of a temporary or extended order to restrict conduct related to the crime of stalking, aggravated stalking or harassment without a hearing, unless a hearing is requested by the adverse party. (NRS 200.591.)~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 200.575 is hereby amended to read as follows:

200.575 1. A person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, ~~for~~ harassed ~~for~~ *or fearful for the safety of a third person, for to suffer other emotional distress,* and that actually causes the victim to feel terrorized, frightened, intimidated, ~~for~~ harassed ~~for~~ *or fearful for the safety of a third person, for to suffer other emotional distress,* commits the crime of stalking. Except where the provisions of subsection 2 or 3 are applicable, a person who commits the crime of stalking:

(a) For the first offense, is guilty of a *gross* misdemeanor.

(b) For any subsequent offense, is guilty of a ~~gross misdemeanor~~ *category D felony and shall be punished as provided in NRS 193.130.*

2. A person who commits the crime of stalking and in conjunction therewith threatens the person with the intent to cause him to be placed in reasonable fear of death or substantial bodily harm commits the crime of aggravated stalking. A person who commits the crime of aggravated stalking shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$5,000.

3. A person who commits the crime of stalking with the use of an Internet or network site, ~~for~~ electronic mail, *text messaging* or any other similar means of communication to publish, display or distribute information in a manner that substantially increases the risk of harm or violence to the victim shall be punished for a category C felony as provided in NRS 193.130.

4. Except as otherwise provided in subsection 2 of NRS 200.571, a criminal penalty provided for in this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

5. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.

~~6. In any prosecution under this section, it is not a defense that the person:~~

~~(a) Was not given actual notice that the course of conduct was unwanted; or~~
~~(b) Did not intend to cause the victim to feel terrorized, frightened, intimidated, harassed or fearful for the safety of a third person or to suffer other emotional distress.~~

~~7.~~ As used in this section:

(a) "Course of conduct" means a pattern of conduct which consists of a series of acts over time that evidences a continuity of purpose directed at a specific person.

(b) ~~"Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.~~

~~(c)~~ "Internet or network site" has the meaning ascribed to it in NRS 205.4744.

(c) ~~(d)~~ "Network" has the meaning ascribed to it in NRS 205.4745.

(d) ~~(e)~~ "Provider of Internet service" has the meaning ascribed to it in NRS 205.4758.

(e) ~~(f)~~ "Text messaging" means a communication in the form of electronic text or one or more electronic images sent ~~by the actor~~ from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

~~(e)~~ (f) "Without lawful authority" includes acts which are initiated or continued without the victim's consent. The term does not include acts which are otherwise protected or authorized by constitutional or statutory law, regulation or order of a court of competent jurisdiction, including, but not limited to:

(1) Picketing which occurs during a strike, work stoppage or any other labor dispute.

(2) The activities of a reporter, photographer, cameraman or other person while gathering information for communication to the public if that person is employed or engaged by or has contracted with a newspaper, periodical, press association or radio or television station and is acting solely within that professional capacity.

(3) The activities of a person that are carried out in the normal course of his lawful employment.

(4) Any activities carried out in the exercise of the constitutionally protected rights of freedom of speech and assembly.

Sec. 2. ~~NRS 200.591 is hereby amended to read as follows:~~

~~200.591 1. In addition to any other remedy provided by law, a person who reasonably believes that the crime of stalking, aggravated stalking or harassment is being committed against him by another person may petition any court of competent jurisdiction for a temporary or extended order directing the person who is allegedly committing the crime to:~~

~~(a) Stay away from the home, school, business or place of employment of the victim of the alleged crime and any other location specifically named by the court.~~

~~(b) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged crime and any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.~~

~~(c) Comply with any other restriction which the court deems necessary to protect the victim of the alleged crime or to protect any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.~~

~~2. If a defendant charged with a crime involving harassment, stalking or aggravated stalking is released from custody before trial or is found guilty at the trial, the court may issue a temporary or extended order or provide as a condition of the release or sentence that the defendant:~~

~~(a) Stay away from the home, school, business or place of employment of the victim of the alleged crime and any other location specifically named by the court.~~

~~(b) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged crime and any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.~~

~~(c) Comply with any other restriction which the court deems necessary to protect the victim of the alleged crime or to protect any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged crime.~~

~~3. A temporary order may be granted with or without notice to the adverse party [,] and without holding a hearing, unless a hearing is requested by the adverse party. An extended order may be granted only after:~~

~~(a) Notice of the petition for the order and of the hearing thereon is served upon the adverse party pursuant to the Nevada Rules of Civil Procedure; and~~

~~(b) A hearing is held on the petition [,], if requested by the adverse party.~~

