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[First Reprint]

**ASSEMBLY, No. 1563**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

**Sponsored by:**

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**District 14 (Mercer and Middlesex)**

**Assemblyman ERIC MUNOZ**

**District 21 (Essex, Morris, Somerset and Union)**

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**SYNOPSIS**

Amends stalking law to broaden protections for victims.

**CURRENT VERSION OF TEXT**

As amended by the Senate on November 24, 2008.

(Sponsorship Updated As Of: 2/6/2009)

1 AN ACT concerning stalking and amending P.L.1992, c.209.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State  
4 of New Jersey:

5

6 1. Section 1 of P.L.1992, c.209 (C.2C:12-10) is amended to  
7 read as follows:

8 1. a. As used in this act:

9 (1) "Course of conduct" means repeatedly maintaining a visual  
10 or physical proximity to a person; directly, indirectly, or through  
11 third parties, by any action, method, device, or means, following,  
12 monitoring, observing, surveilling, threatening, or communicating  
13 to or about, a person, or interfering with a person's property;  
14 repeatedly committing harassment against a person <sup>1</sup> [, including  
15 but not limited to repeatedly making telephone calls]<sup>1</sup>; or  
16 repeatedly conveying, or causing to be conveyed, verbal or written  
17 threats or threats conveyed by any other means of communication  
18 or threats implied by conduct or a combination thereof directed at  
19 or toward a person.

20 (2) "Repeatedly" means on two or more occasions.

21 (3) "Emotional distress" means significant mental suffering or  
22 distress <sup>1</sup> [that may, but does not necessarily, require medical or  
23 other professional treatment or counseling]<sup>1</sup>.

24 <sup>1</sup>(4) "Cause a reasonable person to fear" means to cause fear  
25 which a reasonable victim, similarly situated, would have under the  
26 circumstances.<sup>1</sup>

27 [(3)"Immediate family" means a spouse, parent, child, sibling or  
28 any other person who regularly resides in the household or who  
29 within the prior six months regularly resided in the household.]

30 b. A person is guilty of stalking, a crime of the **[fourth]**  
31 <sup>1</sup>**[third] fourth** degree, if he purposefully or knowingly engages in  
32 a course of conduct directed at a specific person that would cause a  
33 reasonable person to fear **[bodily injury to himself or a member of**  
34 **his immediate family or to fear the death of himself or a member of**  
35 **his immediate family]** for his safety or the safety of a third person  
36 or suffer other emotional distress.

37 c. A person **[is guilty of a crime of the third degree if he]**  
38 <sup>1</sup>**[who] is guilty of a crime of the third degree if he** commits the  
39 crime of stalking in violation of an existing court order prohibiting  
40 the behavior <sup>1</sup>[shall be sentenced by the court to a mandatory  
41 minimum term of imprisonment of six months, during which the  
42 defendant shall be ineligible for parole]<sup>1</sup>.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate floor amendments adopted November 24, 2008.

1 d. A person who commits a second or subsequent offense of  
2 stalking against the same victim [is guilty of a crime of the third  
3 degree] '[shall be sentenced by the court to a mandatory minimum  
4 term of imprisonment of six months, during which the defendant  
5 shall be ineligible for parole] is guilty of a crime of the third  
6 degree'.

7 e. A person [is guilty of a crime of the third degree if he]  
8 '[who] is guilty of a crime of the third degree if he' commits the  
9 crime of stalking while serving a term of imprisonment or while on  
10 parole or probation as the result of a conviction for any indictable  
11 offense under the laws of this State, any other state or the United  
12 States '[shall be sentenced by the court to a mandatory minimum  
13 term of imprisonment of six months, during which the defendant  
14 shall be ineligible for parole]'.

15 f. '[A person who commits the crime of stalking against a  
16 victim who is less than 18 years of age shall be sentenced by the  
17 court to a mandatory minimum term of imprisonment of six months,  
18 during which the defendant shall be ineligible for parole.

19 g.]' This act shall not apply to conduct which occurs during  
20 organized group picketing.

21 (cf: P.L.2001, c.220, s.2)

22

23 2. This act shall take effect immediately.

1 e. A person [is guilty of a crime of the third degree if he] who  
2 commits the crime of stalking while serving a term of imprisonment  
3 or while on parole or probation as the result of a conviction for any  
4 indictable offense under the laws of this State, any other state or the  
5 United States shall be sentenced by the court to a mandatory  
6 minimum term of imprisonment of six months, during which the  
7 defendant shall be ineligible for parole.

