

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1516

By: Peterson of the House and David of the Senate

Title: Crimes and punishments; defining certain term; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its Amendments; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

David	_____
Barrington	_____
Griffin	_____
Shaw	_____
Floyd	_____
Pittman	_____
Treat	_____

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1516

By: Peterson, Ritze and Biggs
of the House

and

David of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

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

4 2. Actually causes the person being followed or harassed to
5 feel terrorized, frightened, intimidated, threatened, harassed, or
6 molested,

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

11 B. Any person who violates the provisions of subsection A of
12 this section when:

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

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

23 3. Said person, within ten (10) years preceding the violation
24 of subsection A of this section, completed the execution of sentence

1 for a conviction of a crime involving the use or threat of violence
2 against the same party, or against any member of the immediate
3 family of such party,
4 upon conviction, shall be guilty of a felony punishable by
5 imprisonment in the ~~State Penitentiary~~ custody of the Department of
6 Corrections for a term not exceeding five (5) years, or by a fine of
7 not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by
8 both such fine and imprisonment.

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

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

3 E. Evidence that the defendant continued to engage in a course
4 of conduct involving repeated unconsented contact, as defined in
5 subsection F of this section, with the victim after having been
6 requested by the victim to discontinue the same or any other form of
7 unconsented contact, and to refrain from any further unconsented
8 contact with the victim, shall give rise to a rebuttable presumption
9 that the continuation of the course of conduct caused the victim to
10 feel terrorized, frightened, intimidated, threatened, harassed, or
11 molested.

12 F. For purposes of ~~this section~~ determining the crime of
13 stalking, the following definitions shall apply:

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

23 2. "Course of conduct" means a pattern of conduct composed of a
24 series of two (2) or more separate acts over a period of time,

1 however short, evidencing a continuity of purpose. Constitutionally
2 protected activity is not included within the meaning of "course of
3 conduct";

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

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

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

g. placing an object on, or delivering an object to,
property owned, leased, or occupied by that
individual; ~~and~~

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

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

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

Section 2002. A. Any commissioned peace officer of this state is authorized to seize any currency, negotiable instrument, monetary instrument, equipment or property used or involved in, used to facilitate, ~~delivered~~ derived from or traceable to a violation of

1 Section 2001 of this title. The seized item may be held as evidence
2 until a forfeiture has been declared or a release ordered.

3 Forfeiture actions under this section may be brought by the district
4 attorney or Attorney General in the proper county of venue as
5 petitioner; provided, in the event the district attorney or Attorney
6 General elects not to file such action, or fails to file such action
7 within ninety (90) days of the date of the seizure of the item, the
8 item shall be returned to the owner.

9 B. Notice of seizure and intended forfeiture proceeding shall
10 be filed in the office of the clerk of the district court for the
11 county wherein the item is seized and shall be given all owners and
12 parties in interest.

13 C. Notice shall be given according to one of the following
14 methods:

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

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

23 D. Within sixty (60) days after the mailing or publication of
24 the notice, the owner of the property and any other party in

1 interest or claimant may file a verified answer and claim to the
2 item described in the notice of seizure and of the intended
3 forfeiture proceeding.

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

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

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

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

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

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

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

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

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

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

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

7 2. To the payment of the actual reasonable expenses of
8 preserving the item;

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

12 4. The balance to a revolving fund in the office of the county
13 treasurer of the county wherein the property was seized, to be
14 distributed as follows: one-half (1/2) to the investigating law
15 enforcement agency and one-half (1/2) to the district attorney to be
16 used to defray any lawful expenses of the office of the district
17 attorney. If the petitioner is not the district attorney, then the
18 one-half (1/2) which would have been designated to that office shall
19 be distributed to the petitioner.

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

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

14 Q. Whenever any item is forfeited pursuant to this section, the
15 district court having jurisdiction of the proceeding may order that
16 the forfeited item may be retained for its official use by the
17 state, county, or municipal law enforcement agency which seized the
18 item.

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