

Michigan Stalking and Aggravated Stalking Laws

Often arising from emotionally charged situations or relationships, Michigan takes stalking, or criminal harassment, very seriously. It is defined under MCL 750.411 as:

- 1) a willful course of conduct involving repeated or continuing harassment of another individual,
- 2) that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and
- 3) that actually did cause the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Now, let's examine more closely what some of these terms and phrases mean.

Course of Conduct-- A series of two or more separate, non-continuous acts evidencing a continuity of purpose. This is very crucial as you cannot be found guilty of stalking if there is only one incident. While it may seem like more than one incident on the surface, it may be considered one long, continuous occurrence (i.e. sending a number of text messages in a row).

Harassment-- Conduct including, but not limited to, repeated or continuing *unconsented contact* that would cause a reasonable person to suffer emotional distress and that actually causes the victim emotional distress. Harassment does not include a constitutionally protected activity or conduct that serves a legitimate purpose.

Unconsented Contact-- When the defendant contacts the victim against their wishes or without permission and that the contact is not consented to has been made known to the defendant. This includes, but is not limited to:

- following or appearing within the victim's sight
- approaching or confronting the victim in a public place or on private property
- appearing at victim's workplace or residence
- entering onto or remaining on property owned, leased, or occupied by the victim
- contacting the victim by phone, email, or other electronic means
- placing an object on or delivering an object to property owned, leased, or occupied by the victim

Keep in mind that the contact can be a combination of both consented and unconsented. Often this occurs where contact is consented to in one incident but not in another. For example, consent may be given to contact the victim regarding a child-in-common, but not for any other purpose.

There is no requirement of a prior domestic relationship.

Punishment: If convicted of stalking, you face up to one-year in jail and/or \$1,000 in fines. You can also be placed on probation up to five years (very rare for a one-year misdemeanor) and the judge can (and usually does) order no contact with the victim.

If the victim is under 18 years old and there is at least a five-year age difference between the victim and defendant, the charge is a felony carrying up to five years in prison and/or \$10,000 in fines.

Aggravated Stalking

Aggravated Stalking involves stalking with an aggravating factor, or a factor that makes it a worse crime. This offense is a felony with steep penalties.

The charge involves all the elements of stalking and one of the following aggravating factors:

- at least one of the actions is in violation of a Personal Protection Order (restraining order) for which the offender has actual notice
- at least one of the actions is a violation of a condition of probation, parole, pretrial release, or release on bond pending appeal
- one or more *credible threats* against the victim, member of the victim's family, or another person living in the victim's household
- offender has a previous conviction for stalking

Credible Threat-- a threat to kill or inflict physical injury on another person, made so that it causes the person hearing the threat to reasonably fear for their safety or the safety of another.

Punishment: This is a felony which carries up to five years in prison and/or \$10,000 in fines. If placed on probation, it must be for a term of at least *five years*. Most felonies carry a maximum probationary period of five years, this one requires at least five years. That is how serious Michigan treats stalking.

If the victim is under 18 and there is at least a five year age difference between the offender and victim, it carries up to 10 years in prison and/or \$15,000 in fines.

Constitutional Challenges

There have been many constitutional challenges to Michigan's stalking laws, but they have not been successful. Most of the challenges have been on First Amendment grounds (alleging that offenders are being prosecuted for what should be conduct protected by free speech) and for vagueness (not specific enough so that an offender would know what type of conduct is permissible and what type is not).

Statutory Presumption

If the defendant persisted in contacting the victim after the victim said “no”, there is a rebuttable presumption that the continued contact caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. The Michigan Court of Appeals rejected the argument that this unconstitutionally shifted the burden of proof onto the defendant.¹

Double Jeopardy

Many stalking cases involve Personal Protection Orders (PPOs) and thus overlap as the same factual events that gave rise to the stalking charge will involve a violation of the PPO as well. This raises double jeopardy concerns as convictions for both would result in punishment for the same conduct and the same elements. Often, the PPO violation will be adjourned (or postponed) until the conclusion of the stalking case. If the stalking case ends with a plea or conviction, the PPO violation will be dismissed.

Defenses to Stalking

The most common defenses to stalking are that the conduct involved a legitimate purpose or that the conduct was consensual. These aren't as cut-and-dry as they seem however. One man erroneously thought that repeatedly contacting his wife after she told him not to was legitimate because he was “trying to preserve his marriage.”² Many defendants have also wrongly concluded that if the victim contacts them, that negates the argument that the victim reasonably felt terrorized, harassed, threatened..., etc. Not necessarily. That is a question of fact for a jury to decide and not a matter of decided law. Also, the victim can consent to certain contact but not to others as noted earlier as that situations often arises when the offender and victim have a child-in-common.

Michigan prosecutors and judges treat stalking very seriously. Not only can you go to jail or prison, but you risk being on probation and under the constant, watchful eye of the court, for at least five years. If you have been accused of stalking, consult with an experienced Michigan criminal defense lawyer immediately.

¹ *People v Ballantyne*, 212 Mich App 628, 629 (1995)

² *People v Coones*, 216 Mich App 721, 725-26 (1996)