8 f. A person who commits the crime of stalking against a victim  
9 who is less than 18 years of age shall be sentenced by the court to a  
10 mandatory minimum term of imprisonment of six months, during  
11 which the defendant shall be ineligible for parole.

12 g. This act shall not apply to conduct which occurs during  
13 organized group picketing.  
14 (cf: P.L.2001, c.220, s.2)

15  
16 2. This act shall take effect immediately.

17  
18  
19 SPONSOR'S STATEMENT

20  
21 This bill would amend the stalking law to broaden protections for  
22 victims. The majority of the bill's provisions were recommended  
23 by the 2007 report of the National Center for Victims of Crime,  
24 "The Model Stalking Code Revisited: Responding to the New  
25 Realities of Stalking."

26 Under the bill, a person would be guilty of the crime of stalking  
27 if his actions cause the victim *to fear for his safety or the safety of a*  
28 *third person*. Current law provides that a person is guilty of  
29 stalking only if his actions cause the victim to fear bodily injury to  
30 or the death of himself or a member of his immediate family. The  
31 report by the National Center for Victims of Crime notes that  
32 reducing the level of fear required in a stalking statute would  
33 provide earlier and better protection for stalking victims. The  
34 report also states that stalkers may target third parties other than the  
35 victim's family members, such as employers or intimate partners,  
36 and that therefore these persons should be protected by the law.

37 The bill also provides that a person would be guilty of stalking if  
38 he purposefully or knowingly engages in a course of conduct  
39 directed at a specific person that would cause a reasonable person to  
40 suffer *emotional distress*. According to the report, certain types of  
41 stalking behavior committed as part of a course of conduct might  
42 not meet the standard of "fear for safety" but nonetheless should be  
43 addressed by law, such as making repeated telephone calls to a  
44 victim.

45 The bill defines "emotional distress" as "significant mental  
46 suffering or distress that may, but does not necessarily, require  
47 medical or other professional treatment or counseling."

1       The bill also amends the definition of “course of conduct” in the  
2 stalking statute. Under the bill, “course of conduct” would include  
3 “directly, indirectly, or through third parties, by any action, method,  
4 device, or means, following, monitoring, observing, surveilling,  
5 threatening, or communicating to or about, a person, or interfering  
6 with a person’s property; repeatedly committing harassment against  
7 a person, including but not limited to repeatedly making telephone  
8 calls.” The new language is intended to cover stalking by means of  
9 new technology, such as situations where the stalker tracks the  
10 victim through the use of a global positioning system attached to  
11 the victim’s car.

12       The offense of harassment, set out in N.J.S.A.2C:33-4, provides  
13 that a person commits harassment if, with purpose to harass  
14 another, he makes, or causes to be made, a communication or  
15 communications anonymously or at extremely inconvenient hours,  
16 or in offensively coarse language, or any other manner likely to  
17 cause annoyance or alarm, or engages in any other course of  
18 alarming conduct or of repeatedly committed acts with purpose to  
19 alarm or seriously annoy such other person. The sponsor notes that  
20 stalkers may use indirect threats that do not cause the victim to  
21 reach the level of fear set out in the statute but that do alarm the  
22 victim.

23       Finally, the bill upgrades the crime of stalking to a crime of the  
24 third degree. Under current law, stalking is generally a crime of the  
25 fourth degree for a first offense. Stalking is currently a crime of the  
26 third degree if it is committed in violation of an existing court order  
27 prohibiting the behavior, if it is a second or subsequent offense of  
28 stalking against the same victim, or if the defendant commits the  
29 crime of stalking while serving a term of imprisonment or while on  
30 parole or probation. Under the bill, stalking would generally be a  
31 crime of the third degree. In the specific cases set out above,  
32 stalking would be punishable by a mandatory minimum term of  
33 imprisonment of six months. The bill also provides that stalking  
34 would be punishable by a mandatory six-month term if the victim is  
35 less than 18 years of age.

36       A crime of the fourth degree is punishable by a term of  
37 imprisonment of up to 18 months or a fine of up to \$10,000 or both;  
38 a crime of the third degree, by a term of imprisonment of three to  
39 five years, a fine of up to \$15,000, or both.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 1563

# STATE OF NEW JERSEY

DATED: FEBRUARY 25, 2008

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 1563.

Assembly Bill No. 1563 amends the State's stalking law to broaden protections for victims. The majority of the bill's provisions were recommended by the 2007 report of the National Center for Victims of Crime, "The Model Stalking Code Revisited: Responding to the New Realities of Stalking."

