

# STALKING JUDICIAL BENCHCARD

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July 2022

## How do you determine if someone is a victim of stalking?

- A stalking victim is any person, regardless of relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of **stalking**, defined in T.C.A. § 39-17-315 as a **willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.**
- Course of Conduct means a pattern of conduct composed of a series of two (2) or more separate, non-continuous acts evidencing a continuity of purpose, including, but not limited to, acts in which the defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to a person, or interferes with a person's property.

Harassment means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact (for example, following, appearing at workplace, sending or posting electronic communications) that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

Emotional distress means significant mental suffering that may but does not necessarily require medical or other professional treatment or counseling.

Unconsented contact means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact, includes but is not limited to: (1) following or appearing within the sight of that person, (2) approaching or confronting that person, (3) appearing at that person's workplace or residence, (4) entering onto or remaining on property owned, leased, or occupied by that person, (5) contacting that person by telephone, (6) sending to that person mail or any electronic communications by any means, (7) placing an object on, or delivering an object to, property owned, leased, or occupied by that person.

## Victims of stalking are entitled to seek an order of protection.

Any person who reasonably believes they are a victim of an offense under T.C.A. § 39-17-315, (stalking, aggravated stalking, and especially aggravated stalking) regardless of whether the alleged perpetrator has been arrested, charged or convicted of a stalking-related offense, shall be entitled to seek and obtain an order of protection in the same manner, and under the same circumstances, as is provided for victims of domestic abuse. T.C.A. 36-3-606.

## What relief is available to protect the petitioner of an order of protection?

A protection order granted under this part to protect the petitioner from domestic abuse, stalking or sexual assault may include, but is not limited to: (1) Directing the respondent to refrain from committing or threatening to commit domestic abuse, stalking or sexual assault against the petitioner or the petitioner's minor children; (2) Prohibiting the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly; (3) Prohibiting the respondent from stalking the petitioner.

## Jurisdiction for prosecution of stalking

If one or more elements of an offense are committed in one county and one or more elements in another or on the boundaries between two counties, the offense may be prosecuted in either county. T.C.A. § 39-11-103

## Criminal penalties and sanctions if the defendant is convicted of stalking.

Stalking is a Class A misdemeanor; however, stalking is a Class E felony if the defendant at the time of the offense, was required to or was registered with the Tennessee Bureau of Investigation as a sexual offender, violent sexual offender or violent juvenile sexual offender.

Aggravated stalking is a Class E felony.

A person commits aggravated stalking who commits the offense of stalking and in the course and furtherance of stalking: (1) displays a deadly weapon; (2) the victim of the

offense was less than eighteen years of age at any time during the person's course of conduct, and the person is five or more years older than the victim; (3) has previously been convicted of stalking within seven years of the instant offense; (4) makes a credible threat to the victim, the victim's child, sibling, spouse, parent or dependents with the intent to place any such person in reasonable fear of death or bodily injury; (5) or at the time of the offense, was prohibited from making contact with the victim under a restraining order or injunction for protection, an order of protection, or any other court-imposed prohibition of conduct toward the victim or the victim's property, and the person knowingly violates the injunction, order or court imposed prohibition.

Especially aggravated stalking is a Class C felony.

A person commits especially aggravated stalking who commits the offense of stalking or aggravated stalking, and (1) has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense; or (2) commits the offense of aggravated stalking, and intentionally or recklessly causes serious bodily injury to the victim of the offense or to the victim's child, sibling, spouse, parent or dependent.

### **Contempt for violation of the order of protection.**

Upon violation of the order of protection or a court approved consent agreement, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law.

### **Criminal prosecution for violation of the order of protection**

Violation of an order of protection is a Class A misdemeanor.

The provisions of T.C.A. § 40-11-150 (a) shall be considered upon arrest for violation of an order of protection to determine whether the defendant is: (1) a threat to the alleged victim; (2) a threat to public safety; and (3) reasonable likely to appear in court. The defendant shall be subject to the twelve-hour holding period authorized by 40-11-150(h) and shall not be released within twelve hours unless a magistrate or judge finds that the defendant is not a threat to the alleged victim. If there is such a finding and defendant is released prior to the twelve hour hold, the official shall make reasonable efforts to contact the victim and inform the victim that the offender will be released prior to the conclusion of the twelve hour hold period.

### **Bond requirements**

The judge, upon finding a violation of an order of protection or a court approved consent order, shall require a bond of the respondent until such time as the order of protection expires. Bond shall be set at whatever the court determines is necessary to reasonably assure the safety of the petitioner as required; however, **bond shall not be less than two thousand five hundred dollars (\$2,500).**

### **Conditions of probation**

If the court grants probation to a person convicted of a stalking offense, the court may in addition to other punishment authorized by law, order the defendant to: (1) refrain from stalking any individual during the term of probation; (2) refrain from having any contact with the victim of the offense or the victim's child, sibling, spouse, parent or dependent; (3) be evaluated to determine the need for psychiatric, psychological or social counseling and if determined appropriate by the court to receive such counseling; (4) if medication order that the defendant submit to drug testing or some other method so the court can monitor whether the defendant is taking the required medication; and submit to the use of an electronic tracking device. T.C.A. § 39-17-315 (g)

### **Determination whether stalking is a single offense or multiple offenses**

If a continuing course of conduct amounting to stalking engaged in by a defendant against the same victim is broken by any of the following events (1) the defendant being arrested for a stalking offense; (2) the defendant being found by a court to have violated an order of protection issued to prohibit the defendant from engaging in the conduct of stalking; or (3) the defendant is convicted of a stalking offense, any such conduct which occurs after that event commences a new and separate offense.

*"This project was supported by Grant No. 2016-WL-AX-0053 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice."*