

**2001 DRAFTING REQUEST**

**Bill**

Received: **10/31/2000**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Brian Burke (608) 266-8535**

By/Representing: **Debbie**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - domestic abuse  
Criminal Law - miscellaneous**

Extra Copies: **rlr**

Submit via email: **NO**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Stalking

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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at intro 2/13/02

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Criminal Law - miscellaneous

Extra Copies: rlr

Submit via email: NO

⇒ pattis@inxpress.net

#### Pre Topic:

No specific pre topic given

#### Topic:

Stalking

#### Instructions:

See Attached

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Extra Copies: rlr

Submit via email: NO

Requester's email:

Pre Topic:

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Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

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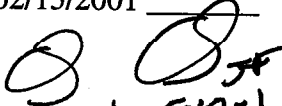
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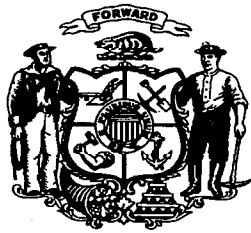
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# BRIAN BURKE

WISCONSIN STATE SENATOR

Senate Chair, Joint Committee on Finance

## Memorandum

**To:** Mike Dsida, Legislative Reference Bureau (Drafting)  
**From:** Senator Brian Burke  
**Date:** 10/25/00  
**Re:** Drafting Request: Stalking; revision of "reasonable person" standard

---

Please draft legislation revising the reasonable person standard under our stalking statute to allow for consideration of any prior history with the stalker.

Domestic violence advocates say that a victim with a prior history with the stalker may fear for his or her safety based on a course of conduct that would not instill such fear in a "reasonable person" who has no personal history with the perpetrator.

For guidance, review Washington State's stalking law that provides: "The feeling of fear must be one that a reasonable person *in the same situation* would experience *under all the circumstances*." (See attached language)

FYI: The "egg shell skull" rule does not apply to emotional distress cases.

If you have any questions, please contact Debbie from my office at 6-8535.

Thanks for your assistance.

Stalking Legislation: Washington  
RCW 9A.46.110

- (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
  - (a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and
  - (b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
  - (c) The stalker either:
    - (i) Intends to frighten, intimidate, or harass the person; or
    - (ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.
- (2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and
- (b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.
- (3) It shall be a defense to the crime of stalking that the defendant is a licensed \*private detective acting within the capacity of his or her license as provided by chapter 18.165 RCW.
- (4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person.
- (5) A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a class C felony if any of the following applies: (a) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; (b) the stalking violates any protective order protecting the person being stalked; (c) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; (d) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.125, while stalking the person; (e) the stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or community correction's officer, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (f) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.
- (6) As used in this section:
  - (a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.
  - (b) "Harasses" means unlawful harassment as defined in RCW 10.14.020.
  - (c) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.
  - (d) "Repeatedly" means on two or more separate occasions.



State of Wisconsin  
2001 - 2002 LEGISLATURE

PI  
LRB-0867/3  
MGD: x  
Jld

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen

1 AN ACT ...; relating to: stalking.

*Analysis by the Legislative Reference Bureau*

Current law prohibits stalking, <sup>which</sup> ~~Stalking~~ is defined as knowingly engaging in a course of conduct directed at a specific person ~~(the victim)~~ <sup>the victim</sup> that: 1) would cause a reasonable person to fear bodily injury to or the death of himself or herself or a member of his or her immediate family ("the reasonable person element") and 2) ~~induces~~ <sup>does</sup> induce such fear in the victim. A person who violates this prohibition may be imprisoned for up to nine months or fined up to \$10,000 or both.

This bill specifies that application of the reasonable person element must entail consideration of what a reasonable person would fear if he or she were under the same circumstances as the victim and ~~had~~ <sup>had had</sup> the same experiences with the alleged stalker as the victim.

STET

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

2 SECTION 1. 940.32 (2) (a) <sup>x</sup> of the statutes is amended to read:

3 940.32 (2) (a) The actor intentionally engages in a course of conduct directed  
4 at a specific person that would cause a reasonable person <sup>if he or she were</sup> under the same  
5 circumstances and ~~had had~~ <sup>had had</sup> the same experiences with the actor as the person at

1 whom<sup>✓</sup> the course of conduct is directed to fear bodily injury to himself or herself or  
2 a member of his or her immediate family or to fear the death of himself or herself or  
3 a member of his or her immediate family.

4 **History:** 1993 a. 96, 496.

**(END)**

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

PI  
LRB-0867/2dn  
MCD:.....

Jed

November 8, 2000

Debbie:

I borrowed some of this language from Wisconsin's sexual harassment statute (s. 111.36 (1) (b)), but I added the "experiences" language to make it clear that the stalking statute is not only referring to the circumstances at the time of the course of conduct, but also to the victim's history with the stalker. Let me know if this language is okay.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0867/P1dn  
MGD:jld:jf

November 16, 2000

Debbie:

I borrowed some of this language from Wisconsin's sexual harassment statute (s. 111.36 (1) (b)), but I added the "experiences" language to make it clear that the stalking statute is not only referring to the circumstances at the time of the course of conduct, but also to the victim's history with the stalker. Let me know if this language is okay.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

*AAAAA*  
*AAAAA*  
*AAAAA*  
*AAAAA*  
*AAAAA*  
**Dsida, Michael**

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**From:** Sybell, Debra  
**Sent:** Wednesday, January 24, 2001 1:46 PM  
**To:** Dsida, Michael  
**Subject:** Revisions to LRB-0867 relating to stalking

Mike:

I spoke with some folks in the Milwaukee County DA's Office. They thought the revision to the reasonable person standard could be cleaner and preferred the language of Washington State's law.