Under the bill, a person would be guilty of the crime of stalking if his actions cause the victim to fear for his safety or the safety of a third person. Current law provides that a person is guilty of stalking only if his actions cause the victim to fear bodily injury to or the death of himself or a member of his immediate family. The report by the National Center for Victims of Crime notes that reducing the level of fear required in a stalking statute would provide earlier and better protection for stalking victims. The report also states that stalkers may target third parties other than the victim's family members, such as employers or intimate partners, and that therefore these persons should be protected by the law.

The bill also provides that a person would be guilty of stalking if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to suffer emotional distress. According to the report, certain types of stalking behavior committed as part of a course of conduct might not meet the standard of "fear for safety" but nonetheless should be addressed by law, such as making repeated telephone calls to a victim.

The bill defines "emotional distress" as ". . . significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling."

The bill also amends the definition of "course of conduct" in the stalking statute. Under the bill, "course of conduct" would include ". . . directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person, including but not limited to repeatedly making telephone calls." The new language is intended to cover stalking by means of new technology, such as situations where the

stalker tracks the victim through the use of a global positioning system attached to the victim's car.

The offense of harassment, set out in N.J.S.A.2C:33-4, provides that a person commits harassment if, with purpose to harass another, he makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm, or engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person. Stalkers may use indirect threats that do not cause the victim to reach the level of fear set out in the statute but that do alarm the victim.

Finally, the bill upgrades the crime of stalking to a crime of the third degree. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. Currently, it is a crime of the fourth degree, which is punishable by imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Under current law, stalking is upgraded to a crime of the third degree if: (1) it is committed in violation of an existing court order prohibiting the behavior; (2) if it is a second or subsequent offense of stalking against the same victim; or (3) if the defendant commits the crime of stalking while serving a term of imprisonment or while on parole or probation. Under the bill, a person who commits the crime of stalking under these circumstances would be guilty of a crime of the third degree, but would have to serve a mandatory minimum term of imprisonment of six months before being eligible for parole. The bill also provides for a mandatory minimum sentence of six months imprisonment for stalking a victim who is less than 18 years of age.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1563

**STATE OF NEW JERSEY**

DATED: JUNE 5, 2008

The Senate Judiciary Committee reports favorably Assembly Bill No. 1563.

This bill would amend the stalking law to broaden protections for victims. The majority of the bill's provisions were recommended by the 2007 report of the National Center for Victims of Crime, "The Model Stalking Code Revisited: Responding to the New Realities of Stalking."

Under the bill, a person would be guilty of the crime of stalking if his actions cause the victim *to fear for his safety or the safety of a third person*. Current law provides that a person is guilty of stalking only if his actions cause the victim to fear bodily injury to or the death of himself or a member of his immediate family.

The bill also provides that a person would be guilty of stalking if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to suffer *emotional distress*. According to the report, certain types of stalking behavior committed as part of a course of conduct might not meet the standard of "fear for safety" but nonetheless should be addressed by law, such as making repeated telephone calls to a victim.

The bill defines "emotional distress" as "significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling."

The bill also amends the definition of "course of conduct" in the stalking statute. Under the bill, "course of conduct" would include "directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person, including but not limited to repeatedly making telephone calls." The new language is intended to cover stalking by means of new technology, such as situations where the stalker tracks the victim through the use of a global positioning system attached to the victim's car.

The offense of harassment, set out in N.J.S.A.2C:33-4, provides that a person commits harassment if, with purpose to harass another, he makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively

coarse language, or any other manner likely to cause annoyance or alarm, or engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

Finally, the bill upgrades the crime of stalking to a crime of the third degree. Under current law, stalking is generally a crime of the fourth degree for a first offense. Stalking is currently a crime of the third degree if it is committed in violation of an existing court order prohibiting the behavior, if it is a second or subsequent offense of stalking against the same victim, or if the defendant commits the crime of stalking while serving a term of imprisonment or while on parole or probation. Under the bill, stalking would generally be a crime of the third degree. In the specific cases set out above, stalking would be punishable by a mandatory minimum term of imprisonment of six months. The bill also provides that stalking would be punishable by a mandatory six-month term if the victim is less than 18 years of age.

A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months or a fine of up to \$10,000 or both; a crime of the third degree, by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The report by the National Center for Victims of Crime notes that reducing the level of fear required in a stalking statute would provide earlier and better protection for stalking victims. The report also states that stalkers may target third parties other than the victim's family members, such as employers or intimate partners, and that therefore these persons should be protected by the law.

This bill is identical to Senate Bill No. 1106.

