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SENATE FLOOR VERSION

March 31, 2015

AS AMENDED

ENGROSSED HOUSE

BILL NO. 1516

By: Peterson, **Ritze**, and **Biggs**
of the House

and

David of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 2011, Section 1173, which relates to the crime of stalking; updating language; defining certain term; amending 21 O.S. 2011, Section 2002, as 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.

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

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

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

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

1 2. Actually causes the person being followed or harassed to
2 feel terrorized, frightened, intimidated, threatened, harassed, or
3 molested,

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

8 B. Any person who violates the provisions of subsection A of
9 this section when:

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

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

20 3. Said person, within ten (10) years preceding the violation
21 of subsection A of this section, completed the execution of sentence
22 for a conviction of a crime involving the use or threat of violence
23 against the same party, or against any member of the immediate
24 family of such party,

1 upon conviction, shall be guilty of a felony punishable by
2 imprisonment in the ~~State Penitentiary~~ custody of the Department of
3 Corrections for a term not exceeding five (5) years, or by a fine of
4 not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by
5 both such fine and imprisonment.

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

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

23 E. Evidence that the defendant continued to engage in a course
24 of conduct involving repeated unconsented contact, as defined in

1 subsection F of this section, with the victim after having been
2 requested by the victim to discontinue the same or any other form of
3 unconsented contact, and to refrain from any further unconsented
4 contact with the victim, shall give rise to a rebuttable presumption
5 that the continuation of the course of conduct caused the victim to
6 feel terrorized, frightened, intimidated, threatened, harassed, or
7 molested.

8 F. For purposes of this section:

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

18 2. "Course of conduct" means a pattern of conduct composed of a
19 series of two (2) or more separate acts over a period of time,
20 however short, evidencing a continuity of purpose. Constitutionally
21 protected activity is not included within the meaning of "course of
22 conduct";
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1 3. "Emotional distress" means significant mental suffering or
2 distress that may, but does not necessarily require, medical or
3 other professional treatment or counseling;

4 4. "Unconsented contact" means any contact with another
5 individual that is initiated or continued without the consent of the
6 individual, or in disregard of that individual's expressed desire
7 that the contact be avoided or discontinued. Constitutionally
8 protected activity is not included within the meaning of unconsented
9 contact. Unconsented contact includes but is not limited to any of
10 the following:

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

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

6 6. "Following" shall include the tracking of the movement or
7 location of an individual through the use of a Global Positioning
8 System (GPS) device or other monitoring device by a person, or
9 person who acts on behalf of another, without the consent of the
10 person whose movement or location is being tracked. "Following"
11 shall not apply to the lawful use of a GPS device or other
12 monitoring device by a law enforcement agency or the parent of a
13 minor child who uses such device for the purpose of tracking such
14 minor child or to the use by a new or used motor vehicle dealer or
15 other motor vehicle creditor of a GPS or other tracking device,
16 including a device containing technology used to remotely disable
17 the starter of a motor vehicle, in connection with lawful action
18 after default of the terms of a motor vehicle credit sale, loan or
19 lease, and with the express written consent of the motor vehicle's
20 owner or lessee.

21 SECTION 2. AMENDATORY 21 O.S. 2011, Section 2002, as
22 amended by Section 2, Chapter 409, O.S.L. 2014 (21 O.S. Supp. 2014,
23 Section 2002), is amended to read as follows:
24

1 Section 2002. A. Any commissioned peace officer of this state
2 is authorized to seize any currency, negotiable instrument, monetary
3 instrument, equipment or property used or involved in, used to
4 facilitate, ~~delivered~~ derived from or traceable to a violation of
5 Section 2001 of this title. The seized item may be held as evidence
6 until a forfeiture has been declared or a release ordered.
7 Forfeiture actions under this section may be brought by the district
8 attorney or Attorney General in the proper county of venue as
9 petitioner; provided, in the event the district attorney or Attorney
10 General elects not to file such action, or fails to file such action
11 within ninety (90) days of the date of the seizure of the item, the
12 item shall be returned to the owner.

