



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

Testimony on Assembly Bill 83

Assembly Committee on Criminal Justice & Public Safety

March 10, 2021

Mr. Chairman and members of the committee, thank you for hearing Assembly Bill 83 relating to stalking. This bill will provide beneficial rewording of the statute, codify existing practice and interpretation, and clarify affected parties.

Under current law, stalking is a “course of conduct” that includes, among other things, “[s]ending material by any means to the victim or, for the purpose of obtaining information about, disseminating information about, or communicating with the victim, to a member of the victim’s family or household or an employer, coworker, or friend of the victim.” **To make clear, prosecutors and judges interpret the “by any means” language to already include cyberstalking; this bill is not intended to upend this understanding or call into questions cyberstalking convictions achieved under this statute.**

First, AB 83 explicitly includes electronic means. This is a constructive addition as texting and other forms of messaging on a variety of platforms and applications have become pervasive in society. Additionally, as indicated, it also codifies the current statutory interpretation and practice that electronic communications may constitute stalking.

Second, the bill conforms more closely to jury instructions, which will aid jurors in their deliberations. If anyone has ever served on a jury, or even observed an entire trial, ensuring the evidence presented by a prosecutor meets all the elements of a crime beyond a reasonable doubt can be difficult, occasionally confusing when complex criminal statutes are involved, and frequently debated by jurors before coming to a conclusion. By making this statute read more like the instructions jurors will hear from a judge it will aid them in their deliberation and help ensure stalkers are convicted, giving peace of mind to victims.

Third and finally, the bill includes the victim’s former employers and coworkers in the class of people who may not be contacted. In *State v. Ardell*, the defendant appealed, arguing that his conduct did not satisfy the conduct required for conviction because he contacted a *former* coworker of the victim. While the Court of Appeals affirmed the trial court’s decision, the appellate opinion is unpublished and therefore may only be cited for its persuasive value and is not binding on any court in Wisconsin. Codifying the inclusion of “former” employers and coworkers will clarify this interpretation for future cases with similar facts.

Thank you again, committee members, for your thoughtful consideration. I am confident these changes will have a positive impact for stalking victims across the state.



2021 ASSEMBLY BILL 83

February 18, 2021 - Introduced by Representatives TUSLER, CALLAHAN, MURSAU, EMERSON, WICHGERS, CABRERA, ROZAR, MILROY, TITTL, SUBECK, THIESFELDT and EDMING, cosponsored by Senators JACQUE, WANGGAARD, CARPENTER, L. TAYLOR and RINGHAND. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to amend** 940.32 (1) (a) 6. and 940.32 (1) (a) 7. of the statutes; **relating**
2 **to:** stalking and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the crime of “stalking” is a course of conduct that includes maintaining visual or physical proximity to the victim, approaching or confronting the victim, appearing at the victim’s workplace, home, or other property, contacting the victim’s employer, coworkers, neighbors, family, or friends, attempting to contact the victim via telephone, and sending various items or materials to the victim. Currently stalking is a Class I felony, for which the penalty is a fine of up to \$10,000 or imprisonment for up to three years and six months, or both.

This bill amends the definition of stalking to explicitly include attempts to contact the victim via text messaging and other electronic means of communication, including sending and posting online content.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 940.32 (1) (a) 6. of the statutes is amended to read:

1284 STALKING — § 940.32(2)

[USE FOR OFFENSES COMMITTED ON OR AFTER APRIL 27, 2004]

Statutory Definition of the Crime

Stalking, as defined in § 940.32(2) of the Criminal Code of Wisconsin, is committed by one who intentionally engages in a course of conduct directed at a specific person that causes that person [to suffer serious emotional distress] [to fear bodily injury or death to (himself) (herself) (a member of (his) (her) (family) (household))] and that would cause a reasonable person [to suffer serious emotional distress] [to fear bodily injury or death to (himself) (herself) (a member of (his) (her) (family) (household))] and where the actor knows or should know that the conduct will [cause the person to suffer serious emotional distress] [place the person in reasonable fear of bodily injury or death to (himself) (herself) (a member of (his) (her) (family) (household))].¹

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally engaged in a course of conduct directed at (name of person).

