

PROPOSED ANTI-STALKING LEGISLATION

Joint Action Group for Gender Equality (JAG)

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PROPOSED AMENDMENTS TO THE PENAL CODE, CREATING THE OFFENCE OF STALKING

From: *The Model Stalking Code*, National Center for Victims of Crime, USA

General Intent.
See "Characteristic 1"

Reasonable person standard of fear.
See "Characteristic 2"

Level of fear.
See "Characteristic 3"

From: Queensland's Criminal Code Act § 359B

Non-exhaustive list.
See "Characteristic 4"

From: UK's Protection from Harassment Act § 2A.3

Adapted from: Queensland's Criminal Code Act § 359B (c) (ii)

From Singapore's Protection from Harassment Act § 7.3

Adapted from: Scotland's Criminal Justice and Licensing (Scotland) Act §39.6 (j)

The Code is amended by inserting after section 507 the following sections:

Offence of Stalking

507A. (1) Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

- (a) fear for his or her safety or the safety of a third person; or
- (b) suffer other emotional distress

is guilty of stalking and shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand ringgit, or with both.

(2) "Course of conduct" under subsection (1) means the commission of one or more of the following acts on any one occasion if the conduct is protracted or on more than one occasion:

- (a) following a person;
- (b) contacting or attempting to contact a person by any means, including, for example, by telephone, mail, fax, email, text message, social media or through the use of any technology;
- (c) publishing any statement or other material, by any means —
 - (i) relating or purporting to relate to a person, or
 - (ii) purporting to originate from a person,
- (d) monitoring the use by a person of the internet, email or any other form of electronic communications;
- (e) entering or loitering in any place (whether public or private) outside or near the person's place of residence or place of business or any other place frequented by the person;
- (f) interfering with property in the possession of the person (whether or not the accused person has an interest in the property);
- (g) giving or sending material to the person, or leaving it where it will be found by, given to or brought to the attention of, the person;
- (h) watching, spying, or keeping the person under surveillance; or
- (i) acting in any other way that would cause a reasonable person to fear for his or her safety or to suffer other emotional distress.

From: New Zealand's Harassment Act, § 3.2 (a)

(3) The specified acts required for the purposes of subsection (2) may be the same type of specified act on each separate occasion, or different types of specified acts.

From: *The Model Stalking Code*, National Center for Victims of Crime, USA

(4) For the purposes of subsection (1)(b), "emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counselling.

(5) For the purposes of subsections (1) and (2), "reasonable person" means a reasonable person in the victim's circumstances.

Defences.
See "Characteristic 5"

(6) In any prosecution under section 507A, it shall not be a defence that:

(a) the accused person was not given actual notice that the course of conduct was unwanted; or

(b) the accused person did not intend to cause the victim fear or other emotional distress.

From: Queensland's Criminal Code Act § 359.5

(7) For the purposes of subsection (1) and (2)(i), it is immaterial whether the fear or emotional distress mentioned in the section is actually caused.

(8) A restraining order may be obtained against the accused person under Chapter XA of the Criminal Procedure Code.

Illustrations

Adapted from: Singapore's Protection from Harassment Act

(a) *Y and X were previously in a romantic relationship. After their relationship ended, X has declined to be in contact with Y. Y sends flowers to X daily. Y has committed the offence defined in this section.*

(b) *Y repeatedly circulates revealing photographs of a classmate (X) to other classmates. Y has committed the offence defined in this section.*

(a) *Y follows X from point A to point B to keep X under surveillance. Y has committed the offence defined in this section.*

Key Characteristics of the Proposed Anti-Stalking Law¹

Characteristic 1. Based on **general intent** instead of specific intent.

- a. General intent means that the accused intends to carry out an act, but may not necessarily intend the consequences of the act.
- b. The prosecution need not prove that the accused intended to harm the victim, i.e., specific intent.
- c. General intent is preferred over specific intent because it is hard to prove what is in the accused's mind.

Characteristic 2. Based on a **“reasonable person” standard of fear** instead of an “actual fear” standard.

- a. Fear is assessed based on what a “reasonable person” would fear, instead of whether the victim actually felt fear, i.e., “actual fear”.
- b. Requiring “actual fear” subjects victims to the further trauma of having to prove and justify their fear in court.
- c. The “reasonable person” is defined as a “reasonable person in the victim’s circumstances” to take into consideration the victim’s context.
- d. Queensland’s stalking law does not require actual fear to be proven.

Characteristic 3. The **level of fear** is that a reasonable person **fears for his or her safety or another person or suffers other emotional distress.**

- a. Fear for safety is less stringent than fear of harm or death.
- b. Fear for the safety of another person is included because victims may fear for the safety of their children, family members, etc.
- c. Emotional distress is included to encompass instances where the victim may not actually feel fear, but experiences distress nonetheless.