**STATEMENT TO**  
**ASSEMBLY, No. 1563**

with Senate Floor Amendments  
(Proposed By Senators BUONO, BECK and SCUTARI)

ADOPTED: NOVEMBER 24, 2008

This bill would broaden protections for stalking victims. These amendments would remove the bill's provisions for mandatory minimum terms, maintain the classification of stalking as a crime of the fourth degree, and clarify certain language.

As originally introduced, the bill would have upgraded the crime of stalking, currently a crime of the fourth degree, to a crime of the third degree. The bill would have also imposed a mandatory minimum term of six months' imprisonment on persons who commit the crime of stalking in violation of a court order, commit a second or subsequent offense of stalking against the same victim, commit the crime of stalking while serving a term of imprisonment or while on parole or probation, or commit the crime of stalking against a victim who is less than 18 years of age.

These amendments would remove the mandatory minimum terms and restore the sentencing for stalking offenses to that contained in current law: Currently, persons who commit stalking in violation of a court order, commit a second or subsequent offense against the same victim, or commit the offense while imprisoned or on parole or probation are guilty of a crime of the third degree. In all other cases, stalking is a crime of the fourth degree.

These amendments also modify the definition of "emotional distress" in the bill. As set out in the bill, "emotional distress" is defined as "significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling." The amendments remove the provision concerning treatment or counseling, so that "emotional distress" is now defined in the bill as simply "significant mental suffering or distress."

The amendments also clarify the bill's definition of "course of conduct," removing language that had provided that the term included "repeatedly committing harassment against a person, including but not limited to repeatedly making telephone calls." The amendments remove the provision concerning telephone calls as it is unnecessary: the definition already refers to using "any action, method, device, or means" to communicate to a person.

Finally, the amendments set out a definition of the phrase "cause a reasonable person to fear." Under the amendments, the phrase would be defined as "to cause fear which a reasonable victim, similarly situated, would have under the circumstances."

1 commits the crime of stalking while serving a term of imprisonment  
2 or while on parole or probation as the result of a conviction for any  
3 indictable offense under the laws of this State, any other state or the  
4 United States shall be sentenced by the court to a mandatory  
5 minimum term of imprisonment of six months, during which the  
6 defendant shall be ineligible for parole.

7 f. A person who commits the crime of stalking against a victim  
8 who is less than 18 years of age shall be sentenced by the court to a  
9 mandatory minimum term of imprisonment of six months, during  
10 which the defendant shall be ineligible for parole.

11 g. This act shall not apply to conduct which occurs during  
12 organized group picketing.  
13 (cf: P.L.2001, c.220, s.2)

14  
15 2. This act shall take effect immediately.

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18 SPONSOR'S STATEMENT

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20 This bill would amend the stalking law to broaden protections for  
21 victims. The majority of the bill's provisions were recommended  
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32 provide earlier and better protection for stalking victims. The  
33 report also states that stalkers may target third parties other than the  
34 victim's family members, such as employers or intimate partners,  
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40 stalking behavior committed as part of a course of conduct might  
41 not meet the standard of "fear for safety" but nonetheless should be  
42 addressed by law, such as making repeated telephone calls to a  
43 victim.

44 The bill defines "emotional distress" as "significant mental  
45 suffering or distress that may, but does not necessarily, require  
46 medical or other professional treatment or counseling."

47 The bill also amends the definition of "course of conduct" in the  
48 stalking statute. Under the bill, "course of conduct" would include

1 “directly, indirectly, or through third parties, by any action, method,  
2 device, or means, following, monitoring, observing, surveilling,  
3 threatening, or communicating to or about, a person, or interfering  
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18 stalkers may use indirect threats that do not cause the victim to  
19 reach the level of fear set out in the statute but that do alarm the  
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21 Finally, the bill upgrades the crime of stalking to a crime of the  
22 third degree. Under current law, stalking is generally a crime of the  
23 fourth degree for a first offense. Stalking is currently a crime of the  
24 third degree if it is committed in violation of an existing court order  
25 prohibiting the behavior, if it is a second or subsequent offense of  
26 stalking against the same victim, or if the defendant commits the  
27 crime of stalking while serving a term of imprisonment or while on  
28 parole or probation. Under the bill, stalking would generally be a  
29 crime of the third degree. In the specific cases set out above,  
30 stalking would be punishable by a mandatory minimum term of  
31 imprisonment of six months. The bill also provides that stalking  
32 would be punishable by a mandatory six-month term if the victim is  
33 less than 18 years of age.

