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By Jay Howell

NEW LAWS ON STALKING

The 2012 session of the Florida legislature made several significant additions to our stalking statutes. Florida, like many states, began to pass criminal stalking laws in the 1990s. The new crime prohibited any person from maliciously and repeatedly following, harassing or cyber stalking another person. The criminal laws created a misdemeanor if the person simply followed, harassed or cyber stalked another person. The crime began a felony if the person engaged in the same conduct and made a “credible threat” with the intent to place the other person in reasonable fear of death or bodily injury.

Over the years, the state legislatures have refined and expanded the criminal law’s treatment of this relatively new crime. In 2012, Florida legislature passed a comprehensive bill which addressed the definitions of and penalties for the crime of stalking.

The phrase “credible threat” has always been a key part of the felony crime of stalking. In 2012, the legislature expanded the definition of “credible threat” to be a verbal or nonverbal or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct. The stalking statute requires that the person who is the target of the threat be in reasonable fear for his or

her safety or the safety of his or her family members or individuals closely associated with them. Also required is the apparent ability on the part of the perpetrator to carry out the threat to cause such harm. Additionally, the new statute states that it is not necessary for the state to prove that the defendant had the intent to actually carry out the threat. It is the making of the threat that is the crime.

The new law requires the sentencing judge to consider, as a part of any sentence, the issuance of an order restraining the defendant from any contact with the victim. The restraining order may be valid for up to 10 years and should be based upon the seriousness of the facts before the court and the safety of the victim. The new law makes it clear that the restraining order may be issued by the judge even if the defendant is sentenced to state prison or county jail for the offense.

The new law also creates a stalking injunction. The basic format of the protection order follows the existing statutory structures for injunctions concerning domestic violence, sexual violence, and repeat violence. The new injunction may be sought regardless of whether any other legal cases are currently pending between the parties. The petition for an injunction against stalking may be filed where the victim resides, where the defendant resides, or where the stalking occurred. There is no minimum requirement of residency to petition for an injunction for this kind of protection. There is no filing fee and the Clerk of the Court is instructed to protect the victim's privacy to the extent practicable while completing the forms for the injunction.

The injunction may be ordered if the defendant has stalked the victim, has previously threatened, harassed or physically abused them victim. The order may also

be granted if the defendant has threatened to harm the petitioner or their family members or other individuals closely associated with them, or intentionally injure or kill a family pet. In addition, if the defendant has used or threatened to use any weapons against the petitioner, that may serve as a basis for the injunction.

The new law requires that the judge allow a victim advocate from the State Attorney's Office, a law enforcement agency, a rape crisis center, or a domestic violence center to be present with the victim during any court proceedings or hearings related to the injunction for protection. If the injunction has been violated and the defendant has not been arrested, the victim may contact the Clerk of the Circuit Court in which the violation is alleged to have occurred to gain assistance in preparing an affidavit concerning the violation that will be immediately forwarded to the State Attorney and to the judge.

Law enforcement is required to complete its investigation regarding the violation of the injunction within 20 days. The State Attorney's Office is required to make a determination within 30 working days whether or not criminal charges will be filed. Violation of the stalking injunction for protection is crime. In addition, a person who suffers an injury or loss as a result of the violation of an injunction for protection against stalking or cyber stalking may be awarded economic damages for that injury or loss by the court. Damages may include costs and attorney's fees for enforcement of the injunction. The new law is identified as Committee Substitute for House Bill 1099 and took affect October 1, 2012.