Perhaps Section 940.32(2)(a) to read:

The actor intentionally engages in a course of conduct directed at a specific person that would cause a reasonable person in the same situation under all the circumstances to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family.

IN ADDITION:

- (1) Modify the "course of conduct " definition to include other forms of harassment made through repeated phone calls, letters, faxes or e-mails [as included in the cybercrime package] AND
- (2) Modify the definition of "repeatedly" to refer to two or more occasions/instances *rather than* two days.





(2)

SOON

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

and providing a penalty

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

*Analysis by the Legislative Reference Bureau*

Current law prohibits stalking, which is defined as knowingly engaging in a course of conduct directed at a specific person (the victim) that: 1) would cause a reasonable person to fear bodily injury to or the death of himself or herself or a member of his or her immediate family ("the reasonable person element"); and 2) does induce such fear in the victim. A person who violates this prohibition may be imprisoned for up to nine months or fined up to \$10,000 or both.

IN sent Barney

This bill specifies that application of the reasonable person element must entail consideration of what a reasonable person would fear if he or she were under the same circumstances as the victim and had had the same experiences with the alleged stalker as the victim. IN sent Fred

IN sent 1/1

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

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

3 940.32 (2) (a) The actor intentionally engages in a course of conduct directed  
4 at a specific person that would cause a reasonable person if he or she were under the  
5 same circumstances and had had the same experiences with the actor as the person

7

1 ~~at whom the course of conduct is directed~~ to fear bodily injury to himself or herself  
2 or a member of his or her immediate family or to fear the death of himself or herself  
3 or a member of his or her immediate family.

4 (END)

1 **analysis INSERT barney**

Under current law, a person commits the offense of stalking when: 1) he or she engages in a course of conduct directed at a specific person (~~the~~ victim) that would cause a reasonable person to fear death or injury, including death of or injury to a family member ("the reasonable person element"); 2) the person knows or should know that the victim will develop that fear; and 3) the person's acts do induce such fear in the victim. Current law defines "course of conduct" to mean repeatedly maintaining a visual or physical proximity to another individual. "Repeatedly," in turn, is defined to mean on two or more days.

A person who commits the offense of stalking may be fined up to \$10,000 or imprisoned for up to nine months or both. More severe penalties may apply depending on the circumstances under which the offense is committed.

2 **analysis INSERT fred**

~~ff~~ <sup>NO</sup> This bill also broadens the prohibition of stalking by expanding the definition of "course of conduct." Under the bill, "course of conduct" includes repeatedly making telephone calls to a person or repeatedly sending a person mail, e-mail, or faxes. In addition, the bill modifies the definition of "repeatedly." Under the bill, "repeatedly" means on two or more occasions ~~or instances~~.

3 **INSERT1/1**

4 **SECTION 1.** 940.32 (1) (a) <sup>✓</sup> of the statutes is amended to read:

5 940.32 (1) (a) "Course of conduct" means repeatedly maintaining a visual or  
6 physical proximity to a person, repeatedly making telephone calls to a person, or  
7 repeatedly sending a person mail or transmissions by facsimile machine or by an  
8 electronic mail <sup>✓</sup> or other computerized communication system.

History: 1993 a. 96, 496.

9 **SECTION 2.** 940.32 (1) (d) <sup>✓</sup> of the statutes is amended to read:

10 940.32 (1) (d) "Repeatedly" means on 2 or more ~~calendar days~~ <sup>✓</sup> occasions.

History: 1993 a. 96, 496.

from Tanya

-0867

Patti Seger - Mon 3/26  
255-0539 PM

### Stalking

Possible/suggested revisions to Wis. Stats. 940.32

940.32(1)(a) "Course of Conduct" means a pattern of conduct composed of a series of acts over time, however short, evidencing a continuity of purpose. (this language comes from CA penal code 646.9(f)).

*I have noticed that several states have similar/same language as above and have added an additional statement such as: Constitutionally protected activity is not included within the meaning of "course of conduct". Such constitutionally protected activity includes picketing and other organized protests. (source: Florida, 784.048(1)(b), also similar language is located in CA 646.9(f); IL Public Act 91-0640) I think the purpose of including such a statement is fairly clear...and if we chose to include, would head off much of the opposition to change.*

940.32(1)(d) "Repeated" means two or more occasions.

940.32(2) sections (a), (b), (c): these sections are quite possibly the most confusing part of our stalking law, making it next to impossible for law enforcement and prosecution to pursue crimes. This is essentially the definition of "stalking". I would suggest that we just create a section that defines a common sense version of stalking. For example:

"Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim or the immediate family of the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. (Source: MI Penal Code: 750.411h (1)(d).

For the purposes of this section, a willful course of conduct means a written or verbal threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written or electronically communicated statements and conduct made with the intent to place the person that is the target of the threat in reasonable fear of his or her safety or the safety of his or her family and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making a threat shall not be a bar to prosecution under this section. (Source: CA Penal Code, 646.9 (g))

Andrews: →  
Does it include battery, and it should

Note: Mich. has both a Stalking and an Aggravated Stalking statute (as do many states such as MO, MN and IL)...we may want to consider this. *Aggravated Stalking could include 1) injury to the victim or victim's family member during the course of stalking (currently a felony in WI); 2) use or possession of weapons during the course of stalking; 3) prior conviction for stalking within X number of years; 4) cyber-stalking and/or gaining identifiable information about the victim via electronic format, 5) breaking into or criminally trespassing on the property/residence of victim for the purpose of stalking.*

Patti

Then I think we should generate an all-inclusive list of stalking acts/crimes, such as:

- 1-Maintaining a visible or physical proximity to the victim;
- 2-Approaching or confronting the victim in a public place or on private property;
- 3-Appearing at the victim's workplace and/or contacting that individual's employer or co-workers;
- 4-Appearing at the victim's residence and/or contacting the victim's neighbors;

Abuse to animals ?? include in # 8  
or add as # 9 ??

