

APPENDIX A

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**Committee on Standard Jury Instructions in Criminal Cases
The Honorable F. Rand Wallis, Chair
Report 2019-08**

8.6 STALKING
§ 784.048(2), Fla. Stat.

To prove the crime of Stalking, the State must prove the following element beyond a reasonable doubt:

(Defendant) **willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked]** (victim).

Definitions.

§ 784.048(1)(a), Fla. Stat.

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

§ 784.048(1)(b), Fla. Stat.

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means knowingly, intentionally and purposely.

Give if applicable.

§ 784.048(1)(d), Fla. Stat.

“Cyberstalk” means [to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person’s permission,] causing substantial emotional distress to that person and serving no legitimate purpose.

Lesser Included Offenses

STALKING — 784.048(2)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was approved in 1995 [657 So. 2d 1152] and amended in 2007 [953 So. 2d 495], ~~and~~ 2013 [131 So. 3d 755], and 2020.

8.7(a) AGGRAVATED STALKING

§ 784.048(3), Fla. Stat.

To prove the crime of Aggravated Stalking, the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked] (victim); and**
- 2. (Defendant) made a credible threat to (victim).**

Definitions.

§ 784.048(1)(a), Fla. Stat.

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

§ 784.048(1)(b), Fla. Stat.

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means knowingly, intentionally and purposely.

Give if applicable.

§ 784.048(1)(d), Fla. Stat.

“Cyberstalk” means [to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person’s

permission,] causing substantial emotional distress to that person and serving no legitimate purpose.

§ 784.048(1)(c), Fla. Stat.

“Credible threat” means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm.

It is not necessary for the State to prove that the person making the threat had the actual intent to carry out the threat.

Give if applicable.

The present incarceration of the person making the threat is not a bar to prosecution.

Lesser Included Offenses

AGGRAVATED STALKING — 784.048(3)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Stalking		784.048(2)	8.6
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1
	Improper exhibition of dangerous weapon	790.10	10.5

Comment

This instruction was approved in 1995 [657 So. 2d 1152] and amended in 2007 [953 So. 2d 495], and 2013 [131 So. 3d 755], and 2020. ~~to incorporate the change in law effective October 1, 2012.~~

8.7(b) AGGRAVATED STALKING
(Injunction Entered)
§ 784.048(4), Fla. Stat.

To prove the crime of Aggravated Stalking, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) knowingly, willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked] (victim).**

Give 2a or 2b or both as applicable.

- 2. At the time of the [following] [harassing] [cyberstalking],**
 - a. an injunction for protection against [repeat] [sexual] [dating] [domestic] violence had been entered against (defendant) for the benefit of (victim).**
 - b. a court had imposed a prohibition of conduct on (defendant) toward (victim) or (victim's property).**
- 3. (Defendant) knew that the [injunction] [court-imposed prohibition of conduct] had been entered against [him] [her].**

Definitions.

§ 784.048(1)(a), Fla. Stat.

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

§ 784.048(1)(b), Fla. Stat.

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means knowingly, intentionally and purposely.

Give if applicable.

§ 784.048(1)(d), Fla. Stat.

“Cyberstalk” means [to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person’s permission,] causing substantial emotional distress to that person and serving no legitimate purpose.

Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007).

“Maliciously” means wrongfully, intentionally, and without legal justification or excuse.

Lesser Included Offenses

AGGRAVATED STALKING (Injunction Entered) — 784.048(4)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Stalking		784.048(2)	8.6
	Attempt	777.04(1)	5.1
	Violation of injunction for protection against domestic violence	741.31(4)	8.16 <u>8</u>
	Violation of injunction for protection against repeat, sexual, or dating violence	784.047	8.19
	Violation of injunction for protection against stalking or cyberstalking	784.0487(4)	8.24

Comments

~~See *Seese v. State*, 955 So. 2d 1145 (Fla. 4th DCA 2007), for the definition of maliciously.—~~

This instruction was adopted in 1995 [657 So. 2d 1152] and was amended in 2007 [953 So. 2d 495], 2008 [995 So. 2d 476], ~~and~~ 2013 [131 So. 3d 755], and 2020.

8.7(c) AGGRAVATED STALKING
(Victim under 16 years of age)
§ 784.048(5), Fla. Stat.

To prove the crime of Aggravated Stalking, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked]** (victim); and,
2. **At the time of (defendant's) actions, (victim) was under 16 years of age.**

Definitions.

§ 784.048(1)(a), Fla. Stat.

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

§ 784.048(1)(b), Fla. Stat.

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means knowingly, intentionally and purposely.

Give if applicable.

§ 784.048(1)(d), Fla. Stat.

“Cyberstalk” means [to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person's permission,] causing substantial emotional distress to that person and serving no legitimate purpose.

Lesser Included Offenses

AGGRAVATED STALKING (Victim under 16 years of age) — 784.048(5)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Stalking		784.048(2)	8.6
	Attempt	777.04(1)	5.1
	Violation of injunction for protection against domestic violence	741.31(4)	8.18
	Violation of injunction for protection against repeat, sexual, or dating violence	784.047	8.19
	Violation of injunction for protection against stalking or cyberstalking	784.0487(4)	8.24

Comment

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2007 [953 So. 2d 495], ~~and~~ 2013 [131 So. 3d 755], and 2020.

8.7(d) AGGRAVATED STALKING
(Defendant previously sentenced for sex offense
and was prohibited from contacting victim)
§ 784.048(7), Fla. Stat.

To prove the crime of Aggravated Stalking, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) was sentenced for [sexual battery] [violating Fla. Stat. 800.04] [violating Fla. Stat. 847.0135(5)].**
- 2. As part of that sentencing, (defendant) was ordered to have no contact with (victim).**
- 3. After the sentencing, (defendant) willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked] (victim).**

Definitions.

§ 784.048(1)(a), Fla. Stat.

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

§ 784.048(1)(b), Fla. Stat.

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means knowingly, intentionally and purposely.

Give if applicable.

§ 784.048(1)(d), Fla. Stat.

“Cyberstalk” means [to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person’s permission,] causing substantial emotional distress to that person and serving no legitimate purpose.

Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007).

“Maliciously” means wrongfully, intentionally, and without legal justification or excuse.

Lesser Included Offenses

AGGRAVATED STALKING (Defendant previously sentenced for sex offense and was prohibited from contacting victim) — 784.048(7)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Stalking		784.048(2)	8.6
	Attempt	777.04(1)	5.1
	Violation of injunction for protection against domestic violence	741.31(4)	8.18

	Violation of injunction for protection against repeat, sexual, or dating violence	784.047	8.19
	Violation of injunction for protection against stalking or cyberstalking	784.0487(4)	8.24

Comment

This instruction was adopted in 2013 [131 So. 3d 755] and amended in 2020.