

1 ENGROSSED HOUSE
2 BILL NO. 1516

By: Peterson of the House

and

David of the Senate

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7 An Act relating to crimes and punishments; amending
8 21 O.S. 2011, Section 1173, which relates to the
9 crime of stalking; updating language; defining
10 certain term; amending 21 O.S. 2011, Section 2002, as
11 amended by Section 2, Chapter 409, O.S.L. 2014 (21
O.S. Supp. 2014, Section 2002), which relates to
forfeiture of unlawful proceeds; modifying
circumstances for forfeiture; and providing an
effective date.

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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1173, is
16 amended to read as follows:

17 Section 1173. A. Any person who willfully, maliciously, and
18 repeatedly follows or harasses another person in a manner that:

19 1. Would cause a reasonable person or a member of the immediate
20 family of that person as defined in subsection F of this section to
21 feel frightened, intimidated, threatened, harassed, or molested; and

22 2. Actually causes the person being followed or harassed to
23 feel terrorized, frightened, intimidated, threatened, harassed, or
24 molested,

1 upon conviction, shall be guilty of the crime of stalking, which is
2 a misdemeanor punishable by imprisonment in a county jail for not
3 more than one (1) year or by a fine of not more than One Thousand
4 Dollars (\$1,000.00), or by both such fine and imprisonment.

5 B. Any person who violates the provisions of subsection A of
6 this section when:

7 1. There is a permanent or temporary restraining order, a
8 protective order, an emergency ex parte protective order, or an
9 injunction in effect prohibiting the behavior described in
10 subsection A of this section against the same party, when the person
11 violating the provisions of subsection A of this section has actual
12 notice of the issuance of such order or injunction; or

13 2. Said person is on probation or parole, a condition of which
14 prohibits the behavior described in subsection A of this section
15 against the same party or under the conditions of a community or
16 alternative punishment; or

17 3. Said person, within ten (10) years preceding the violation
18 of subsection A of this section, completed the execution of sentence
19 for a conviction of a crime involving the use or threat of violence
20 against the same party, or against any member of the immediate
21 family of such party,
22 upon conviction, shall be guilty of a felony punishable by
23 imprisonment in the ~~State Penitentiary~~ custody of the Department of
24 Corrections for a term not exceeding five (5) years, or by a fine of

1 not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by
2 both such fine and imprisonment.

3 C. Any person who commits a second act of stalking within ten
4 (10) years of the completion of sentence for a prior conviction
5 under subsection A of this section, upon conviction ~~thereof~~, shall
6 be guilty of a felony punishable by imprisonment in the ~~State~~
7 ~~Penitentiary~~ custody of the Department of Corrections for a term not
8 exceeding five (5) years, or by a fine of not more than Two Thousand
9 Five Hundred Dollars (\$2,500.00), or by both such fine and
10 imprisonment.

11 D. Any person who commits an act of stalking within ten (10)
12 years of the completion of execution of sentence for a prior
13 conviction under subsection B or C of this section, ~~shall~~, upon
14 conviction ~~thereof~~, shall be guilty of a felony punishable by a fine
15 of not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor
16 more than Ten Thousand Dollars (\$10,000.00), or by imprisonment in
17 the ~~State Penitentiary~~ custody of the Department of Corrections for
18 a term not exceeding ten (10) years, or by both such fine and
19 imprisonment.

20 E. Evidence that the defendant continued to engage in a course
21 of conduct involving repeated unconsented contact, as defined in
22 subsection F of this section, with the victim after having been
23 requested by the victim to discontinue the same or any other form of
24 unconsented contact, and to refrain from any further unconsented

1 contact with the victim, shall give rise to a rebuttable presumption
2 that the continuation of the course of conduct caused the victim to
3 feel terrorized, frightened, intimidated, threatened, harassed, or
4 molested.

