

**609.749 HARASSMENT; STALKING; PENALTIES.**

Subdivision 1. **Definition.** As used in this section, "harass" means to engage in intentional conduct which:

- (1) the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and
- (2) causes this reaction on the part of the victim.

Subd. 1a. **No proof of specific intent required.** In a prosecution under this section, the state is not required to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated, or except as otherwise provided in subdivision 3, paragraph (a), clause (4), or paragraph (b), that the actor intended to cause any other result.

Subd. 2. **Harassment and stalking crimes.** (a) A person who harasses another by committing any of the following acts is guilty of a gross misdemeanor:

- (1) directly or indirectly manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;
- (2) stalks, follows, monitors, or pursues another, whether in person or through technological or other means;
- (3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;
- (4) repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;
- (5) makes or causes the telephone of another repeatedly or continuously to ring;
- (6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, or other objects; or
- (7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

(b) The conduct described in paragraph (a), clauses (4) and (5), may be prosecuted at the place where any call is either made or received or, additionally in the case of wireless or electronic communication, where the actor or victim resides. The conduct described in paragraph (a), clause (2), may be prosecuted where the actor or victim resides. The conduct described in paragraph (a), clause (6), may be prosecuted where any letter, telegram, message, package, or other object

is either sent or received or, additionally in the case of wireless or electronic communication, where the actor or victim resides.

(c) A peace officer may not make a warrantless, custodial arrest of any person for a violation of paragraph (a), clause (7).

Subd. 3. **Aggravated violations.** (a) A person who commits any of the following acts is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both:

(1) commits any offense described in subdivision 2 because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;

(2) commits any offense described in subdivision 2 by falsely impersonating another;

(3) commits any offense described in subdivision 2 and possesses a dangerous weapon at the time of the offense;

(4) harasses another, as defined in subdivision 1, with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(5) commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim.

(b) A person who commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Subd. 4. **Second or subsequent violations; felony.** (a) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency, and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency, and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Subd. 5. **Pattern of harassing conduct.** (a) A person who engages in a pattern of harassing conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(b) For purposes of this subdivision, a "pattern of harassing conduct" means two or more acts within a five-year period that violate or attempt to violate the provisions of any of the following or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories:

- (1) this section;
- (2) section 609.713;
- (3) section 609.224;
- (4) section 609.2242;
- (5) section 518B.01, subdivision 14;
- (6) section 609.748, subdivision 6;
- (7) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7);
- (8) section 609.79;
- (9) section 609.795;
- (10) section 609.582;
- (11) section 609.595;
- (12) section 609.765; or
- (13) sections 609.342 to 609.3451.

(c) When acts constituting a violation of this subdivision are committed in two or more counties, the accused may be prosecuted in any county in which one of the acts was committed for all acts constituting the pattern.

Subd. 6. **Mental health assessment and treatment.** (a) When a person is convicted of a felony offense under this section, or another felony offense arising out of a charge based on this section, the court shall order an independent professional mental health assessment of the offender's need for mental health treatment. The court may waive the assessment if an adequate assessment was conducted prior to the conviction.

(b) Notwithstanding sections 13.384, 13.85, 144.291 to 144.298, 260B.171, or 260C.171, the assessor has access to the following private or confidential data on the person if access is relevant and necessary for the assessment:

- (1) medical data under section 13.384;
- (2) welfare data under section 13.46;
- (3) corrections and detention data under section 13.85;
- (4) health records under sections 144.291 to 144.298; and
- (5) juvenile court records under sections 260B.171 and 260C.171.

Data disclosed under this section may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

(c) If the assessment indicates that the offender is in need of and amenable to mental health treatment, the court shall include in the sentence a requirement that the offender undergo treatment.

(d) The court shall order the offender to pay the costs of assessment under this subdivision unless the offender is indigent under section 563.01.

**Subd. 7. Exception.** Conduct is not a crime under this section if it is performed under terms of a valid license, to ensure compliance with a court order, or to carry out a specific lawful commercial purpose or employment duty, is authorized or required by a valid contract, or is authorized, required, or protected by state or federal law or the state or federal constitutions. Subdivision 2, clause (2), does not impair the right of any individual or group to engage in speech protected by the federal Constitution, the state Constitution, or federal or state law, including peaceful and lawful handbilling and picketing.

**Subd. 8. Stalking; firearms.** (a) When a person is convicted of a harassment or stalking crime under this section and the court determines that the person used a firearm in any way during commission of the crime, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(b) Except as otherwise provided in paragraph (a), when a person is convicted of a stalking or harassment crime under this section, the court shall inform the defendant that the defendant

is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

(c) Except as otherwise provided in paragraph (a), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1996, of a stalking or harassment crime under this section, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

(d) If the court determines that a person convicted of a stalking or harassment crime under this section owns or possesses a firearm and used it in any way during the commission of the crime, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

**History:** 1993 c 326 art 2 s 22; 1Sp1993 c 5 s 5; 1994 c 465 art 1 s 61; 1995 c 226 art 2 s 23; 1995 c 259 art 3 s 18,19; 1996 c 408 art 4 s 12; 1997 c 96 s 6-9; 1998 c 367 art 2 s 23,24; 1999 c 139 art 4 s 2; 1999 c 227 s 22; 2000 c 311 art 4 s 6; 2000 c 437 s 15,16; 1Sp2001 c 8 art 10 s 15,16; 2002 c 385 s 5-8; 2005 c 136 art 17 s 46; 2006 c 260 art 1 s 29; 2007 c 147 art 10 s 15