Characteristic 4. Includes a **non-exhaustive list of prohibited acts.**

Characteristic 5. Articulates **defences** that will not be considered valid.

- a. The defence that the accused did not actually intend to harm the victim is a common defence that is hard to disprove, even if it were untrue. Excluding this defence is in line with “general intent”.
- b. The defence that the accused was not given actual notice that the course of conduct was unwanted is also a common defence. Excluding this defence makes stalkers accountable for their behaviour and relieves victims of the responsibility of confronting stalkers.

Characteristic 6. Does not include **exemptions.**

- a. Some jurisdictions exempt conduct done in certain circumstances, such as for the purposes of preventing crime, enforcing laws, carrying out one’s occupation, etc. However, such exemptions may enable stalkers of certain professions to evade prosecution.

¹ The framework for the proposed stalking law is based on: National Center for Victims of Crime. (2007). *The Model Stalking Code Revisited*. Washington, DC. <<https://victimsofcrime.org/docs/default-source/src/model-stalking-code.pdf?sfvrsn=12>>

PROPOSED AMENDMENTS TO THE CRIMINAL PROCEDURE CODE, CREATING THE RESTRAINING ORDER

These proposed amendments are based on the Attorney General Chamber's proposal to introduce a restraining order under the Criminal Procedure Code in 2015. JAG made updates to Section 98C, to harmonise with the prohibited acts under the proposed stalking law.

The Code is amended by inserting after Chapter X the following Chapter:

CHAPTER XA RESTRAINING ORDERS RELATING TO STALKING

Interim restraining order

98A. (1) A Magistrate may, during the pendency of investigation relating to the commission of an offence of stalking under Section 507A of the Penal Code, issue an interim restraining order prohibiting a person who is suspected to have committed the offence from continuing to commit the offence against an applicant.

- (2) An application for an interim restraining order under this section shall be made *ex parte* by—
- (a) a victim;
 - (b) a victim's counsel
 - (c) in the case of a victim who is a child or an incapacitated adult, the guardian, relative or person responsible for such child or incapacitated adult; or
 - (d) any police officer on behalf of the victim.
- (3) A person against whom an interim restraining order is made may apply to set aside the interim restraining order within fourteen days from the date the interim restraining order is served on him.
- (4) An interim restraining order shall cease to have effect—
- (a) upon the applicant being informed in writing by a police officer about the completion of the investigation and that there is no further action to be taken against the person against whom the order is made; or
 - (b) if, upon being informed in writing by a police officer that a criminal proceeding relating to the commission of an offence of stalking will be instituted against the person against whom the order is made, -
 - (i) there is no application for restraining order made within seven days after being so informed, when a criminal proceeding is instituted; or
 - (ii) an application for a restraining order is made within seven days after being so informed, upon the determination of the application for the restraining order.

Restraining order

98B. (1) A Magistrate may, upon an application, issue a restraining order prohibiting a person who is being charged with the commission of an offence of stalking from continuing to commit the offence against an applicant.

(2) A restraining order shall have effect for such period not exceeding twelve months from the date of the commencement of the order.

(3) A restraining order may be extended for a further period, not exceeding twelve months from the date of the expiration of the original order, where the Magistrate is satisfied that such extension is necessary to restrain the person against whom the order is made from committing the offence of stalking against the applicant.

(4) The extension of the restraining order under subsection (3) may be made more than once until the disposal of the criminal proceedings against the person against whom the order is made.

Prohibitions that may be included in interim restraining order or restraining order

98C. The Magistrate may, in making an interim restraining order under section 98A or a restraining order under section 98B, prohibit the person against whom the order is made from engaging in one or more of the following actions:

- (a) inciting any other person to commit the offence of stalking against the applicant;
- (b) following the applicant,
- (c) contacting or attempting to contact the applicant by any means, including, for example, by telephone, mail, fax, email, social media or through the use of any technology;
- (d) publishing any statement or other material, by any means —
 - (i) relating or purporting to relate to the applicant, or
 - (ii) purporting to originate from the applicant;
- (e) monitoring the use by the applicant of the internet, email or any other form of electronic communications;
- (f) entering or loitering in any place (whether public or private) outside or near the applicant's place of residence or place of business or any other place frequented by the applicant;
- (g) interfering with property in the possession of the applicant (whether or not the accused person has an interest in the property);
- (h) giving or sending material to the applicant, or leaving it where it will be found by, given to or brought to the attention of, the person;
- (i) watching, spying, or keeping the applicant under surveillance; or
- (j) acting in any other way that could reasonably be expected to cause the applicant to fear for his or safety or to suffer other emotional distress.

Contravention of interim restraining order or restraining order

98D. Any person who contravenes an interim restraining order issued under section 98A or a restraining order issued under section 98B commits an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both."