- 5-Entering onto or remaining on the property owned, leased, or occupied by the victim;
- 6-Contacting the victim by telephone or makes or causes the telephone of another (including the victim) to repeatedly and continuously ring, whether or not a conversation ensues;
- 7-Sending mail or written communications by any means, including electronic communications to the victim or to immediate family, employer, co-workers, or friends for the purpose of obtaining information about or communicating via third party to the victim;
- 8-Placing an object on, or delivering an object to, property owned, leased, or occupied by the victim, or to an immediate family member, employer, co-worker or friend for the purpose of delivery to the victim.



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0867/P2

MGD:jld:km

D-Note

P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Soon

Regen

- 1 AN ACT to amend 940.32 (1) (a), 940.32 (1) (d) and 940.32 (2) (a) of the statutes;
- 2 relating to: stalking and providing a penalty.

---

*Analysis by the Legislative Reference Bureau*

Under current law, a person commits the offense of stalking when: 1) he or she engages in a course of conduct directed at a specific person (victim) that would cause a reasonable person to fear death or injury, including death of or injury to a family member ("the reasonable person element"); 2) the person knows or should know that the victim will develop that fear; and 3) the person's acts do induce such fear in the victim. Current law defines "course of conduct" to mean repeatedly maintaining a visual or physical proximity to another individual. "Repeatedly," in turn, is defined to mean on two or more days.

A person who commits the offense of stalking may be fined up to \$10,000 or imprisoned for up to nine months or both. More severe penalties may apply depending on the circumstances under which the offense is committed.

This bill specifies that application of the reasonable person element must entail consideration of what a reasonable person would fear under the same circumstances. This bill also broadens the prohibition of stalking by expanding the definition of "course of conduct." Under the bill, "course of conduct" includes repeatedly making telephone calls to a person or repeatedly sending a person mail, e-mail, or faxes. In

Analysis  
insert

addition, the bill modifies the definition of "repeatedly." Under the bill, "repeatedly" means on two or more occasions.

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

INS  
2/1

1 ~~SECTION 1. 940.32 (1) (a) of the statutes is amended to read:~~

2 ~~940.32 (1) (a) "Course of conduct" means repeatedly maintaining a visual or~~  
3 ~~physical proximity to a person, repeatedly making telephone calls to a person, or~~  
4 ~~repeatedly sending a person mail or transmissions by facsimile machine or by an~~  
5 ~~electronic mail or other computerized communication system.~~

6 ~~SECTION 2. 940.32 (1) (d) of the statutes is amended to read:~~

7 ~~940.32 (1) (d) "Repeatedly" means on 2 or more calendar days occasions.~~

8 ~~SECTION 3. 940.32 (2) (a) of the statutes is amended to read:~~

9 ~~940.32 (2) (a) The actor intentionally engages in a course of conduct directed~~  
10 ~~at a specific person that would cause a reasonable person under the same~~  
11 ~~circumstances to fear bodily injury to himself or herself or a member of his or her~~  
12 ~~immediate family or to fear the death of himself or herself or a member of his or her~~  
13 ~~immediate family.~~

14 (END)

1 **analysis INSERT**

This is a preliminary draft. An analysis will be provided in a later version.

2 **INSERT** 2/1

3 **SECTION 1.** 940.32 (1) (a)<sup>✓</sup> of the statutes is renumbered 940.32 (1) (a) (intro.)

4 and amended to read:

5 940.32 (1) (a) (intro.) "Course of conduct" means ~~repeatedly maintaining a~~  
6 ~~visual or physical proximity to a person. a series of~~ <sup>2</sup> ~~two~~ or more acts carried out over  
7 time, however short, that show a continuity of purpose, including any of the  
8 following:

9 History: 1993 a. 96, 496.

**SECTION 2.** 940.32 (1) (a) 1.<sup>✓</sup> of the statutes is created to read:

10 940.32 (1) (a) 1. Maintaining a visible or physical proximity to the victim.

11 **SECTION 3.** 940.32 (1) (a) 2.<sup>✓</sup> of the statutes is created to read:

12 940.32 (1) (a) 2. Approaching or confronting the victim.

13 **SECTION 4.** 940.32 (1) (a) 3.<sup>✓</sup> of the statutes is created to read:

14 940.32 (1) (a) 3. Appearing at the victim's workplace or contacting the victim's  
15 employer or <sup>e</sup>coworkers.

16 **SECTION 5.** 940.32 (1) (a) 4.<sup>✓</sup> of the statutes is created to read:

17 940.32 (1) (a) 4. Appearing at the victim's residence or contacting the victim's  
18 neighbors. <sub>home</sub>

19 **SECTION 6.** 940.32 (1) (a) 5.<sup>✓</sup> of the statutes is created to read:

20 940.32 (1) (a) 5. Entering onto or remaining on property owned, leased, or  
21 occupied by the victim. <sub>real</sub>

22 **SECTION 7.** 940.32 (1) (a) 6.<sup>✓</sup> of the statutes is created to read:





1 940.32 (1) (a) 6. Contacting the victim by telephone or causing the victim's  
2 telephone or any other person's telephone to ring repeatedly or continuously,  
3 regardless of whether a conversation ensues.

4 SECTION 8. 940.32 (1) (a) 7. of the statutes is created to read:

5 940.32 (1) (a) 7. Sending material by any means to the victim or, for the purpose  
6 of obtaining information about or communicating with the victim, to a family  
7 member, employer, co~~w~~orker, or friend of the victim.

8 SECTION 9. 940.32 (1) (a) 8. of the statutes is created to read:

9 940.32 (1) (a) 8. Placing an object on or delivering an object to <sup>real</sup> property owned,  
10 leased, or occupied by the victim.

