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HOUSE FILE No. 3090

FIRST COMMITTEE ENGROSSMENT

February 22, 2010

Authored by Hilstrom, Gardner, Paymar and Slocum

The bill was read for the first time and referred to the Committee on Public Safety Policy and Oversight

Referred by Chair to Crime Victims/Criminal Records Division.

February 26, 2010

Returned to the Committee on Public Safety Policy and Oversight as Amended.

1.1 A bill for an act
1.2 relating to crime; modifying crime of stalking; amending Minnesota Statutes
1.3 2008, section 609.749.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2008, section 609.749, is amended to read:

1.6 **609.749 HARASSMENT; STALKING; PENALTIES.**

1.7 Subdivision 1. **Definition.** As used in this section, "~~harass~~" "stalking" means
1.8 to engage in ~~intentional~~ conduct which: ~~(1)~~ the actor knows or has reason to know
1.9 would cause the victim under the circumstances to feel frightened, threatened, oppressed,
1.10 persecuted, or intimidated; and ~~(2)~~ causes this reaction on the part of the victim regardless
1.11 of the relationship between the actor and victim.

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

1.17 Subd. 1b. **Venue.** (a) When acts constituting a violation of this section are
1.18 committed in two or more counties, the accused may be prosecuted in any county in which
1.19 one of the acts was committed for all acts in violation of this section.

1.20 (b) The conduct described in subdivision 2, clause (4), (5), or (8), may be prosecuted
1.21 at the place where any call is made or received or, in the case of wireless or electronic
1.22 communication or any communication made through any available technologies, where
1.23 the actor or victim resides or in the jurisdiction of the victim's designated address if the
1.24 victim participates in Safe at Home. The conduct described in subdivision 2, clause (2),

2.1 may be prosecuted where the actor or victim resides. The conduct described in subdivision
2.2 2, clause (6), may be prosecuted where any letter, telegram, message, package, or other
2.3 object is sent or received or, in the case of wireless or electronic communication or
2.4 communication made through other available technologies, where the actor or victim
2.5 resides or in the jurisdiction of the victim's designated address if the victim participates in
2.6 Safe at Home.

2.7 Subd. 1c. **Arrest.** For all violations under this section, except a violation of
2.8 subdivision 2, clause (8), a peace officer may make an arrest under the provisions of
2.9 section 629.34. A peace officer may not make a warrantless, custodial arrest of any person
2.10 for a violation of subdivision 2, clause (8).

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

2.13 (1) directly or indirectly, or through third parties, manifests a purpose or intent to
2.14 injure the person, property, or rights of another by the commission of an unlawful act;

2.15 (2) ~~stalks~~, follows, monitors, or pursues another, whether in person or through
2.16 any available technological or other means;

2.17 (3) returns to the property of another if the actor is without claim of right to the
2.18 property or consent of one with authority to consent;

2.19 (4) repeatedly makes telephone calls, sends text messages, or induces a victim to
2.20 make telephone calls to the actor, whether or not conversation ensues;

2.21 (5) makes or causes the telephone of another repeatedly or continuously to ring;

2.22 (6) repeatedly mails or delivers or causes the delivery by any means, including
2.23 electronically, of letters, telegrams, messages, packages, through assistive devices for
2.24 the visually or hearing impaired, or any communication made through any available
2.25 technologies or other objects; ~~or~~

2.26 (7) engages in harassment as defined in section 609.748, subdivision 1, paragraph
2.27 (a); or

2.28 (8) knowingly makes false allegations against a peace officer concerning the
2.29 officer's performance of official duties with intent to influence or tamper with the officer's
2.30 performance of official duties.

2.31 ~~(b) The conduct described in paragraph (a), clauses (4) and (5), may be prosecuted at~~
2.32 ~~the place where any call is either made or received or, additionally in the case of wireless~~
2.33 ~~or electronic communication, where the actor or victim resides. The conduct described~~
2.34 ~~in paragraph (a), clause (2), may be prosecuted where the actor or victim resides. The~~
2.35 ~~conduct described in paragraph (a), clause (6), may be prosecuted where any letter,~~

3.1 ~~telegram, message, package, or other object is either sent or received or, additionally in~~
3.2 ~~the case of wireless or electronic communication, where the actor or victim resides:~~

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

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

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

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

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

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

3.19 (5) commits any offense described in subdivision 2 against a victim under the age of
3.20 18, if the actor is more than 36 months older than the victim.

3.21 (b) A person who commits any offense described in subdivision 2 against a victim
3.22 under the age of 18, if the actor is more than 36 months older than the victim, and the act
3.23 is committed with sexual or aggressive intent, is guilty of a felony and may be sentenced
3.24 to imprisonment for not more than ten years or to payment of a fine of not more than
3.25 \$20,000, or both.

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

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

3.35 Subd. 5. **Pattern of ~~harassing~~ stalking conduct.** (a) A person who engages in
3.36 a pattern of ~~harassing~~ stalking conduct with respect to a single victim or one or more

4.1 members of a single household which the actor knows or has reason to know would
4.2 cause the victim under the circumstances to feel terrorized or to fear bodily harm and
4.3 which does cause this reaction on the part of the victim, is guilty of a felony and may
4.4 be sentenced to imprisonment for not more than ten years or to payment of a fine of
4.5 not more than \$20,000, or both.

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

4.10 (1) this section;

4.11 (2) sections 609.185 to 609.205;

4.12 ~~(2)~~ (3) section 609.713;

4.13 (4) section 609.221;

4.14 (5) section 609.222;

4.15 (6) section 609.223;

4.16 ~~(3)~~ (7) section 609.224;

4.17 ~~(4)~~ (8) section 609.2242;

4.18 (9) section 609.2247;

4.19 ~~(5)~~ (10) section 518B.01, subdivision 14 or 22;

4.20 ~~(6)~~ (11) section 609.748, subdivision 6;

4.21 ~~(7)~~ (12) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7);

4.22 (13) section 609.78, subdivision 2;

4.23 ~~(8)~~ (14) section 609.79;

4.24 ~~(9)~~ (15) section 609.795;

4.25 ~~(10)~~ (16) section 609.582;

4.26 ~~(11)~~ (17) section 609.595;

4.27 ~~(12)~~ (18) section 609.765; or

4.28 ~~(13)~~ (19) sections 609.342 to 609.3451.

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

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

5.1 (b) Notwithstanding sections 13.384, 13.85, 144.291 to 144.298, 260B.171, or
5.2 260C.171, the assessor has access to the following private or confidential data on the
5.3 person if access is relevant and necessary for the assessment:

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

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

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

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

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

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

5.34 (b) Except as otherwise provided in paragraph (a), when a person is convicted of
5.35 a stalking ~~or harassment~~ crime under this section, the court shall inform the defendant
5.36 that the defendant is prohibited from possessing a pistol for three years from the date of

6.1 conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure
6.2 of the court to provide this information to a defendant does not affect the applicability of
6.3 the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

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

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

6.14 Sec. 2. **REVISOR'S INSTRUCTION.**

6.15 The revisor of statutes shall make any cross-reference and technical language
6.16 changes to Minnesota Statutes made necessary by section 1.