

PO STALKING BENCHCARD

1. Stalking – Three Alternate Means

- Allege Stalking. Petitioner must allege the existence of stalking committed against the petitioner or petitioners by the respondent. RCW 7.105.100(1)(c).
- Only 1 Need Be Proven. Stalking definition under RCW 7.105.010(34) includes 3 alternate means of proof –
 - (a) Stalking. Any act of stalking as defined under RCW 9A.46.110; or
 - (b) Cyber Harassment. Any act of cyber harassment as defined under RCW 9A.90.120; or
 - (c) Course Of Conduct. Any course of conduct as defined under RCW 7.105.010(34)(c).
 - Proof of any 1 of the 3 is proof of stalking.

2. Stalking – Stalking Elements (RCW 9A.46.110(1))

Petitioner must prove all 4 stalking elements by a preponderance of the evidence –

- (1) No Lawful Authority. Respondent was without lawful authority; and
- (2) Intentionally And Repeatedly. Respondent intentionally and repeatedly – (a) harasses another person; or (b) follows another person; and
 - Actual Notice – Prima Facie Evidence Of Intent. RCW 9A.46.110(4) – Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. “Contact” includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.
 - Lack Of Actual Notice – Not A Defense. RCW 9A.46.110(2)(a) – It is not a defense that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person.
 - “Repeatedly” Definition. RCW 9A.46.110(6)(f) – “Repeatedly” means on two or more separate occasions.
 - “Harasses” Definition. RCW 9A.46.110(6)(d) – “Harasses” means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or when the course of conduct would cause a reasonable parent to fear for the well-being of his or her child.
 - “Course Of Conduct” Definition. RCW 9A.46.110(6)(b) – “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of “course of conduct.”
 - “Follows” Definition. RCW 9A.46.110(6)(c) – “Follows” means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person’s home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

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- (3) Fear – Objective. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
- (4) Mens Rea. The stalker either –
 - (i) Intent. Intends to frighten, intimidate, or harass the person; or
 - (ii) Knowledge. Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.
- Defense – Licensed Private Investigator. RCW 9A.46.110(3).

3. Stalking – Cyber Harassment Elements (RCW 9A.90.120(1))

Petitioner must prove all 4 stalking cyber harassment elements by a preponderance of the evidence –

- (1) Not Telephone Harassment. Cyber harassment statute specifically exempts telephone harassment (see RCW 9.61.230 – harassment involving “telephone call”); and
- (2) Intent. Respondent had intent to harass or intimidate any other person; and
- (3) Electronic Communication. Respondent made an electronic communication to that person or a third party; and
 - “Electronic Communication” Definition. Means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. “Electronic communication” includes, but is not limited to, email, internet-based communications, pager service, and electronic text messaging. RCW 9A.90.120(8).
- (4) The communication either (any 1 of the following 4) –
 - (a) Lewd, Indecent, Obscene. Uses any lewd, lascivious, indecent, or obscene words, images, or language, or suggests the commission of any lewd or lascivious act; or
 - (b) Anonymous Or Repeated. Is made anonymously or repeatedly; or
 - (c) Threat – Bodily Injury. Contains a threat to inflict bodily injury immediately or in the future on the person threatened or to any other person which – ; or
 - (i) Distress Or Fear – Objective. Would cause a reasonable person, with knowledge of the sender’s history, to suffer emotional distress or to fear for the safety of the person threatened; or
 - (ii) Distress Or Fear – Subjective. Reasonably caused the threatened person to suffer emotional distress or fear for the threatened person’s safety. RCW 9A.90.120(b).
 - (d) Threat – Property. Contains a threat to damage, immediately or in the future, the property of the person threatened or of any other person which –
 - (a) Distress Or Fear – Objective. Would cause a reasonable person, with knowledge of the sender’s history, to suffer emotional distress or to fear for the safety of the person threatened; or
 - (b) Distress Or Fear – Subjective. Reasonably caused the threatened person to suffer emotional distress or fear for the threatened person’s safety. RCW 9A.90.120(b).
- Offense Location – Where Communication Made Or Received. RCW 9A.90.120(7).

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4. Stalking – Course Of Conduct Elements (RCW 7.105.010(34)(c))

Petitioner must prove all 6 stalking course of conduct elements by a preponderance of the evidence –

- (1) Mens Rea. Respondent knows, or reasonably should know, their course of conduct threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person; 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.
- (3) Repeated Or Continuing. Respondent’s course of conduct involved repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person; and
- (4) Feel – Objective. Respondent’s actions would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened; and
- (5) Feel – Subjective. Respondent’s actions caused the person to actually feel intimidated, frightened, under duress, significantly disrupted, or threatened; and
- (6) No Lawful Purpose. Respondent’s course of conduct served no 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?; or
 - (ii) Living Environment? 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?