11 SECTION 10. 940.32 (1) (a) 9. of the statutes is created to read:

12 940.32 (1) (a) 9. Delivering an object to an immediate family member, employer,  
13 co~~w~~orker, or friend of the victim with the intent that the object be delivered to the  
14 victim.

15 SECTION 11. 940.32 (1) (a) 10. of the statutes is created to read:

16 940.32 (1) (a) 10. Harming an animal owned or cared for by the victim or a  
17 family member of the victim.

18 SECTION 12. 940.32 (1) (am) of the statutes is created to read:

19 940.32 (1) (am) "Domestic abuse" has the meaning given in s. 813.12 (1) (a).

20 SECTION 13. 940.32 (1) (b) of the statutes is amended to read:

21 940.32 (1) (b) "~~Immediate family~~" "Family member" means a spouse, parent,  
22 child, sibling, or any other person who regularly resides in the household or who  
23 within the prior 6 months regularly resided in the household.

History: 1993 a. 96, 496.

24 SECTION 14. 940.32 (1) (d) of the statutes is repealed.

1           **SECTION 15.** 940.32 (2) (intro.)<sup>✓</sup> of the statutes is amended to read:  
 2           940.32 (2) (intro.) Whoever meets all of the following criteria is guilty of a Class  
 3           A misdemeanor E felony:

History: 1993 a. 96, 496.

\*\*\*\*NOTE: This is based on a suggestion from Audrey Skwierawski. Her office rarely prosecutes stalking under this section. Instead, it typically charges the defendant with separate offenses (for example, unlawful use of a telephone under s. 947.012) for each criminal act that constitutes the "course of conduct." Under that approach, the maximum potential penalty for the defendant is generally greater than the Class A misdemeanor penalties provided under this section. Increasing the penalty for a violation of this section also makes sense in view of the challenges involved with proving all of the elements of this offense.

*currently*

4           **SECTION 16.** 940.32 (2) (a)<sup>✓</sup> of the statutes is renumbered 940.32 (2) (a) (intro.)  
 5           and amended to read:

6           940.32 (2) (a) (intro.) The actor intentionally ~~engages~~ does any of the following:

- 7           1. Engages in a course of conduct directed at a specific person that would cause  
 8           a reasonable person to fear bodily injury to ~~himself or herself or a member of his or~~  
 9           ~~her immediate family or to fear the death of himself or herself or a family member~~  
 10           of his or her ~~immediate family~~.

History: 1993 a. 96, 496.

11           **SECTION 17.** 940.32 (2) (a) 2.<sup>✓</sup> of the statutes is created to read:

12           940.32 (2) (a) 2. After having been found by a court to have committed any act  
 13           of domestic abuse, carries out any of the acts listed in sub. (1) (a) 1. to 10.<sup>✓</sup> This  
 14           subsection only applies if the victim under this section was the victim of the act of  
 15           domestic abuse.

\*\*\*\*NOTE: This is based on a suggestion from Audrey Skwierawski.

16           **SECTION 18.** 940.32 (2) (b)<sup>✓</sup> of the statutes is amended to read:

17           940.32 (2) (b) The actor ~~has knowledge~~ knows or should have ~~knowledge~~ know  
 18           that the specific person will be placed in reasonable fear of bodily injury to ~~himself~~  
 19           ~~or herself or a member of his or her immediate family or will be placed in reasonable~~

*✓*

1 ~~fear of the death of himself or herself or a family member of his or her immediate~~  
2 ~~family.~~

History: 1993 a. 96, 496.

3 SECTION 19. 940.32 (2) (c) of the statutes is amended to read:

4 940.32 (2) (c) The actor's acts induce fear in the specific person of bodily injury  
5 to ~~himself or herself or a member of his or her immediate family or induce fear in the~~  
6 ~~specific person of the death of himself or herself or a family member of his or her~~  
7 ~~immediate family.~~

History: 1993 a. 96, 496.

8 SECTION 20. 940.32 (2m) of the statutes is renumbered 940.32 (2m) (intro.) and  
9 amended to read:

10 940.32 (2m) (intro.) Whoever violates sub. (2) is guilty of a Class D felony if he  
11 ~~or she~~ any of the following ~~actor~~ applies:

12 (c) The ~~person~~ actor intentionally gains access to a record in electronic format that  
13 contains personally identifiable information regarding the victim in order to  
14 facilitate the violation under sub. (2).

History: 1993 a. 96, 496.

15 SECTION 21. 940.32 (2m) (a) of the statutes is created to read:

16 940.32 (2m) (a) The actor has a previous conviction for a violent crime, as  
17 defined in s. 939.632 (1) (e) 1., or a previous conviction under this section or s. 947.013  
18 (1r), (1t), (1v), or (1x).

3  
\*\*\*\*NOTE: This provision and the ~~ones~~ that follow are based on suggestions from  
Bob Kaiser. If you want a narrower definition of "violent crime," you may want to consider  
the one in s. 969.035 (1), or I could draft one to cover the specific crimes that you want  
included. In addition, note that an offense used to prove the "previous conviction"  
element under this paragraph, par. (b), or sub. (3) (b) may, depending on the nature of the  
offense, be used to prove one of the elements of the violation of sub. (2) itself. See sub. (2)  
(a) 2. Is that okay?

19 SECTION 22. 940.32 (2m) (b) of the statutes is created to read:

1 940.32 (2m) (b) The actor has a previous conviction for a crime, the victim of  
2 that crime is the victim of the present violation of sub. (2), and the present violation  
3 occurs within 7 years after the prior conviction.