"Intentionally" requires that the defendant acted with the purpose² to engage in a course of conduct directed at (name of person).

"Course of conduct" means a series of two or more acts carried out over time, however short or long, that show a continuity of purpose.³ Acts that you may find constitute a course of conduct are limited to: (identify acts listed in § 940.32(1)(a)1.-10 that are supported by the evidence.).⁴

2. The course of conduct would have caused a reasonable person [to suffer serious emotional distress] [to fear bodily injury or death to (himself) (herself) (a member of (his) (her) (family) (household))].

["Suffer serious emotional distress" means to feel terrified, intimidated, threatened, harassed, or tormented. This does not require that (name of person) received treatment from a mental health professional.]⁵

["Member of a family" means a spouse, parent, child, sibling, or any other person who is related by blood or adoption to another.]⁶

["Member of a household" means a person (who regularly resides in the household of another) (who within the previous 6 months regularly resided in the household of another).]⁷

To determine whether this element is established, the standard is what effect the course of conduct would have had on a person of ordinary intelligence and prudence in the position of (name of person) under the circumstances that existed at the time of the course of conduct.

3. The defendant's acts⁸ [caused (name of person) to suffer serious emotional distress] [induced fear in (name of person) of bodily injury or death to (himself) (herself) (a member of (his) (her) (family) (household))].
4. The defendant knew or should have known that at least one of the acts constituting the course of conduct would [cause (name of person) to suffer serious emotional distress] [place (name of person) in reasonable fear of bodily injury or death to (himself) (herself) (a member of (his) (her) (family) (household))].⁹

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1284 was originally published in 1994 and revised in 1999, 2003, 2004, 2010, and 2011. This revision was approved by the Committee in February 2013; it added reference to State v. Hemmingway to the comment.

2003 Wisconsin Act 222 amended § 940.32(2) to add causing a person to "suffer serious emotional distress" and changing the mental state requirement addressed in the fourth element from "intends" to "knows or should know." The effective date of the statute is April 27, 2004.

Section 940.32 was created by 1993 Wisconsin Act 96. As originally enacted, it was adapted from a model "anti-stalking code for the states" prepared by the National Institute of Justice (NIJ) and the National

VIA EMAIL AND HAND DELIVERY
Rep.Spiros@legis.wisconsin.gov

March 10, 2021

Representative John Spiros, Chairman
Assembly Committee on Criminal Justice and Public Safety
Room 212 North
State Capitol
PO Box 8953
Madison, WI 53708

RE: Association of State Prosecutors Support for 2021 AB 83

Dear Chairman Spiros and Members of the Assembly Committee on Criminal Justice and Public Safety:

Thank you for allowing me to provide written testimony in support of 2021 Assembly Bill 83 on behalf of the Association of State Prosecutors (ASP). My name is Curtis Johnson. I am an Assistant District Attorney in Iowa County. ASP represents Assistant District Attorneys from every county in the state of Wisconsin.

AB 83 would amend the definition of the crime of "stalking" in Wisconsin and to specifically include attempts to contact a stalking victim via text message or other electronic communication, including sending and posting online content. This legislative change is important because so often our law enforcement referrals include fulfilling the essence of "stalking" as currently provided under sec. 940.32, Wis. Stats., by a perpetrator through online public means rather than the traditional phone calls, physical proximity, or third-party contacts associated with traditional "stalking".

Our office has received numerous reports where individuals feel just as victimized by persistent online posts, messages, and so forth that, though they might be as threatening and emotionally distressful as acts currently defined as "stalking", the online content does not fit the direct messaging element of sub. (1)(a)7.

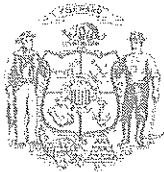
I also wish to quell any concerns that this neuters free speech considerations. As provided under sec. 904.32, the State must establish the persistence of those messages defined under sub. (1)(a), and that those messages caused a reasonable person to fear bodily harm or suffer emotional harm, and that the perpetrator knew or should know the acts would cause that fear or harm. Proof safeguards are in place to prevent unreasonable prosecution that silences legitimate free speech.

