

SNOHOMISH COUNTY PROSECUTOR'S OFFICE INVESTIGATIVE CHECKLIST

STALKING

RCW 9A.46.110(1)(5)

ELEMENTS

- 1a. The suspect unlawfully, intentionally and repeatedly (at least two times) harassed* the victim;
OR
- 1b. The suspect unlawfully, intentionally and repeatedly (at least two times) followed** the victim;
AND
2. The victim was placed in fear that the suspect intended to injure the victim, another person, or the property of the victim or another person;
AND
3. A reasonable person in the same situation as the victim would have been fearful;
AND
- 4a. The suspect intended to frighten, intimidate, or harass* the victim;
OR
- 4b. The suspect knew or reasonably should have known that the victim was afraid, intimidated, or harassed* even if the suspect did not intend to place the victim in fear or intimidate or harass the victim;
AND
5. The suspect's actions did not amount to a felony attempt of another crime;
AND for the Class C Felony crime:
- 6a. The suspect was previously convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order;
OR
- 6b. The stalking violates any protective order protecting the victim;
OR
- 6c. The suspect was previously convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person;
OR
- 6d. The stalker was armed with a deadly weapon, as defined in RCW 9.94A.602, while stalking the victim;
OR
- 6e. The victim is or was a law enforcement officer; judge, juror, attorney, victim advocate, legislator, community corrections' officer, an employee, contract staff person, or volunteer of a correctional agency***, or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services; AND the suspect stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties;
OR
- 6f. The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, AND the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

*Harassed 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 their child.

****Followed** 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.

*****Correctional agency** means a person working for the department of natural resources in a correctional setting or any state, county, or municipally operated agency with the authority to direct the release of a person serving a sentence or term of confinement and includes but is not limited to the department of corrections, the indeterminate sentence review board, and the department of social and health services.

Defense: If the suspect was a licensed private investigator acting within the capacity of his or her license as provided in RCW 18.165, that is a complete defense.

SPECIFIC REQUIREMENTS

- 1. Identify and document the two or more incidents of harassment or following of the victim.
- 2. Document whether the victim was seriously alarmed or annoyed by the suspect's actions, resulting in substantial emotional distress for the victim. Would a reasonable person in the victim's situation be in fear, given the prior history, physical actions, gestures or verbal communication by the suspect?
- 3. Determine and document whether the suspect intended to scare the victim or whether the suspect reasonably should have known the actions would scare the victim, even if unintentional. Besides interviewing the suspect about this and obtaining witness accounts of what suspect said about this, the following may have bearing on the suspect's state of mind.
- 4. If victim has a no contact order against the suspect, obtain copy of the order and proof that the order was served on the suspect.
- 5. If the order has not been served on suspect, did suspect know of the order through other means? Document and obtain applicable witness statements.
- 6. Seize, if available, any recordings of what the suspect said to the victim or writings of the suspect to the victim.
- 7. Document any attempts to contact or follow the victim after being given actual notice that the victim did not want to be contacted or followed.
- 8. For this to be a felony stalking crime:
 - Provide verification of a previous conviction for a crime of harassment, as defined in RCW 9A. 46.060, and that the victim of that previous crime was this victim, a member of this victim's family or household, or a person specifically named in a protective order; OR

- [] The stalking violated a protective order which protects this victim – provide a copy of the order; OR
- [] Provide verification of a previous conviction for stalking, whether a gross misdemeanor or a felony, and regardless of who was the victim; OR
- [] The suspect was armed with a deadly weapon during the stalking: describe and photograph the weapon. If it is a firearm, test it for operability. OR
- [] The stalking was in retaliation for the victim's act during the course of the victim's official duties or to influence the victim's performance of official duties. Specify the victim's official status and the official action in question.

Assume that the victim will recant, will be unavailable for court or will be uncooperative with the prosecution by the time the case goes to trial. The following may assist us with prosecuting the case without the victim's help.

- [] 7. Always try to obtain a statement from the suspect.
- [] 8. After the victim has written a statement: a) read aloud the certification at the bottom of the statement to the victim; b) you initial next to the certification to memorialize that you have read it to the victim; c) victim initials the certification statement to memorialize that you read it to the victim; d) the victim signs, you sign and note the date and time on the statement.
- [] 9. Document any spontaneous statements made by the victim to anyone while in an excited state.
- [] 10. Copy of the CAD dispatch printout. Circle the names of any officers who should have completed a report.
- [] 11. Photograph victim and suspect, if possible, to document visible injuries or the lack thereof. Photograph the location of the incident if there are signs of a struggle, property damage, etc.
- [] 12. Request a copy of 911 tape if the tape will reveal excited utterances or other evidence relevant to the investigation of domestic violence.