4 SECTION 23. 940.32 (2m) (d) of the statutes is created to read:

5 940.32 (2m) (d) The person violates s. 968.31 (1) or 968.34 (1) in order to  
6 facilitate the violation.

7 SECTION 24. 940.32 (2m) (e) of the statutes is created to read:

8 940.32 (2m) (e) The victim is under the age of 18 years at the time of the  
9 violation.

10 SECTION 25. 940.32 (3) (intro.) of the statutes is amended to read:

11 940.32 (3) (intro.) Whoever violates sub. (2) under any of the following  
12 circumstances is guilty of a Class E C felony:

History: 1993 a. 96, 496.

\*\*\*\*NOTE: This change is based on: 1) the increased penalty under the bill for  
"simple stalking" (applicable to both pars. (a) and (b)); 2) Bob Kaiser's recommendation  
that the penalties in cases in which a person suffers bodily harm be more severe than  
those in cases in which the perpetrator gains access to an electronic record containing  
personally identifiable information — a Class D felony under current sub. (2m) and under  
this bill (applicable to par. (a)); and 3) the fact that the bill classifies stalking as a Class  
D felony if the person committed a prior violent offense or stalking or harassment offense  
against someone other than the victim of the current offense (applicable to par. (b)).

*of this subsection*

*If, however,  
you do not  
want*

*to*  
Instead of having all bodily harm cases be considered Class C felonies, you could  
have them all be Class D felonies, have them be Class C felonies only if all of the criteria  
for one of the other Class D felonies are otherwise satisfied, or have them be Class C  
felonies only if they involve substantial or great bodily harm.

In any event, given the number of elements that can be used to increase the penalty,  
the statute could be amended in a number of other ways to take those elements into  
account or repeal the provisions containing them. If you would like to have the  
penalties structured differently, please let me know.

①

*the bill may*

13 SECTION 26. 940.32 (3) (b) of the statutes is amended to read:

14 940.32 (3) (b) The actor has a previous conviction for a violent crime, as defined

15 in s. 939.632 (1) (e) 1., or a previous conviction under this section or s. 947.013 (1r),

16 (1t), (1v) or (1x) for a violation against, the same victim of that crime is the victim of



1 the present violation of sub. (2), and the present violation occurs within 7 years after  
2 the prior conviction.

History: 1993 a. 96, 496.

3 **SECTION 27.** 940.32 (3m) of the statutes is repealed.

\*\*\*\*NOTE: Any offense covered by <sup>current</sup> par. (a) is covered by sub. (3) ~~(b)~~. <sup>2m</sup> Given the fact that, under the bill, violations of sub. (3) ~~have~~ become Class C felonies, I was not sure that you would want the penalties to be further increased based on the use of a record. Therefore, for the time being, this draft repeals that provision as well. If you want to retain par. (b) but do not want to increase the penalties beyond those provided for Class C felonies, you may want to consider two other options: the broader "record" language could replace the "electronic record" language in the bill's sub. (2m) (c); or the "record" language could apply to offenses only under sub. (2) or (2m) (a), (b), ~~or~~ (d) ~~or~~ (e). <sup>With respect to par. (b) current</sup>

4 **SECTION 28.** 947.013 (1t) of the statutes is amended to read: <sup>2</sup> or (e)

5 947.013 (1t) Whoever violates sub. (1r) is guilty of a Class E felony if the person  
6 has a prior conviction under this subsection or sub. (1r), (1v) or (1x) or s. 940.32 (2),  
7 (2m), or (3) ~~or~~ (3m) involving the same victim and the present violation occurs within  
8 7 years of the prior conviction.

History: 1983 a. 336; 1991 a. 194; 1993 a. 496.

9 **SECTION 29.** 947.013 (1x) (a) of the statutes is amended to read:

10 947.013 (1x) (a) The person has a prior conviction under sub. (1r), (1t) or (1v)  
11 or this subsection or s. 940.32 (2), (2m), or (3) ~~or~~ (3m).

History: 1983 a. 336; 1991 a. 194; 1993 a. 496.

(end ins 2-1)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB  
01-0867/P3dn  
MGD: r:....  
Jld

Tanya:

1. Bob Kaiser (with the Dane County District Attorney's office) mentioned the possibility of increasing the penalty for stalking while armed. He also acknowledged, however, that the enhancer under current s. 939.63<sup>✓</sup> already applies to stalking offenses. Please let me know if you want me to change how stalking while armed is punished.

2. A violation of Michigan's stalking statute becomes aggravated stalking if, in the course of the violation, the person violates the terms of a restraining order or of probation. Do you want to include a comparable provision in this bill?

3. The meaning of the phrase "directed at a specific person" in s. 940.32 (2) (a) 1. is unclear, in view of the changes in the definition of "course of conduct." For example, can a letter sent to a person's employer be "directed at" that person? The "specific person" phrase also may be problematic in view of its use in sub. (2) (b) and (c) — even under current law. For example, assume that A maintains a physical proximity to B's child, C. A's acts may never induce fear in C, but they may induce fear in B. But without fear being induced in C, the acts only constitute stalking if they are viewed as "directed at" B. Courts may apply the "directed at" language so that the person in whom the fear is induced is the same person at whom the act is directed. But if you want that provision to be interpreted in that way, I recommend that you amend the statute to make that point clear.