Thank you for holding a public hearing on this important legislation. On behalf of Wisconsin's Assistant District Attorneys, we ask that you support AB 83 and pass this bill this session.

Sincerely,

-electronically signed by Curtis E. Johnson

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*Testimony before the Assembly Committee on Criminal Justice and Public Safety
State Senator André Jacque
March 10, 2021*

Chairman Spiros and Members of the Assembly Committee on Criminal Justice and Public Safety,

Thank you for the opportunity to testify in support of Assembly Bill 83, the Cyberstalking Protection Act. This common sense bi-partisan legislation was drafted at the request of victims and prosecutors from specific cases where novel criminal defenses have been asserted, in order to update Wisconsin's stalking statutes to explicitly clarify and ensure protection for victims of electronic stalking through more modern means such as text messages, email, web applications and social media. I would like to thank the Offield family for being here today to share their story, and for letting me know of the need for this legislation to protect others from having to go through the same nightmare scenario.

To be clear, cyberstalking cases are currently appropriately being prosecuted under existing law, however this cyberstalking statute will further flesh out its meaning and reduce vulnerability of such prosecutions to future defense challenges. In addition, Rep. Tusler and I have included language in consultation with law enforcement stakeholders that takes into account jury instructions in related case law and updates the stalking definition so victims are able to be more fully protected under our statutes.

This legislation passed both Assembly and Senate committees last session unanimously, and the full State Senate on a voice vote, and is supported by End Domestic Abuse Wisconsin, the Wisconsin Professional Police Association, the Wisconsin Chapter of the National Association of Social Workers, and the Association of State Prosecutors, and the Wisconsin Department of Justice. We ask that committee members support this common sense legislation to help keep Wisconsinites safe as technology continues to evolve.

Thank you for your consideration of Assembly Bill 83.

Bill circulating in Wisconsin aims to expand legal definition of stalking

By: Victor Jacobo [Twitter](#)

Posted: Oct 22, 2019 4:07 PM CST

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MADISON, Wis. (CBS 58) – A bill being considered by state lawmakers aims to expand the legal definition of stalking in an effort to protect future victims.

Current law punishes people who stalk through various forms of behavior. However, the language in the statutes does not specifically include behavior like texting or sending and posting content online.

Senate Bill 235 would change that if it becomes law. The bill had a public hearing Tuesday.

The effort is spearheaded by Sen. André Jacque (R – DePere) who authored the bill.

“This updates and clarifies our statute,” Jacque told CBS 58. “[It] makes sure that something that is already able to be prosecuted – takes away the seed of doubt from the jury, from anybody that would be potentially, targeted by a defense argument.”

That scenario greatly impacted Nicole Offield of Green Bay. Her son was the victim of cyberstalking in high school by a teacher.

“It started at the end of my son’s junior year,” Offield said. “He started to receive multiple texts that were actually sexual in nature and not just the friendly teacher-student texts.”

Offield told CBS 58 that her son told school officials and they moved forward with legal action. During the case, the defense lawyer for the teacher used the language in the current stalking law to their advantage in order to avoid a harsher sentence for their client.

“It was very hard to hear the defense lawyer come into every preliminary hearing that we had stating, ‘This is not stalking, his phone never rang,’” Offield said. “It doesn’t matter. [My son] was still notified that there was a message. It doesn’t matter that the phone never physically rang.”

The teacher eventually entered a plea deal but if the bill becomes law, similar situations could end up in harsher penalties.

Offield hopes the bill can prevent future victims from having to experience the situation her and her son went through.

“We need to roll with the times and we need to make sure that the laws are updated to reflect what is happening today.”

Senator Jacque said he hopes the bill can get on the Assembly and Senate floors for a vote in November.

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To: Members of the Assembly Committee on Criminal Justice and Public Safety
Date: March 10th, 2021
From: Jenna Gormal, Director of Public Policy and Systems Change, End Domestic Abuse Wisconsin
Re: AB 83 – Relating to Stalking

Chairperson Spiros and Members of the Committee, thank you for the opportunity to provide testimony in support of Assembly Bill 83, the bill regarding stalking and electronic communication.

