Sec. 11.41.270. Stalking in the second degree.

(a) A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.

(b) In this section,

(1) "course of conduct" means repeated acts of nonconsensual contact involving the victim or a family member;

(2) "family member" means a

(A) spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;

(B) person who lives, or has previously lived, in a spousal relationship with the victim;

(C) person who lives in the same household as the victim; or

(D) person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim;

(3) "nonconsensual contact" means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; "nonconsensual contact" includes

(A) following or appearing within the sight of that person;

(B) approaching or confronting that person in a public place or on private property;

(C) appearing at the workplace or residence of that person;

(D) entering onto or remaining on property owned, leased, or occupied by that person;

(E) contacting that person by telephone;

(F) sending mail or electronic communications to that person;

(G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;

(4) "victim" means a person who is the target of a course of conduct.

(c) Stalking in the second degree is a class A misdemeanor.

History -

(Sec. 1 ch 40 SLA 1993)

History Reports -

For Senate letter of intent in connection with the enactment of this section, see 1993 Senate Journal 1026 - 1027.

Decisions -

Constitutionality. - The potential due process and overbreadth problems in the definition of stalking do not require invalidation of the stalking statutes; rather, those problems should be resolved on a case-by-case basis. Petersen v. State, 930 P.2d 414 (Alaska Ct. App. 1996).

Sufficiency of evidence. - Grand jury evidence was sufficient for indictment for first-degree stalking, under AS 11.41.260, where there was a protective order in place against defendant who nevertheless made ongoing contact with victim, including numerous hang-up calls to the victim and victim's boyfriend, paging the victim when she attended one of her boyfriend's musical performances, and slashing tires on her and her boyfriend's cars. Kenison v. State, 107 P.3d 335 (Alaska Ct. App. 2005).

Construction of "contact". - Inclusion within AS 18.66.100(c)(2) of the phrase "or otherwise communicating" immediately after "contacting" strongly suggests that nonphysical contact must involve

some element of direct or indirect communication and does not merely mean coming within view; further, "nonconsensual contact" in this section is not all that is needed for a crime to take place; the contact must also be "repeated," so that it is a course of conduct, and it must place the protected person in fear, and the need for these additional requirements to make stalking a crime argues against a construction that makes merely appearing in the sight of a protected person, without more, a crime. Cooper v. Cooper, 144 P.3d 451 (Alaska 2006).

Stalking of ex-wife as domestic violence. - Ex-husband's threatening communications to his ex-wife constituted stalking; these acts by the ex-husband were sufficient support for the issuance of a protective order under AS 18.66.990(3)(A) because stalking in the second degree is a crime involving domestic violence when committed against a former spouse. McComas v. Kirn, 105 P.3d 1130 (Alaska 2005).

Legitimate nonconsensual contacts and telephone calls not prohibited. - The stalking statutes do not prohibit telephone calls or other nonconsensual contact made for a legitimate purpose, even when the defendant knows that the person contacted may or will unreasonably perceive the contact as threatening. Petersen v. State, 930 P.2d 414 (Alaska Ct. App. 1996).

Husband admitted to having been at a mall at a time when his wife, who had sought a protective order against the husband, was also there, but he denied having seen his wife. Only knowing contact was required, but the superior court's error was harmless in holding that contact must be intentional because there was no conduct that amounted to"contacting" within the meaning of AS 18.66.100(c)(2); being in the mere presence of the husband's wife did not mean the husband was "contacting" his wife; the meaning of "contacting" had a normal meaning, and a nonphysical "contact" did not mean merely coming within view. Cooper v. Cooper, 144 P.3d 451 (Alaska 2006).

Stated in Cook v. State, 36 P.3d 710 (Alaska Ct. App. 2001).

Cited in Prentzel v. State, 169 P.3d 573 (Alaska 2007).