Current s. 940.32 (3) (a)<sup>✓</sup> presents a related problem. It only refers to harm to the victim. Under certain circumstances, the person harmed may not be the victim of the stalking offense (although he or she may be the victim of some other offense based on the same conduct). For example, using the scenario in the preceding paragraph, C may suffer bodily harm, but it may be difficult to prove that A's acts induced fear in C — which means that C would not be a victim of the stalking offense. This problem could be addressed by referring to bodily harm suffered by a victim *or a victim's family member* in sub. (3) (a).<sup>✓</sup>

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0867/P3dn  
MGD:jld:rs

May 10, 2001

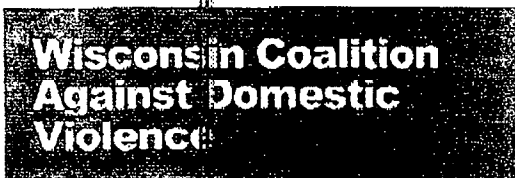
Tanya:

1. Bob Kaiser (with the Dane County District Attorney's office) mentioned the possibility of increasing the penalty for stalking while armed. He also acknowledged, however, that the enhancer under current s. 939.63 already applies to stalking offenses. Please let me know if you want me to change how stalking while armed is punished.
2. A violation of Michigan's stalking statute becomes aggravated stalking if, in the course of the violation, the person violates the terms of a restraining order or of probation. Do you want to include a comparable provision in this bill?
3. The meaning of the phrase "directed at a specific person" in s. 940.32 (2) (a) 1. is unclear, in view of the changes in the definition of "course of conduct." For example, can a letter sent to a person's employer be "directed at" that person? The "specific person" phrase also may be problematic in view of its use in sub. (2) (b) and (c) — even under current law. For example, assume that A maintains a physical proximity to B's child, C. A's acts may never induce fear in C, but they may induce fear in B. But without fear being induced in C, the acts only constitute stalking if they are viewed as "directed at" B. Courts may apply the "directed at" language so that the person in whom the fear is induced is the same person at whom the act is directed. But if you want that provision to be interpreted in that way, I recommend that you amend the statute to make that point clear.

Current s. 940.32 (3) (a) presents a related problem. It only refers to harm to the victim. Under certain circumstances, the person harmed may not be the victim of the stalking offense (although he or she may be the victim of some other offense based on the same conduct). For example, using the scenario in the preceding paragraph, C may suffer bodily harm, but it may be difficult to prove that A's acts induced fear in C — which means that C would not be a victim of the stalking offense. This problem could be addressed by referring to bodily harm suffered by a victim or a victim's family member in sub. (3) (a).

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

307 S Paterson Suite 1  
Madison, WI 53703  
Phone: 608-255-0539  
Fax: 608-255-3560



# Fax

To: <i>KANYA</i>	From: <i>PATTI</i>
Fax: <i>267 0274</i>	Date:
Phone:	Pages:
Re: <i>Stalking</i>	CC:
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle	

•Comments:

*J -  
Here's our notes on  
stalking.*

*Patti*





State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0867/2

MGD:jll

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*any msds?  
ref*

1 **AN ACT to repeal 940.32 (1) (d) and 940.32 (3m); to renumber and amend**  
 2 **940.32 (1) (a), 940.32 (2) (a) and 940.32 (2m); to amend 940.32 (1) (b), 940.32**  
 3 **(2) (intro.), 940.32 (2) (b), 940.32 (2) (c), 940.32 (3) (intro.), 940.32 (3) (b), 947.013**  
 4 **(1t) and 947.013 (1x) (a); and to create 940.32 (1) (a) 1., 940.32 (1) (a) 2., 940.32**  
 5 **(1) (a) 3., 940.32 (1) (a) 4., 940.32 (1) (a) 5., 940.32 (1) (a) 6., 940.32 (1) (a)**  
 6 **940.32 (1) (a) 8., 940.32 (1) (a) 9., 940.32 (1) (a) 10., 940.32 (1) (am), 940.32**  
 7 **(a) 2., 940.32 (2m) (a), 940.32 (2m) (b), 940.32 (2m) (d) and 940.32 (2m) (e) of**  
 8 **statutes; relating to: stalking and providing a penalty.**

*Analysis by the Legislative Reference Bureau*

*This is a preliminary draft. An analysis will be provided in a later version.*

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

9 **SECTION 1. 940.32 (1) (a) of the statutes is renumbered 940.32 (1) (a) (int.**  
 10 **and amended to read:**

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LRB-0857/P3  
MGD:jdrs  
SECTION 1

1 940.32 (1) (a) (intro.) "Course of conduct" means ~~repeatedly maintaining a~~  
2 ~~visual or physical proximity to a person, a series of 2 or more acts carried out over~~  
3 ~~time, however short, that show a continuity of purpose including any of the~~  
4 following:

5 SECTION 2. 940.32 (1) (a) 1. of the statutes is created to read:

6 940.32 (1) (a) 1. Maintaining a visual or physical proximity to the victim.

7 SECTION 3. 940.32 (1) (a) 2. of the statutes is created to read:

8 940.32 (1) (a) 2. Approaching or confronting the victim.

9 SECTION 4. 940.32 (1) (a) 3. of the statutes is created to read:

10 940.32 (1) (a) 3. Appearing at the victim's workplace or contacting the victim's  
11 employer or coworkers.

12 SECTION 5. 940.32 (1) (a) 4. of the statutes is created to read:

13 940.32 (1) (a) 4. Appearing at the victim's home or contacting the victim's  
14 neighbors.

15 SECTION 6. 940.32 (1) (a) 5. of the statutes is created to read:

16 940.32 (1) (a) 5. Entering real personal property owned, leased, or occupied by the  
17 victim.

18 SECTION 7. 940.32 (1) (a) 6. of the statutes is created to read:

19 940.32 (1) (a) 6. Contacting the victim by telephone or causing the victim's  
20 telephone or any other person's telephone to ring repeatedly or continuously,  
21 regardless of whether a conversation ensues.

22 SECTION 8. 940.32 (1) (a) 7. of the statutes is created to read:

23 940.32 (1) (a) 7. Sending material by any means to the victim or, for the purpose  
24 of obtaining information about, or disseminating information about communicating with the victim, to a family  
25 member, employer, coworker, or friend of the victim.

