This project began after Staff reviewed the New Jersey Supreme Court decision State v. Burkert.\(^1\) The Burkert Court addressed the issue of whether the creation of lewd flyers that seriously annoyed the subject they portrayed was constitutionally protected free speech, or criminal harassment under N.J.S. 2C:33-4(c).\(^2\) The relevant portion of the harassment statute provides that “a person commits a petty disorderly persons offense if, with purpose to harass another, he: ... c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.”\(^3\)

Previous memoranda have detailed the Constitutional issues raised by New Jersey’s harassment statute and discussed in State v. Burkert and its progeny. During the April 18, 2019 meeting, the Commission requested that Staff compare and contrast New Jersey’s harassment statute with similar statutes in other states.\(^4\) In addition, Staff was asked to identify the important purposes of a harassment statute.\(^5\) On the basis of that effort, Staff has modified the current harassment statute to provide the citizenry with necessary protection from unwanted behavior while avoiding the Constitutional issues of vagueness, over-breadth, or infringement on free speech.\(^6\)

A selection of harassment statutes from other states is appended to this memorandum.\(^7\) Although no one statute provides a definitive model that could replace the current statute, several suggested approaches that were both helpful and insightful.

In New Jersey, the harassment statute frequently serves as the basis for civil orders, under Chapter 25 of the Code of Criminal Justice, to protect vulnerable citizens from domestic violence.\(^8\) A domestic violence proceeding is considered to be a civil matter. Accordingly, the burden of proof is “by a preponderance of the evidence,” not beyond a reasonable doubt.\(^9\) The use of the harassment statute in domestic violence proceedings underscores the necessity of

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\(^2\) Id. at 271.
\(^3\) N.J.S. 2C:33–4(c).
\(^5\) Id.
\(^6\) See State v. Burkert, 231 N.J. 257, 277 (2017) (holding that the Court “must construe a statute that criminalizes expressive activity narrowly to avoid any conflict with the constitutional right to free speech.”)
\(^7\) See Appendix at 5.
\(^8\) See 2C:25-19
\(^9\) See 2C:25-29.
having a statute that is broad enough to protect victims of domestic violence while ensuring that
the same statute is not so vague or overbroad that it unjustly affects the liberty of persons against
whom domestic violence claims have been made.
Appendix

The proposed modifications (shown with strikethrough, and underlining) are as follows:

**2C:33-4. Harassment.**

a. Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass harm or seriously distress another, either without other legitimate purpose or in a manner clearly excessive in light of any legitimate purpose, he the individual:

a.(1) Makes, or causes to be made, a communication or series of communications anonymously or at extremely inconvenient hours, or in offensively coarse language in any other manner likely to cause annoyance distress, intimidate, or alarm;

b.(2) Threatens to inflict injury or physical harm to any person,

c.(3) Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other harm a person.

b. A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c. 443)

e. c. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

**COMMENT**

Subsection a. retains the purpose requirement of current law but replaces the vague term, “harass” with “harm or seriously distress”. The “harm” standard is more clear but, alone, does not cover all of the offensive intents that the statute should restrict. As a result, we have added, “seriously distress”. That phrase is somewhat less precise, but is better and more limited than alternatives such as annoy, bother, or disturb. The subsection retains the language “either without other legitimate purpose or in a manner clearly excessive in light of any legitimate purpose” tentatively approved by the Commission. That language might have less necessary if the intent standard was limited to “harm”, but even there clearly allowing political and labor actions makes the limitation desirable.

Subsection a(1) is based on subsection a. of the current statute. It is changed by the deletion of “in offensively coarse language” as that standard is increasingly difficult to apply. Additional modifications include the replacement of the term, “annoyance” with the more precise, “distress, intimidate”.

Subsection a(2) is new to this statute. It is derived from the cyber harassment statute, N.J.S. 2C:33-4.1.

Subsection a(3) is based on the problematic subsection c. of the current statute. The important change is the narrowing of the “purpose requirement” set forth in the statute. The current statute uses the open-ended “purpose to alarm or seriously annoy” standard. Even with the change in the purpose language in the beginning of subsection a., that standard is too broad. The change to a requirement of “purpose to harm” is a restriction on the opening language of subsection a, which allows a purpose either to harm or to seriously distress. The restriction is intended to assure the activities that are included in the “other course of alarming conduct or of repeatedly committed acts” are serious enough to merit criminal sanctions.

Subsections b. and c. are identical to the unlettered subsection following subsection c. and to subsection e. of the current statute.
There is no equivalent to subsection b. of the current statute. If there is injury, the act is covered by 2C:12-1a(1) Assault.

Current New Jersey Laws on Related Subjects


a. A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:
(1) threatens to inflict injury or physical harm to any person or the property of any person;
(2) knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or
(3) threatens to commit any crime against the person or the person's property.

b. Cyber-harassment is a crime of the fourth degree, unless the person is 21 years of age or older at the time of the offense and impersonates a minor for the purpose of cyber-harassing a minor, in which case it is a crime of the third degree.