~~4. If an extended order is issued by a justice court, an interlocutory appeal lies to the district court, which may affirm, modify or vacate the order in question. The appeal may be taken without bond, but its taking does not stay the effect or enforcement of the order.~~

~~5. Unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order, any person who intentionally violates:~~

~~(a) A temporary order is guilty of a gross misdemeanor;~~

~~(b) An extended order is guilty of a category C felony and shall be punished as provided in NRS 193.130.~~

~~6. Any court order issued pursuant to this section must:~~

~~(a) Be in writing;~~

~~(b) Be personally served on the person to whom it is directed; and~~

~~(c) Contain the warning that violation of the order:~~

~~(1) Subjects the person to immediate arrest;~~

~~(2) Is a gross misdemeanor if the order is a temporary order;~~

~~(3) Is a category C felony if the order is an extended order.~~

~~7. A temporary or extended order issued pursuant to this section must provide notice that a person who is arrested for violating the order will not be admitted to bail sooner than 12 hours after his arrest if:~~

~~(a) The arresting officer determines that such a violation is accompanied by a direct or indirect threat of harm;~~

~~(b) The person has previously violated a temporary or extended order for protection; or~~

~~(c) At the time of the violation or within 2 hours after the violation, the person has:~~

~~(1) A concentration of alcohol of 0.08 or more in his blood or breath; or~~

~~(2) An amount of a prohibited substance in his blood or urine that is equal to or greater than the amount set forth in subsection 3 of NRS 484.379.] **(Deleted by amendment.)**~~

Sec. 3. NRS 176A.413 is hereby amended to read as follows:

176A.413 1. Except as otherwise provided in subsection 2, if a defendant is convicted of stalking with the use of an Internet or network site, ~~for~~ electronic mail, **text messaging** or any other similar means of communication pursuant to subsection 3 of NRS 200.575, an offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive, or luring a child or a person with mental illness through the use of a computer, system or network pursuant to paragraph (a) or (b) of subsection 4 of NRS 201.560 and the court grants probation or suspends the sentence, the court shall, in addition to any other condition ordered pursuant to NRS 176A.400, order as a condition of probation or suspension that the defendant not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

2. The court is not required to impose a condition of probation or suspension of sentence set forth in subsection 1 if the court finds that:

(a) The use of a computer by the defendant will assist a law enforcement agency or officer in a criminal investigation;

(b) The defendant will use the computer to provide technological training concerning technology of which the defendant has a unique knowledge; or

(c) The use of the computer by the defendant will assist companies that require the use of the specific technological knowledge of the defendant that is unique and is otherwise unavailable to the company.

3. Except as otherwise provided in subsection 1, if a defendant is convicted of an offense that involved the use of a computer, system or network and the court grants probation or suspends the sentence, the court may, in addition to any other condition ordered pursuant to NRS 176A.400, order as a condition of probation or suspension that the defendant not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

4. As used in this section:

(a) "Computer" has the meaning ascribed to it in NRS 205.4735.

(b) "Network" has the meaning ascribed to it in NRS 205.4745.

(c) "System" has the meaning ascribed to it in NRS 205.476.

(d) "Text messaging" has the meaning ascribed to it in NRS 200.575.

Sec. 4. NRS 213.1258 is hereby amended to read as follows:

213.1258 1. Except as otherwise provided in subsection 2, if the Board releases on parole a prisoner convicted of stalking with the use of an Internet or network site, ~~for~~ electronic mail, *text messaging* or any other similar means of communication pursuant to subsection 3 of NRS 200.575, an offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive, or luring a child or a person with mental illness through the use of a computer, system or network pursuant to paragraph (a) or (b) of subsection 4 of NRS 201.560, the Board shall, in addition to any other condition of parole, require as a condition of parole that the parolee not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

2. The Board is not required to impose a condition of parole set forth in subsection 1 if the Board finds that:

(a) The use of a computer by the parolee will assist a law enforcement agency or officer in a criminal investigation;

(b) The parolee will use the computer to provide technological training concerning technology of which the defendant has a unique knowledge; or

(c) The use of the computer by the parolee will assist companies that require the use of the specific technological knowledge of the parolee that is unique and is otherwise unavailable to the company.

3. Except as otherwise provided in subsection 1, if the Board releases on parole a prisoner convicted of an offense that involved the use of a computer, system or network, the Board may, in addition to any other condition of parole, require as a condition of parole that the parolee not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

4. As used in this section:

(a) "Computer" has the meaning ascribed to it in NRS 205.4735.

(b) "Network" has the meaning ascribed to it in NRS 205.4745.

(c) "System" has the meaning ascribed to it in NRS 205.476.

(d) "Text messaging" has the meaning ascribed to it in NRS 200.575.