?  
Patti -  
Per ~~the~~ -  
means being  
close or  
in a place  
where ~~stalker~~  
can see victim.

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where approp.

other subs no  
YES  
MGD:lls  
SECTION 9  
or having another person deliver or personal

1 SECTION 9. 940.32 (1) (a) 8. of the statutes is created to read:  
2 940.32 (1) (a) 8. Placing an object on or delivering an object to real property  
3 owned, leased, or occupied by the victim.

Put in  
Add add  
Simil with  
language

4 SECTION 10. 940.32 (1) (a) 9. of the statutes is created to read:  
5 940.32 (1) (a) 9. Delivering an object to an immediate family member, employer,  
6 coworker, or friend of the victim with the intent that the object be delivered to the  
7 victim.

8 SECTION 11. 940.32 (1) (a) 10. of the statutes is created to read:  
9 940.32 (1) (a) 10. Harming an animal owned or cared for by the victim or a  
10 family member of the victim.

11 SECTION 12. 940.32 (1) (am) of the statutes is created to read:

12 940.32 (1) (am) "Domestic abuse" has the meaning given in s. 813.12 (1) (a). broad

13 SECTION 13. 940.32 (1) (b) of the statutes is amended to read:

14 940.32 (1) (b) ~~"Immediate family"~~ "Family member" means a spouse, parent,  
15 child, sibling, or any other person who regularly resides in the household or who  
16 within the prior 6 months regularly resided in the household.

Patti -  
Make it  
broad  
(combine 2  
defn's, not clear?  
if necc)

17 SECTION 14. 940.32 (1) (d) of the statutes is repealed.

Make this  
def. consistent  
w/ fam member as  
defined in  
§813.12(1)(c)

18 SECTION 15. 940.32 (2) (intro.) of the statutes is amended to read:

19 940.32 (2) (intro.) Whoever meets all of the following criteria is guilty of a Class

20 A-misdemeanor E-felony.

---NOTE: This is based on a suggestion from Audrey Skwierawski. Her office rarely prosecutes stalking under this section. Instead, it typically charges the defendant with separate offenses (for example, unlawful use of a telephone under s. 947.012) for each criminal act that constitutes the "course of conduct." Under that approach, the maximum potential penalty for the defendant is generally greater than the Class A misdemeanor penalties currently provided under this section.

21 SECTION 16. 940.32 (2) (a) of the statutes is renumbered 940.32 (2) (a) (intro.)

22 and amended to read:

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MGD:jld:rs

SECTION 16

*Use old Larry*

1 *if he or she were under the same*  
 2 *circumstances and had had the same experiences w/ the actor*  
 3 **940.32 (2) (a) (intro.) The actor intentionally engages ~~in~~ any of the following:** *as the person*  
 4 **1. Engages in a course of conduct directed at a specific person that would cause** *at whom*  
 5 **a reasonable person to fear bodily injury to himself or herself or a member of his or** *the laws*  
 6 **her immediate family or to fear the death of himself or herself or a family member** *of land*  
 7 **of his or her immediate family.** *is dired*

**SECTION 17. 940.32 (2) (a) 2. of the statutes is created to read:**

7 **940.32 (2) (a) 2. After having been found by a court to have committed any act**  
 8 **of domestic abuse, carries out any of the acts listed in sub. (1) (a) 1. to 10. This**  
 9 **subsection only applies if the victim under this section was the victim of the act of**  
 10 **domestic abuse.**

*add 5 sexual assaults 940.225*

**NOTE: This is based on a suggestion from Audrey Skwirawski.**

*]*  
 ?  
 NOT SURE  
 WHAT THIS IS  
 CLASS D FEL?  
 move to next section?

**SECTION 18. 940.32 (2) (b) of the statutes is amended to read:**

12 **940.32 (2) (b) The actor ~~has knowledge~~ knows or should have knowledge know**  
 13 **that the specific person will be placed in reasonable fear of bodily injury to himself**  
 14 **or herself or a member of his or her immediate family or will be placed in reasonable**  
 15 **fear of the death of himself or herself or a family member of his or her immediate**  
 16 **family.**

**SECTION 19. 940.32 (2) (c) of the statutes is amended to read:**

18 **940.32 (2) (c) The actor's acts induce fear in the specific person of bodily injury**  
 19 **to himself or herself or a member of his or her immediate family or induce fear in the**  
 20 **specific person of the death of himself or herself or a family member of his or her**  
 21 **immediate family.**

22 **SECTION 20. 940.32 (2m) of the statutes is renumbered 940.32 (2m) (intro.) and**  
 23 **amended to read:**

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1 940.32 (2m) (intro.) Whoever violates sub. (2) is guilty of a Class D felony if he  
2 or she or any of the following applies

3 (c) The actor intentionally gains access to a record in electronic format that  
4 contains personally identifiable information regarding the victim in order to  
5 facilitate the violation under sub. (2). *\* may want to move  
Auchey's suggestion here*

6 SECTION 21. 940.32 (2m) (a) of the statutes is created to read:

7 940.32 (2m) (a) The actor has a previous conviction for a violent crime,  
8 defined in s. 939.632 (1) (e) 1., or a previous conviction under this section or s. 947.01  
9 (1r), (1t), (1v), or (1x).

....NOTE: This provision and the 3 that follow are based on suggestions from Bob  
Kaiser. If you want a narrower definition of "violent crime," you may want to consider  
the one in s. 969.035 (1), or I could draft one to cover the specific crimes that you want  
included. In addition, note that an offense used to prove the "previous conviction"  
element under this paragraph, par. (b), or sub. (3) (b) may, depending on the nature of the  
offense, be used to prove one of the elements of the violation of sub. (2) itself. See sub. (2)  
(a) 2. Is that okay? yes

10 SECTION 22. 940.32 (2m) (b) of the statutes is created to read:

11 940.32 (2m) (b) The actor has a previous conviction for a crime, the victim of  
12 that crime is the victim of the present violation of sub. (2), and the present violation  
13 occurs within 7 years after the prior conviction.