2C:12-10. Definitions; Stalking Designated a Crime; Degrees.

a. As used in this act:
(1) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person; 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; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.
(2) "Repeatedly" means on two or more occasions.
(3) "Emotional distress" means significant mental suffering or distress.
(4) "Cause a reasonable person to fear" means to cause fear which a reasonable victim, similarly situated, would have under the circumstances.

b. A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress.

c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.

d. A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.

e. A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.
2C:12-1. Assault.

a. Simple assault. A person is guilty of assault if he:

(1)Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
(2)Negligently causes bodily injury to another with a deadly weapon; or
(3)Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

Harassment Laws in Some Other States

Connecticut

(a) A person is guilty of harassment in the first degree when, with the intent to harass, annoy, alarm or terrorize another person, he threatens to kill or physically injure that person or any other person, and communicates such threat by telephone, or by telegraph, mail, computer network, as defined in section 53a-250, or any other form of written communication, in a manner likely to cause annoyance or alarm and has been convicted of a capital felony under the provisions of section 53a-54b in effect prior to April 25, 2012, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a-122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For the purposes of this section, “convicted” means having a judgment of conviction entered by a court of competent jurisdiction.

District of Columbia

(a) It is unlawful for a person to purposefully engage in a course of conduct directed at a specific individual:

(1) With the intent to cause that individual to:
   (A) Fear for his or her safety or the safety of another person;
   (B) Feel seriously alarmed, disturbed, or frightened; or
(2) That the person knows would cause that individual reasonably to:
   (A) Fear for his or her safety or the safety of another person;
   (B) Feel seriously alarmed, disturbed, or frightened; or
   (C) Suffer emotional distress; or
(3) That the person should have known would cause a reasonable person in the individual’s circumstances to:
(B) Feel seriously alarmed, disturbed, or frightened; or
(C) Suffer emotional distress.
(b) This section does not apply to constitutionally protected activity.
(c) Where a single act is of a continuing nature, each 24-hour period constitutes a separate occasion.
(d) The conduct on each of the occasions need not be the same as it is on the others.

**Hawai‘i**

1. A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:
   (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
   (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;
   (c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;
   (d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;
   (e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or
   (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

**Iowa**

1. a. A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:
   (1) Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.
   (2) Places a simulated explosive or simulated incendiary device in or near a building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person.
   (3) Orders merchandise or services in the name of another, or to be delivered to another, without the other person’s knowledge or consent.
   (4) Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged
occurrence of a criminal act, knowing the act did not occur.
(5) Disseminates, publishes, distributes, posts, or causes to be disseminated, published, distributed, or posted a photograph or film showing another person in a state of full or partial nudity or engaged in a sex act, knowing that the other person has not consented to the dissemination, publication, distribution, or posting.
b. A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person.

**Louisiana**

A. Stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person’s home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.

**Massachusetts**

(a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than 2½ years or by a fine of not more than $1,000, or by both such fine and imprisonment. The conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

**Missouri**

1. A person commits the offense of harassment in the second degree if he or she, without good cause, engages in any act with the purpose to cause emotional distress to another person.

**North Carolina**

(b) Definitions.--The following definitions apply in this section:
   (1) Course of conduct.--Two or more acts, including, but not limited to, acts in which the
stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

(2) Harasses or harassment.--Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

(3) Reasonable person.--A reasonable person in the victim’s circumstances.

(4) Substantial emotional distress.--Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

Nebraska

(2) For purposes of sections 28-311.02 to 28-311.05, 28-311.09, and 28-311.10:
(a) Harass means to engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose;
(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, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning, contacting, or otherwise communicating with the person;

New Mexico

A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

New York

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury. This section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Pennsylvania
(a) **Offense defined.**—A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

1. strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;
2. follows the other person in or about a public place or places;
3. engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;
4. communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;
5. communicates repeatedly in an anonymous manner;
6. communicates repeatedly at extremely inconvenient hours; or
7. communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

**South Carolina**

(A) “Harassment the first degree” means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:

1. following the targeted person as he moves from location to location;
2. visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;
3. surveillance of or the maintenance of a presence near the targeted person’s:
   a. residence;
   b. place of work;
   c. school; or
   d. another place regularly occupied or visited by the targeted person; and
4. vandalism and property damage.

(B) “Harassment in the second degree” means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

**Washington**

1. A person is guilty of harassment if:
   a. Without lawful authority, the person knowingly threatens:
(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or
(ii) To cause physical damage to the property of a person other than the actor; or
(iii) To subject the person threatened or any other person to physical confinement or restraint; or
(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. “Words or conduct” includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

**Wisconsin**

(1) In this section:
(a) “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.
(b) “Credible threat” means a threat made with the intent and apparent ability to carry out the threat.
(c) “Personally identifiable information” has the meaning given in s. 19.62(5).
(d) “Record” has the meaning given in s. 19.32(2).

(2) Whoever, with intent to harass or intimidate another person, does any of the following is subject to a Class B forfeiture:
(a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.
(b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

**Wyoming**

(a) As used in this section:
(i) “Course of conduct” means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose;
(ii) “Harass” means to engage in a course of conduct, including but not limited to verbal threats, written threats, lewd or obscene statements or images, vandalism or nonconsensual physical contact, directed at a specific person or the family of a specific person, which the defendant knew or should have known would cause a reasonable person to suffer substantial emotional distress, and which does in fact seriously alarm the person toward whom it is directed.

(b) Unless otherwise provided by law, a person commits the crime of stalking if, with intent to harass another person, the person engages in a course of conduct reasonably likely to harass that person, including but not limited to any combination of the following:
(i) Communicating, anonymously or otherwise, or causing a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses;
(ii) Following a person, other than within the residence of the defendant;
(iii) Placing a person under surveillance by remaining present outside his or her school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; or
(iv) Otherwise engaging in a course of conduct that harasses another person.

(c) This section does not apply to an otherwise lawful demonstration, assembly or picketing.