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# RON TUSLER

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STATE REPRESENTATIVE • 3<sup>rd</sup> ASSEMBLY DISTRICT

Testimony

on

Assembly Bill 259

Assembly Committee on Criminal Justice & Public Safety

August 22, 2019

Mr. Chairman and members of the committee, thank you for hearing Assembly Bill 259 relating to stalking. This bill will provide beneficial rewording of the statute, codify existing practice and interpretation, and clarify affected parties. To frame today's discussion, please see the draft substitute amendment, developed in consultation with experts at DOJ, attached to my testimony that Senator Jacque and I intend to introduce after receiving feedback at today's hearing.

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."<sup>1</sup> **To make clear, prosecutors and judges interpret the "by any means" language to already include cyberstalking; this bill and substitute amendment is not intended to upend this understanding or call into questions cyberstalking convictions achieved under this statute.** The draft substitute amendment makes improvements to the current statute in three ways.

First, the substitute amendment language 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, particularly since the dawn of the smartphone age about a decade ago. Additionally, as indicated, it also codifies the current statutory interpretation and practice that electronic communications may constitute stalking.

Second, this substitute amendment conforms more closely to jury instructions, which will aid jurors in their deliberations. If anyone has ever been served on a jury, or even just 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 substitute amendment includes former employers and coworkers in the class of people who may not be contacted to stalk a victim. In *State v. Ardell*, Ardell appealed, arguing that his conduct did not satisfy the conduct required for conviction because he contacted a *former* coworker of the victim.<sup>2</sup> While the Court of Appeals affirmed the trial court's decision,

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<sup>1</sup> Wis. Stat. §940.32(1)(a)7. (2017-18).

<sup>2</sup> *State v. Ardell*, 2018 WI App 28, ¶38, 381 Wis.2d 471 (2018).

the appellate opinion is unpublished and therefore may only be cited for its persuasive value and is not binding on any court in Wisconsin.<sup>3</sup> Codifying the inclusion of “former” employers and coworkers will clarify this interpretation for future cases with similar facts.

I would like to thank the DOJ, who has an expert here to testify today, for their assistance making these changes and clarifications. 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.

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<sup>3</sup> Wis. Stat. §809.23(3)(b) (2017-18).



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRBs0084/P1  
MLJ:cjs

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT ,  
TO ASSEMBLY BILL 259**

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

*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:

4 940.32 (1) (a) 6. Contacting the victim by telephone, text message, electronic  
5 message, electronic mail, or other means of electronic communication or causing the  
6 victim's telephone or electronic device or any other person's telephone or electronic  
7 device to ring or generate notifications repeatedly or continuously, regardless of  
8 whether a conversation ensues.

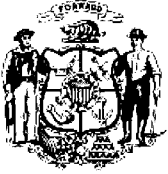
9 **SECTION 2.** 940.32 (1) (a) 7. of the statutes is amended to read:

10 940.32 (1) (a) 7. Sending to the victim any physical or electronic material or  
11 contacting the victim by any means ~~to the victim or, for the purpose of obtaining~~

1 ~~information about, disseminating information about, or communicating with the~~  
2 ~~victim, including any message, comment, or other content posted on any Internet site~~  
3 ~~or web application.~~

4 7m. Sending to a member of the victim's family or household, or an any current  
5 or former employer, of the victim, or any current or former coworker of the victim, or  
6 any friend of the victim, any physical or electronic material, or contacting such  
7 person by any means, including any message, comment, or other content posted on  
8 any Internet site or web application for the purpose of obtaining information about,  
9 disseminating information about, or communicating with the victim.

10 (END)



# ANDRÉ JACQUE

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*Testimony before the Assembly Committee on Criminal Justice & Public Safety  
State Senator André Jacque  
August 22<sup>nd</sup>, 2019*

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

Thank you for holding this hearing and the opportunity to testify in support of Assembly Bill 259, the Cyberstalking Protection Act. I am pleased to join Representative Tusler in bringing forward this common sense bi-partisan addition to our state statutes in light of the many advances of communication technology. At the request of victims and prosecutors from specific cases where novel criminal defenses have been asserted, we have introduced AB259 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.

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 are introducing an amendment 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 is supported by End Domestic Abuse Wisconsin and has been vetted by 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 259.

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To: Members of the Assembly Committee on Criminal Justice and Public Safety  
Date: August 22<sup>nd</sup>, 2019  
From: Abby Swetz, Policy and Systems Analyst, End Domestic Abuse Wisconsin  
Re: AB 259 – Relating to Stalking

Chairperson Spiros and Members of the Committee, thank you for the opportunity to provide testimony in support of Assembly Bill 259, the bill regarding stalking and electronic communication. We at End Domestic Abuse Wisconsin support the bill, and we thank Representatives Tusler and Stuck and Senators Jacque and Carpenter for their authorship.

My name is Abigail Swetz, and I am here as a representative of End Domestic Abuse Wisconsin to express our support of this bill amending the definition of stalking to explicitly include electronic communication and internet comments.

End Domestic Abuse Wisconsin is the statewide membership organization that is the voice for survivors of domestic violence and local domestic violence victim service providers. As both a representative of those survivors and providers and as a survivor of domestic violence and electronic communication stalking myself, I am here today to speak on the importance of this bill and explain End Abuse's support.

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."<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 12 of these 19 million women were stalked by current or former intimate partners.<sup>4</sup>

One night a year and two months after I left my abusive spouse, I received 54 text messages between 2 and 4am. The messages detailed my location and current activities, and many of them spoke of a plan to come find me. I informed my colleagues of the general situation, but I also explained to them that I was reticent to call the police as my ex was a former officer. The day ended without incident, but knowing what I know now years later about electronic communication, stalking behavior, and access to weapons – my ex kept a gun and ammunition in the bedroom – I feel incredibly lucky that those text messages did not end in violence.

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

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

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

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

Between 2007 and 2017, 600 Wisconsin residents died at the hands of an intimate partner. 600. That we know of.

Each year, End Abuse drafts a Wisconsin Domestic Violence Homicide Report. In addition to detailing these 600 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.

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.<sup>5</sup>

Jennifer's story is one of many incidents of domestic violence, stalking, and death detailed in our Homicide Report. 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,<sup>6</sup> 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.<sup>7</sup> 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. Speaking for domestic violence survivors and advocates, we at End Abuse urge the passage of this bill.

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<sup>5</sup> [https://www.endabusewi.org/wp-content/uploads/2018/11/2008\\_dv\\_homicide\\_report.pdf](https://www.endabusewi.org/wp-content/uploads/2018/11/2008_dv_homicide_report.pdf), pg. 13-14.

<sup>6</sup> <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>, pg. 167.

<sup>7</sup> <https://dare2knowwi.org/resources>

To Whom It May Concern,

We would like to see the state statute on stalking be revised to include the use of electronic devices and social media. When someone texts, the phone might not "ring" as the statute currently states. We would like to include any time the phone vibrates, buzzes, or anyway a phone informs the receiving person there is a notification that needs to be looked at.

Our son was the victim of sexual solicitation by a teacher. The teacher used his cell phone to contact our son by sending over 1000 text and snapchat messages. Since the phone never "rang", the defense argued that this was not considered stalking. Our son still had to endure his phone dinging or vibrating every time a message was received which interrupted his day numerous times and caused him stress every time he received a text message. We believe this can be construed as the same act as a telephone ringing constantly.

The case is now closed against the teacher accused of stalking our son and he was not convicted of this charge. We would like to see the bill amended in order to help future victims. We appreciate your time and attention in this matter.

Rodney and Nikie Offield