

PO UNLAWFUL HARASSMENT BENCHCARD

1. Unlawful Harassment – Course Of Conduct Elements (.010(36)(a))

Petitioner must prove all 7 of the course of conduct elements by a preponderance of the evidence –

- (1) Mens Rea. Respondent acted knowingly and willfully; and
- (2) Course Of Conduct. Respondent engaged in a course of conduct; and
 - “Course Of Conduct” Definition (.010(6)(a)). Means –
 - (a) Pattern. A pattern of conduct; and
 - (b) Acts. Composed of a series of acts; and
 - (c) Time. Over a period of time however short; and
 - (d) Continuity. Evidencing a continuity of purpose.
 - Course of conduct includes any form of communication, contact, or conduct, including the sending of electronic communication.
 - Not Constitutionally Protected. “Course of conduct” definition does not include constitutionally protected free speech or other constitutionally protected activity. .010(6)(a); .310(3).
 - See FREE SPEECH BENCH GUIDE, Tab 8.
- (3) Specific Person. Respondent’s course of conduct was directed at a specific person; and
- (4) Serious. Respondent’s course of conduct seriously alarms, annoys, harasses, or is detrimental to such person; and
- (5) Substantial Emotional Distress – Objective. Respondent’s course of conduct would cause a reasonable person to suffer substantial emotional distress; and
- (6) Substantial Emotional Distress – Subjective. Respondent’s course of conduct did actually cause substantial emotional distress to “petitioner” [see “petitioner” definition at .010(28)]; and
- (7) Purpose Not Legitimate Or Lawful. Respondent’s course of conduct serves no legitimate or lawful purpose. Court shall consider (.010(6)(b)) –
 - (a) Who Initiated Contact? Was contact initiated by respondent only, or both parties?
 - (b) Clear Notice Contact Unwanted? Was respondent given clear notice that all further contact with “petitioner” is unwanted [see “petitioner” definition at .010(28)]?
 - (c) Designed To Harass, Annoy, Alarm? Did respondent’s course of conduct appear to be designed to alarm, annoy, or harass “petitioner” [see “petitioner” definition at .010(28)]?
 - (d) Statutory Authority For Conduct? Was respondent acting pursuant to any statutory authority including, but not limited to, acts which are reasonably necessary to –
 - (i) Property Or Liberty? Protect property or liberty interests?; or
 - (ii) Law? Enforce the law?; or
 - (iii) Legal Duties? Meet specific statutory duties or requirements?
 - (e) Purpose Or Effect? Did respondent’s course of conduct have the purpose or effect of –
 - (i) Privacy? Unreasonably interfering with “petitioner’s” privacy [see “petitioner” definition at .010(28)]?; or
 - (ii) Hostile? Creating intimidating, hostile, or offensive living environment for “petitioner” [see “petitioner” definition at .010(28)]?; or
 - (f) Previous Order(s)? Had contact by respondent with petitioner or petitioner’s family been limited in any manner by any previous court order?

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2. Unlawful Harassment – Single Violent Act Elements (.010(36)(b))

Petitioner must prove all 6 of the single violent act elements by a preponderance of the evidence –

- (1) Violence. Respondent engaged in a –
 - Act. Single act of violence [statute does not define “violence”]; or
 - Threat. Single threat of violence which must include either –
 - (a) Hate Crime. A malicious and intentional threat in RCW 9A.36.080(1)(c) –
 - Malicious + Intentional. A person is guilty of a hate crime offense if he or she maliciously and intentionally commits the following because of his or her perception of the victim’s race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability –
 - (i) Threat + Fear. Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property; and
 - (ii) Fear – Objective. The fear must be a fear that a reasonable person would have under all the circumstances. For purposes of this section, a “reasonable person” is a reasonable person who is a member of the victim’s race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same gender expression or identity, or the same mental, physical, or sensory disability as the victim; and
 - (iii) Real Threat + Ability To Carry Out. Words alone do not constitute a hate crime offense unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute a hate crime offense if it is apparent to the victim that the person does not have the ability to carry out the threat; or
 - (b) Firearm Or Weapon. The presence of a firearm or other weapon; and
 - “Firearm” Definition. Means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. “Firearm” also includes parts that can be assembled to make a firearm. .010(15).
 - “Firearm” Does Not Include. “Firearm” does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes. .010(15).
- (2) Specific Person. Respondent’s act directed at a specific person; and
- (3) Serious. Respondent’s act seriously alarms, annoys, harasses, or is detrimental to such person; and
- (4) Substantial Emotional Distress – Objective. Respondent’s act would cause a reasonable person to suffer substantial emotional distress, and
- (5) Substantial Emotional Distress – Subjective. Respondent’s act did actually cause substantial emotional distress to “petitioner” [see “petitioner” definition at .010(28)]; and
- (6) Purpose Not Legitimate Or Lawful. Respondent’s act serves no legitimate or lawful purpose.
 - Query whether course of conduct definition (.010(6)(b)) concerning legitimate or lawful purpose applies here for a single act? [see ¶1(7) on page 1].