13 B. Notice of seizure and intended forfeiture proceeding shall
14 be filed in the office of the clerk of the district court for the
15 county wherein the item is seized and shall be given all owners and
16 parties in interest.

17 C. Notice shall be given according to one of the following
18 methods:

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

23 2. Upon all other owners, whose addresses are unknown, but who
24 are believed to have an interest in the property by one publication

1 in a newspaper of general circulation in the county where the
2 seizure was made.

3 D. Within sixty (60) days after the mailing or publication of
4 the notice, the owner of the property and any other party in
5 interest or claimant may file a verified answer and claim to the
6 item described in the notice of seizure and of the intended
7 forfeiture proceeding.

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

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

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

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

19 I. The claimant of any right, title, or interest in the item
20 may prove the lien, mortgage, or conditional sales contract to be
21 bona fide and that the right, title, or interest created by the item
22 was created without any knowledge or reason to believe that the item
23 was being, or was to be, used for the purpose charged.
24

1 J. In the event of such proof, the court may order the item
2 released to the bona fide or innocent owner, lienholder, mortgagee,
3 or vendor if the amount due such person is equal to, or in excess
4 of, the value of the item as of the date of the seizure, it being
5 the intention of this section to forfeit only the right, title, or
6 interest of the purchaser.

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

13 L. A seized item taken or detained pursuant to this section
14 shall not be repleviable, but shall be deemed to be in the custody
15 of the petitioner or in the custody of the law enforcement agency.
16 The petitioner shall release the seized item to the owner of the
17 item if it is determined that the owner had no knowledge of the
18 illegal use of the item or if there is insufficient evidence to
19 sustain the burden of showing illegal use of the item. If the owner
20 of the property stipulates to the forfeiture and waives the hearing,
21 the petitioner may determine if the value of the item is equal to or
22 less than the outstanding lien. If such lien exceeds the value of
23 the item, the item may be released to the lienholder. A seized item
24 which has not been released by the petitioner shall be subject to

1 the orders and decrees of the court or the official having
2 jurisdiction thereof.

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

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

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

11 2. To the payment of the actual reasonable expenses of
12 preserving the item;

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

16 4. The balance to a revolving fund in the office of the county
17 treasurer of the county wherein the property was seized, to be
18 distributed as follows: one-half (1/2) to the investigating law
19 enforcement agency and one-half (1/2) to the district attorney to be
20 used to defray any lawful expenses of the office of the district
21 attorney. If the petitioner is not the district attorney, then the
22 one-half (1/2) which would have been designated to that office shall
23 be distributed to the petitioner.
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1 O. If the court finds that the item was not used in the attempt
2 or commission of an act specified in subsection A of this section
3 and was not an item subject to forfeiture pursuant to subsection B
4 of this section, the court shall order the item released to the
5 owner as the right, title, or interest as determined by the court.

6 P. No vehicle, airplane, or vessel used by a person as a common
7 carrier in the transaction of business as a common carrier shall be
8 forfeited pursuant to the provisions of this section unless it shall
9 be proven that the owner or other person in charge of such
10 conveyance was a consenting party or privy to the attempt or
11 commission of an act specified in subsection A or B of this section.
12 No item shall be forfeited pursuant to the provisions of this
13 section by reason of any act or omission established by the owner
14 thereof to have been committed or omitted without the knowledge or
15 consent of such owner, and by any person other than such owner while
16 the item was unlawfully in the possession of a person other than the
17 owner in violation of the criminal laws of the United States or of
18 any state.

19 Q. Whenever any item is forfeited pursuant to this section, the
20 district court having jurisdiction of the proceeding may order that
21 the forfeited item may be retained for its official use by the
22 state, county, or municipal law enforcement agency which seized the
23 item.
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SECTION 3. This act shall become effective November 1, 2015.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
March 31, 2015 - DO PASS AS AMENDED