My name is Jenna Gormal, Director of Public Policy and Systems Change, and I represent End Domestic Abuse Wisconsin (End Abuse), the statewide voice for survivors of domestic violence and the membership organization representing local domestic violence victim service providers in all of Wisconsin's 72 counties. I would like to express our support of this bill amending the definition of stalking to explicitly include electronic communication and internet comments.

The Center for Disease Control and Prevention conducted the most recent National Intimate Partner and Sexual Violence Survey State Report from 2010 to 2012. On the very first page about stalking, researchers at the CDC wrote "advances in technology and social networking have created more choices for harassing and threatening victims."¹ 7 years and countless technological advances later, the prevalence of electronic stalking is doubtless higher, but the statistics reported from 2012 are still sobering. 1 in 6 women – over 19 million nationally – experienced stalking resulting in a fear of physical harm or death in her lifetime.² The most commonly reported stalking tactic was electronic; 76% of these women received unwanted phone calls and text messages, and 29% of stalking victims reported unwanted emails or social media posts within the past year.³ 12 of these 19 million women were stalked by current or former intimate partners.⁴

Between 2000 and 2019, 811 lives were lost to domestic violence in Wisconsin. 811. That we know of.

Each year, End Abuse drafts a Wisconsin Domestic Violence Homicide Report. In addition to detailing these incidents of domestic violence homicide, the reports have analyzed trends seen across the state. In every year of the report, stalking is found as a trend indicator of subsequent homicide.⁵

¹ <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 85.

² <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 85.

³ <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 88.

⁴ <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 118.

⁵ https://s3-us-east-2.amazonaws.com/edaw-webinars/wp-content/uploads/2020/09/24101634/FINAL_2019-Wisconsin-Domestic-Violence-Homicide-Report_revised_9_21_2020.pdf.

In 2008, Jennifer Vordermann was in the process of leaving her husband due to domestic violence. After receiving threatening text messages, she and her mother contacted law enforcement to report the threats. Her husband had also begun using telephone tracking devices to follow her. Police made contact multiple times but did not take her husband into custody or take possession of his weapons. He shot Jennifer in the back, killing her before turning the gun on himself, four days after Jennifer's mother reported the text message stalking to police.⁶

Jennifer's story is one of many incidents of domestic violence, stalking, and death detailed in our Homicide Reports. Some of the incidents date back to when the victim was 15 years old. In fact, intimate partner violence has been reported as young as the age of 12,⁷ and the number of teens in a relationship who say they have been called names, harassed, or put down by their partner through mobile devices is 1 in 4.⁸ With the advent of new technology, this number is set to rise.

End Domestic Abuse Wisconsin supports explicitly including identifying electronic and social media communication in the statute defining stalking. Stalking is an abusive and violent act. And stalking through texts, emails, and social media is still stalking. Threats are threats and sending them through the internet does not reduce the harm caused. The message may be electronic, but the fear is real, and so is the danger.

End Abuse would like to take this opportunity to emphasize that no victim in Wisconsin should have to take the courageous step of leaving an abusive relationship without the safety and support offered by domestic violence victim advocates and without the benefit of a coordinated community response. Domestic violence programs across the state are chronically underfunded. Responses to violence should be survivor centered, and we hear from survivors that they are in dire need of stable housing, economic support, legal representation, mental health, and other community resources. A response to violence that focuses on punishment is not effective since it does nothing to address the conditions that allowed that violence to happen in the first place. Focusing on repairing the conditions - the root cause - would prevent the harm from happening again. Updates to statute such as this are necessary reforms, and they mean very little if they are not accompanied by resources that support survivors' access to safety, healing, and economic security. We welcome your ideas and look forward to working with the legislature in the future on the needs we have identified.

Speaking for domestic violence survivors and advocates, we at End Abuse support the passage of this bill.

⁶https://www.endabusewi.org/wp-content/uploads/2018/11/2008_dv_homicide_report.pdf, pg. 13-14.

⁷<https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 167.

⁸ <https://dare2knowwi.org/resources>