14 SECTION 23. 940.32 (2m) (d) of the statutes is created to read:

15 940.32 (2m) (d) The person violates s. 968.31 (1) or 968.34 (1) in order to  
16 facilitate the violation.

17 SECTION 24. 940.32 (2m) (e) of the statutes is created to read:

18 940.32 (2m) (e) The victim is under the age of 18 years at the time of  
19 violation.

20 SECTION 25. 940.32 (3) (intro.) of the statutes is amended to read:

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LRB-0867PS  
MGD:jdms  
SECTION 25

1 940.32 (3) (intro.) Whoever violates sub. (2) under any of the following  
2 circumstances is guilty of a Class ~~E~~ C felony:

Victim or family member suffers bodily injury/harm

---NOTE: This change is based on: 1) the increased penalty under the bill for "simple stalking" (applicable to both pars. (a) and (b) of this subsection); 2) Bob Kaiser's recommendation that the penalties in cases in which a person suffers bodily harm be more severe than those in cases in which the perpetrator gains access to an electronic record containing personally identifiable information -- a Class D felony under current sub. (2m) and under this bill (applicable to par. (a)); and 3) the fact that the bill classifies stalking as a Class D felony if the person committed a prior violent offense or stalking or harassment offense against someone other than the victim of the current offense (applicable to par. (b)).

Use of weapon

If, however, you do not want all bodily harm cases to be considered Class C felonies, you could have them all be Class D felonies, have them be Class C felonies only if all of the criteria for one of the other Class D felonies are otherwise satisfied, or have them be Class C felonies only if they involve substantial or great bodily harm.

↑  
= Class C

In any event, given the number of elements that can be used to increase the penalty, the statute could be amended in a number of other ways to take those elements into account, or the bill may repeal the provisions containing them. If you would like to have the penalties structured differently, please let me know.

3 SECTION 26. 940.32 (3) (b) of the statutes is amended to read:

4 940.32 (3) (b) The actor has a previous conviction for a violent crime, as defined  
5 in s. 939.632 (1) (a), or a previous conviction under this section or s. 947.013 (1r),  
6 (1t), (1v) or (1x) for a violation against the same victim of that crime is the victim of  
7 the present violation of sub. (2), and the present violation occurs within 7 years after  
8 the prior conviction.

9 SECTION 27. 940.32 (3m) of the statutes is repealed.

---NOTE: Any offense covered by current par. (a) is covered by sub. (2m) (a). With respect to current par. (b) given the fact that, under the bill, violations of sub. (3) become Class C felonies, I was not sure that you would want the penalties to be further increased based on the use of a record. Therefore, for the time being, this draft repeals that provision as well. If you want to retain par. (b) but do not want to increase the penalties beyond those provided for Class C felonies, you may want to consider two other options: the broader "record" language could replace the "electronic record" language in the bill's sub. (2m) (c); or the "record" language could apply to offenses only under sub. (2) or (2m) (a), (b), (d), or (e).

10 SECTION 28. 947.013 (1t) of the statutes is amended to read:

11 947.013 (1t) Whoever violates sub. (1r) is guilty of a Class E felony if the person  
12 has a prior conviction under this subsection or sub. (1r), (1v) or (1x) or s. 940.32 (2),

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SECTION 29

1 (~~2m~~), ~~or (3) or (3m)~~ involving the same victim and the present violation occurs within  
2 7 years of the prior conviction.

3 SECTION 29. 947.018 (1x) (a) of the statutes is amended to read:

4 947.018 (1x) (a) The person has a prior conviction under sub: (1r), (1t) or (1v)  
5 or this subsection or s. 940.32 (2), (2m), ~~or (3) or (3m)~~.

6 (END)

Plc to Patti Seger

Wants agg. Stalking

Look at Mich 750.411h

411i = aggravated version

kaiser@co.dane.wi.us

Sugg'd I talk to Bob Kaiser

266-4211

Audrey Skowierawski

414/278-4646

left  
msgs

- 5235

10-12, 130-400

Bob Kaiser

make aggravation

more rational

Injury should be more severe enhance

than ~~enhance~~ (2m) enhance

Prior convictions

Any crime if the person  
was the victim

or if

+ Separate one for  
certain crimes against  
anyone

eavesdropping

wiretapping

Mich - restraining order

Use of weapons ~~as~~ <sup>as</sup> enhance

stalking while armed?

(already in it)

Child Victim ↑ penalties?





P/c from Audrey Shearwater - Mke DA

Problem - Rarely used as a misdemeanor, b/c if DA has 2 separate offenses that form a pattern, DA will charge those offenses separately to get 2 separate penalties

Add - "While injunction is in place" to aggravating factors

Believe that penalty for basic offense could be increased to a felony to address this.

~~Anyone other than~~  
~~the~~ ~~Anyone other than~~ ~~only people other than~~  
Anyone Except for stalking by strangers or only dating rel'ship, ~~and~~ anyone can get injunction. But stalking statute is prob. still needed to cover those exceptional cases

Prob w/ Patti's draft -

Course of conduct = a written or verbal threat?

Battery - Needs to ~~be~~ be included

✓ examples ~~needed~~ for course of conduct instead of def'n ??

Enhancers - ~~Revised~~

Any ~~to~~ domestic violence act is ⇒ enhancer (that may mean getting rid of # 5 of Patti's bolded language)

- audrey @ mail . da . state . wi . us