34 A crime of the fourth degree is punishable by a term of  
35 imprisonment of up to 18 months or a fine of up to \$10,000 or both;  
36 a crime of the third degree, by a term of imprisonment of three to  
37 five years, a fine of up to \$15,000, or both.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1106

**STATE OF NEW JERSEY**

DATED: JUNE 5, 2008

The Senate Judiciary Committee reports favorably Senate Bill No. 1106.

This bill would amend the stalking law to broaden protections for victims. The majority of the bill's provisions were recommended by the 2007 report of the National Center for Victims of Crime, "The Model Stalking Code Revisited: Responding to the New Realities of Stalking."

Under the bill, a person would be guilty of the crime of stalking if his actions cause the victim *to fear for his safety or the safety of a third person*. Current law provides that a person is guilty of stalking only if his actions cause the victim to fear bodily injury to or the death of himself or a member of his immediate family.

The bill also provides that a person would be guilty of stalking if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to suffer *emotional distress*. According to the report, certain types of stalking behavior committed as part of a course of conduct might not meet the standard of "fear for safety" but nonetheless should be addressed by law, such as making repeated telephone calls to a victim.

The bill defines "emotional distress" as "significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling."

The bill also amends the definition of "course of conduct" in the stalking statute. Under the bill, "course of conduct" would include "directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person, including but not limited to repeatedly making telephone calls." The new language is intended to cover stalking by means of new technology, such as situations where the stalker tracks the victim through the use of a global positioning system attached to the victim's car.

The offense of harassment, set out in N.J.S.A.2C:33-4, provides that a person commits harassment if, with purpose to harass another, he makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively

coarse language, or any other manner likely to cause annoyance or alarm, or engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

Finally, the bill upgrades the crime of stalking to a crime of the third degree. Under current law, stalking is generally a crime of the fourth degree for a first offense. Stalking is currently a crime of the third degree if it is committed in violation of an existing court order prohibiting the behavior, if it is a second or subsequent offense of stalking against the same victim, or if the defendant commits the crime of stalking while serving a term of imprisonment or while on parole or probation. Under the bill, stalking would generally be a crime of the third degree. In the specific cases set out above, stalking would be punishable by a mandatory minimum term of imprisonment of six months. The bill also provides that stalking would be punishable by a mandatory six-month term if the victim is less than 18 years of age.

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The report by the National Center for Victims of Crime notes that reducing the level of fear required in a stalking statute would provide earlier and better protection for stalking victims. The report also states that stalkers may target third parties other than the victim's family members, such as employers or intimate partners, and that therefore these persons should be protected by the law.

This bill is identical to Assembly Bill No. 1563.

**STATEMENT TO**  
**SENATE, No. 1106**

with Senate Floor Amendments  
(Proposed By Senators BUONO, BECK and SCUTARI)

ADOPTED: OCTOBER 23, 2008

This bill would broaden protections for stalking victims. These amendments would remove the bill's provisions for mandatory minimum terms, maintain the classification of stalking as a crime of the fourth degree, and clarify certain language.

As originally introduced, the bill would have upgraded the crime of stalking, currently a crime of the fourth degree, to a crime of the third degree. The bill would have also imposed a mandatory minimum term of six months' imprisonment on persons who commit the crime of stalking in violation of a court order, commit a second or subsequent offense of stalking against the same victim, commit the crime of stalking while serving a term of imprisonment or while on parole or probation, or commit the crime of stalking against a victim who is less than 18 years of age.

These amendments would remove the mandatory minimum terms and restore the sentencing for stalking offenses to that contained in current law: Currently, persons who commit stalking in violation of a court order, commit a second or subsequent offense against the same victim, or commit the offense while imprisoned or on parole or probation are guilty of a crime of the third degree. In all other cases, stalking is a crime of the fourth degree.

These amendments also modify the definition of "emotional distress" in the bill. As set out in the bill, "emotional distress" is defined as "significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling." The amendments remove the provision concerning treatment or counseling, so that "emotional distress" is now defined in the bill as simply "significant mental suffering or distress."

The amendments also clarify the bill's definition of "course of conduct," removing language that had provided that the term included "repeatedly committing harassment against a person, including but not limited to repeatedly making telephone calls." The amendments remove the provision concerning telephone calls as it is unnecessary: the definition already refers to using "any action, method, device, or means" to communicate to a person.

Finally, the amendments set out a definition of the phrase "cause a reasonable person to fear." Under the amendments, the phrase would be defined as "to cause fear which a reasonable victim, similarly situated, would have under the circumstances."