5 F. For purposes of this section:

6 1. "Harasses" means a pattern or course of conduct directed
7 toward another individual that includes, but is not limited to,
8 repeated or continuing unconsented contact, that would cause a
9 reasonable person to suffer emotional distress, and that actually
10 causes emotional distress to the victim. Harassment shall include
11 harassing or obscene phone calls as prohibited by Section 1172 of
12 this title and conduct prohibited by Section 850 of this title.
13 Harassment does not include constitutionally protected activity or
14 conduct that serves a legitimate purpose;

15 2. "Course of conduct" means a pattern of conduct composed of a
16 series of two (2) or more separate acts over a period of time,
17 however short, evidencing a continuity of purpose. Constitutionally
18 protected activity is not included within the meaning of "course of
19 conduct";

20 3. "Emotional distress" means significant mental suffering or
21 distress that may, but does not necessarily require, medical or
22 other professional treatment or counseling;

23 4. "Unconsented contact" means any contact with another
24 individual that is initiated or continued without the consent of the

1 individual, or in disregard of that individual's expressed desire
2 that the contact be avoided or discontinued. Constitutionally
3 protected activity is not included within the meaning of unconsented
4 contact. Unconsented contact includes but is not limited to any of
5 the following:

- 6 a. following or appearing within the sight of that
7 individual,
- 8 b. approaching or confronting that individual in a public
9 place or on private property,
- 10 c. appearing at the workplace or residence of that
11 individual,
- 12 d. entering onto or remaining on property owned, leased,
13 or occupied by that individual,
- 14 e. contacting that individual by telephone,
- 15 f. sending mail or electronic communications to that
16 individual, and
- 17 g. placing an object on, or delivering an object to,
18 property owned, leased, or occupied by that
19 individual; ~~and~~

20 5. "Member of the immediate family", ~~for the purposes of this~~
21 ~~section,~~ means any spouse, parent, child, person related within the
22 third degree of consanguinity or affinity or any other person who
23 regularly resides in the household or who regularly resided in the
24 household within the prior six (6) months; and

1 6. "Following" shall include the tracking of the movement or
2 location of an individual through the use of a Global Positioning
3 System (GPS) device or other monitoring device by a person, or
4 person who acts on behalf of another, without the consent of the
5 individual whose movement or location is being tracked; provided,
6 this shall not apply to the lawful use of a GPS device or other
7 monitoring device by a law enforcement agency or the parent or
8 guardian of a minor child who uses such device for the purpose of
9 tracking such minor child.

10 SECTION 2. AMENDATORY 21 O.S. 2011, Section 2002, as
11 amended by Section 2, Chapter 409, O.S.L. 2014 (21 O.S. Supp. 2014,
12 Section 2002), is amended to read as follows:

13 Section 2002. A. Any commissioned peace officer of this state
14 is authorized to seize any currency, negotiable instrument, monetary
15 instrument, equipment or property used or involved in, used to
16 facilitate, ~~delivered~~ derived from or traceable to a violation of
17 Section 2001 of this title. The seized item may be held as evidence
18 until a forfeiture has been declared or a release ordered.
19 Forfeiture actions under this section may be brought by the district
20 attorney or Attorney General in the proper county of venue as
21 petitioner; provided, in the event the district attorney or Attorney
22 General elects not to file such action, or fails to file such action
23 within ninety (90) days of the date of the seizure of the item, the
24 item shall be returned to the owner.

1 B. Notice of seizure and intended forfeiture proceeding shall
2 be filed in the office of the clerk of the district court for the
3 county wherein the item is seized and shall be given all owners and
4 parties in interest.

5 C. Notice shall be given according to one of the following
6 methods:

7 1. Upon each owner, lienholder, or party in interest whose name
8 and address is known, served in the manner of service of process in
9 civil cases prescribed by Section 2004 of Title 12 of the Oklahoma
10 Statutes; or

11 2. Upon all other owners, whose addresses are unknown, but who
12 are believed to have an interest in the property by one publication
13 in a newspaper of general circulation in the county where the
14 seizure was made.

15 D. Within sixty (60) days after the mailing or publication of
16 the notice, the owner of the property and any other party in
17 interest or claimant may file a verified answer and claim to the
18 item described in the notice of seizure and of the intended
19 forfeiture proceeding.

20 E. If at the end of sixty (60) days after the notice has been
21 mailed or published there is no verified answer on file, the court
22 shall hear evidence upon the fact of the unlawful use and may order
23 the item forfeited to the state, if such fact is proven.
24

1 F. If a verified answer is filed, the forfeiture proceeding
2 shall be set for hearing.

3 G. Proceedings under this section shall be special proceedings.

4 H. At the hearing the petitioner shall prove by a preponderance
5 of the evidence that property was used in the attempt or commission
6 of an act specified in subsection A of this section with knowledge
7 by the owner of the item.

8 I. The claimant of any right, title, or interest in the item
9 may prove the lien, mortgage, or conditional sales contract to be
10 bona fide and that the right, title, or interest created by the item
11 was created without any knowledge or reason to believe that the item
12 was being, or was to be, used for the purpose charged.

13 J. In the event of such proof, the court may order the item
14 released to the bona fide or innocent owner, lienholder, mortgagee,
15 or vendor if the amount due such person is equal to, or in excess
16 of, the value of the item as of the date of the seizure, it being
17 the intention of this section to forfeit only the right, title, or
18 interest of the purchaser.

19 K. If the amount due to such person is less than the value of
20 the item, or if no bona fide claim is established, the item may be
21 forfeited to the state and may be sold pursuant to judgment of the
22 court, as on sale upon execution, and as provided in Section 2-508
23 of Title 63 of the Oklahoma Statutes, except as otherwise provided
24 for by law.

1 L. A seized item taken or detained pursuant to this section
2 shall not be repleviable, but shall be deemed to be in the custody
3 of the petitioner or in the custody of the law enforcement agency.
4 The petitioner shall release the seized item to the owner of the
5 item if it is determined that the owner had no knowledge of the
6 illegal use of the item or if there is insufficient evidence to
7 sustain the burden of showing illegal use of the item. If the owner
8 of the property stipulates to the forfeiture and waives the hearing,
9 the petitioner may determine if the value of the item is equal to or
10 less than the outstanding lien. If such lien exceeds the value of
11 the item, the item may be released to the lienholder. A seized item
12 which has not been released by the petitioner shall be subject to
13 the orders and decrees of the court or the official having
14 jurisdiction thereof.

15 M. Attorney fees shall not be assessed against the state or the
16 petitioner for any actions or proceeding pursuant to this section.

17 N. The proceeds of the sale of any property shall be
18 distributed as follows, in the order indicated:

19 1. To the bona fide or innocent purchaser, conditional sales
20 vendor, or mortgagee of the item, if any, up to the amount of the
21 interest of that person in the property, when the court declaring
22 the forfeiture orders a distribution to such person;

23 2. To the payment of the actual reasonable expenses of
24 preserving the item;

1 3. To the victim of the crime to compensate the victim for any
2 loss incurred as a result of the act for which the item was
3 forfeited; and

4 4. The balance to a revolving fund in the office of the county
5 treasurer of the county wherein the property was seized, to be
6 distributed as follows: one-half (1/2) to the investigating law
7 enforcement agency and one-half (1/2) to the district attorney to be
8 used to defray any lawful expenses of the office of the district
9 attorney. If the petitioner is not the district attorney, then the
10 one-half (1/2) which would have been designated to that office shall
11 be distributed to the petitioner.

12 O. If the court finds that the item was not used in the attempt
13 or commission of an act specified in subsection A of this section
14 and was not an item subject to forfeiture pursuant to subsection B
15 of this section, the court shall order the item released to the
16 owner as the right, title, or interest as determined by the court.

17 P. No vehicle, airplane, or vessel used by a person as a common
18 carrier in the transaction of business as a common carrier shall be
19 forfeited pursuant to the provisions of this section unless it shall
20 be proven that the owner or other person in charge of such
21 conveyance was a consenting party or privy to the attempt or
22 commission of an act specified in subsection A or B of this section.
23 No item shall be forfeited pursuant to the provisions of this
24 section by reason of any act or omission established by the owner

1 thereof to have been committed or omitted without the knowledge or
2 consent of such owner, and by any person other than such owner while
3 the item was unlawfully in the possession of a person other than the
4 owner in violation of the criminal laws of the United States or of
5 any state.

6 Q. Whenever any item is forfeited pursuant to this section, the
7 district court having jurisdiction of the proceeding may order that
8 the forfeited item may be retained for its official use by the
9 state, county, or municipal law enforcement agency which seized the
10 item.

11 SECTION 3. This act shall become effective November 1, 2015.

12 Passed the House of Representatives the 3rd day of March, 2015.

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15 Presiding Officer of the House
of Representatives

16 Passed the Senate the ____ day of _____, 2015.

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Presiding Officer of the Senate